

The complaint

Mr C and Mrs K complain that HSBC UK Bank Plc (HSBC) won't refund the money they lost when Mr C fell victim to an investment scam.

What happened

The details of this complaint are well known to both parties. So rather than repeat them all again here, I'll briefly summarise the key points.

In 2016, Mr C received a call from a company I'll refer to as S, claiming to offer investment services. He says he was looking to invest, so had been researching investments online and had signed up to some websites. The call therefore didn't seem unexpected.

Mr C looked up S and didn't find anything which made him doubt their legitimacy. He checked the financial regulator's (the FCA's) warning list and there was nothing published for S. He says S's contact was also professional; they went through the expected 'know your customer' checks, provided documentation, had a sophisticated website and generally gave the impression of being a reputable company. He thought they were regulated by the FCA.

Over a period of around six weeks, Mr C made six debit card payments, totalling £19,500, to S from the current account he and Mrs K held with HSBC. After appearing to make a good profit, Mr C asked to withdraw some funds in late 2016. He was told he could only do so once he met a certain trading volume. That concerned him as it hadn't been mentioned in any of the documentation. On questioning S about this, he realised he had been scammed.

Mr C contacted HSBC about raising a chargeback claim against S around May 2017. Then in 2022, he complained to HSBC (via a professional representative) – arguing it should have intervened and uncovered the scam when he made the payments.

HSBC didn't agree with the complaint and declined to refund Mr C and Mrs K. So they referred the matter to our service. An investigator here looked into what had happened – and didn't uphold their complaint.

The investigator thought HSBC ought to have spoken to Mr C about some of the payments as they weren't in keeping with the usual account activity. But he wasn't persuaded that appropriate intervention would have uncovered the scam. He also didn't think HSBC could have pursued the chargeback claim given the time limits that apply. And because Mr C hadn't provided the necessary information.

Unhappy with this response, Mr C and Mrs K have requested a final decision. They said the scenario should have raised alarm bells with HSBC. And they would have realised it was a scam much earlier if HSBC had provided scam education.

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.

Having done so, I agree with the conclusions of the investigator for these reasons:

In line with the Payment Services Regulations 2009, in force at the time, HSBC was expected to execute authorised payment instructions without undue delay. It's not in dispute that Mr C was scammed. But nor is it in dispute that he authorised the payments. So the starting position is that he (and Mrs K, as the joint account holder) are liable for them.

But there are some situations where we believe that banks—taking into account relevant rules, codes and best practice—ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. If HSBC failed to do so, and that failure led to a fraudulent loss, it might be fair to hold it liable.

I don't think the first payment to S appeared so unusual, in amongst the genuine account activity, that HSBC ought to have been concerned about fraud. At the time, there weren't any warnings about S so the recipient wouldn't have caused concern. There had also been previous payments for higher amounts in the months leading up to the scam.

A few weeks later, Mr C made a further four payments between £2,000 and £5,000, in one day, to S. That was a significant departure from Mr C and Mrs K's usual spending. So I do think HSBC should have spoken to Mr C (as the authorising party) to find out more about the circumstances of the payments.

However, if it had done so, I'm not persuaded it's likely HSBC would have succeeded in uncovering the scam and preventing further loss. If it had questioned Mr C, it seems likely they would have established that he had done due diligence to reassure himself S seemed legitimate and reputable before making the investment. Although it could have guided him on what might be indicative of a scam, and what to check, a lot of this appears to match what Mr C had already checked/considered.

For example, Mr C was aware of how to check the FCA website, having already looked at this to make sure there weren't any warnings issued about S. He has also told us he thought S were FCA regulated. That wasn't true, and I'm not clear on where that belief originated from. The representative suggested it may have come from S's website. But, having accessed an archived version, I haven't seen anything showing it was falsely claiming to fall under FCA regulation. And in fact, the type of investment the website said it offered (Binary Options) didn't require FCA regulation at the time.

Regardless, HSBC isn't expected to do research on a customer's behalf, nor is it able to give investment advice. If it had asked Mr C if S were regulated, it's likely he would have said they were – as that was his belief at the time. Even if it came to light they weren't, as I've not found anything to show they were making a false claim, and given the investment type, it's unclear this would have uncovered the scam.

There may have been enough about the circumstances to prompt HSBC to give a general warning about investment scams. But given the research Mr C had done, I'm not persuaded he was likely to have been concerned about S's legitimacy. And some circumstances that appeared more akin to a scam seemed less concerning in context. For example, although Mr C says he was cold called, he says this was in the context of him having sought out/signed up to investment websites first. So it may have appeared that S were following up from contact initiated by Mr C.

This was a sophisticated scam. It's clear S operated professionally, to the extent of having a website seemingly showing Mr C's funds being loaded and invested. There wasn't public information at the time which suggested they might be a scam – as Mr C found himself when looking into the investment. In the circumstances, I'm not persuaded it's fair to conclude HSBC ought to have uncovered the scam at the time. Meaning it isn't at fault for not preventing Mr C's loss.

It's not clear to me whether the circumstances of the chargeback claim are still in dispute. But, for the sake of completeness, I've considered whether HSBC missed an opportunity to recover Mr C's loss. However, the scope for a successful chargeback claim in the circumstances was very limited. There were specific evidential requirements which, from what I've seen, I don't think would have been met. And there was a time limit of 120 days from the transaction processing date. It also appears Mr C didn't respond to HSBC's letter seeking more information to consider whether it would raise the claim. So I don't think HSBC's actions in relation to the chargeback claim had a material impact on Mr C's loss.

Despite my sympathy for Mr C – who has clearly fallen victim to a cruel and sophisticated scam – I'm not persuaded HSBC is at fault for his loss. I therefore don't consider it fair to direct it to refund him or take further action to resolve this complaint.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs K to accept or reject my decision before 31 August 2023.

Rachel Loughlin
Ombudsman