

The complaint

Y, a limited company, complains that HSBC UK Bank Plc won't refund the money it lost when it was the victim of a scam.

Y is represented in this case by Mr A, its director.

What happened

Y's director, Mr A, met a woman on a social media website in early 2021. They messaged for some time and the woman then told Mr A that she worked for an investment company and could teach him how to trade. As Mr A trusted the woman by this point, he agreed and so made a number of payments to the investment company from personal accounts he held with other banks – as the woman instructed him to do.

A number of payments were also made to the investment company from Y's account with HSBC, as set out below:

Date	Amount
30 April 2021	£2,000
1 May 2021	£5,000
1 May 2021	£2,000
4 May 2021	£5,000

Unfortunately we now know the woman and the investment company were scammers.

The scam was uncovered after Mr A tried to withdraw some of the profit he was told he had been making. The woman told him he couldn't withdraw it and, when he queried why he hadn't been told this before, she blocked him. Y then reported the payments made out of its account to HSBC as fraud and asked it to refund the money it had lost.

HSBC didn't agree to refund the money Y had lost, so it referred a complaint to our service.

I sent Y and HSBC a provisional decision on 7 September 2023, setting out why I wasn't intending to uphold this complaint. An extract from my provisional decision is set out below:

"This decision is solely in relation to the payments made out of Y's account. In these circumstances, Y is the eligible complainant who can bring a complaint to our service. Mr A is considered a separate legal entity – distinct from Y.

Y accepts that it made the payments out of its account here. So while I recognise that it didn't intend for the money to go to scammers, it did authorise the payments. And so the starting position in law is that HSBC was obliged to follow its instructions and make the payments. So Y isn't automatically entitled to a refund.

Where a customer made payments as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for a bank to reimburse the customer even though they

authorised the payments. And I've thought carefully about what Y, and Mr A, have told us to decide whether it would be fair for HSBC to refund the payments here.

Mr A met the scammer on a social media website. The initial payments he made towards the scam were made out of his own personal accounts. And, from looking at transcripts of his chats with the scammer, he only mentions using the profits he would make for his own personal benefit. So I think Mr A entered into the investment intending for the profits he made to be for his own personal benefit, rather than for any business-related activity on behalf of Y.

Mr A has said the first payments he made towards the scam were for his personal benefit. But that, as he thought he was making a good profit, he then also decided to use money from Y's account. And that the profit from these payments would be used to help Y.

But he hasn't sent us any documentary evidence to show that the investment was being made by Y in its own capacity, such as a business plan or correspondence with a business accountant setting out the investment. And Mr A sent money to the scam from his personal accounts first, and only started sending money from Y's account after the available balance of his personal account was used up.

There was also no activity on Y's account for several months before the payments to the scam. And Y appears to be a restaurant, or food-related service, so investing or trading doesn't appear to be connected to any business activity it would be carrying out.

So, based on the evidence I've seen, I think it's more likely than not that the money paid towards the scam from Y's account was for a personal investment being made by Mr A, rather than for any business-related activity on behalf of Y.

Given this, there are two potential scenarios in relation to the debt created by the spending on Y's account. Firstly, this could be Y lending money to Mr A personally – in which case Mr A would be liable to repay that debt to Y. And Y couldn't fairly be considered to have suffered a loss, as it is still owed the money by Mr A.

Secondly, by spending the money in Y's account in this way, Y could have been paying off a debt it owed to Mr A. But if this were the case, Y wouldn't have suffered a loss as its debt to Mr A would have been paid off. Mr A would then have been deemed to have lost the money on his own behalf.

So however the payments made out of Y's account are treated, I don't think Y has suffered a loss. And so, even if HSBC had made an error or would otherwise be required to refund the payments, I don't think it would be fair and reasonable to require it to do so here because I don't think Y has suffered a loss."

I said I'd consider anything further Y and HSBC sent in following the provisional decision, provided it was received by the deadline given.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Both Y and HSBC replied to the provisional decision, but neither submitted any further evidence or arguments to be considered.

As neither Y nor HSBC sent in anything further to be considered, I still think the conclusions I reached in the provisional decision are correct – and for the same reasons. I still don't think Y has suffered a loss here, and so I don't think it would be fair or reasonable to require HSBC to refund the payments it made.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Y to accept or reject my decision before 9 November 2023.

Alan Millward
Ombudsman