

## **The complaint**

Mr and Mrs T have complained that HSBC UK Bank Plc won't refund the money they lost after falling victim to a scam.

## **What happened**

Both sides are most familiar with the case, so I'll summarise things in brief.

In late 2017, Mr and Mrs T were contacted by a property company. They provided documents setting out a corporate bond, backed by a security trustee and a compliance company that was registered with the Financial Conduct Authority (FCA). Mr and Mrs T were persuaded to pay £25,000 to invest, paid by cheque from their HSBC current account, funded from other investments of theirs.

Mr and Mrs T received returns at first, but eventually these stopped. The property company went into liquidation. Mr and Mrs T believe they've been scammed.

In 2022, Mr and Mrs T complained to HSBC. HSBC explained that the rules for recovering scam payments didn't apply to cheques, and it had been too many years for HSBC to be able to get their money back.

Our investigator looked into things independently and didn't uphold the complaint. They found that at the time Mr and Mrs T invested, HSBC could not have reasonably foreseen that this was a scam. Mr and Mrs T's representatives didn't agree, so the complaint's been passed to me to decide.

## **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.

From what I can see, the property company is currently being investigated and it's not been determined whether this really was a scam – as opposed to, for instance, a poorly-run firm which fell into liquidation and couldn't pay its investors anymore. However, I accept it's likely and plausible that this was a scam, so in the interests of addressing the complaint fairly I will treat it as such in this case. I also appreciate that Mr and Mrs T lost a good deal of money here – for which they have my sympathy. I understand this can't have been easy to deal with, and I understand why they feel their money should be returned. I need to bear in mind that it's the property company who is primarily responsible for what happened, and who really owes Mr and Mrs T their money back. But I can only consider what HSBC did. Having carefully considered everything that both sides have said and provided, I can't fairly hold HSBC liable for Mr and Mrs T's loss here. I'll explain why.

It's not in dispute that Mr and Mrs T authorised the payment involved. So although they didn't intend the money to go to a scam or a failing investment, they are liable for the loss in the first instance. And broadly speaking, HSBC had an obligation to follow their instructions – the starting position in law is that banks are expected to process payments that a customer authorises them to make.

HSBC should have been on the lookout for payments which could be the result of fraud or scams, to help prevent them. But I also accept that a balance must be struck between identifying and responding to potentially fraudulent payments, and ensuring there's minimal disruption to legitimate payments. I've thought carefully about whether HSBC should have done more in Mr and Mrs T's case.

As this payment was made by cheque, it's not covered by the same rules that other payments – such as bank transfers – are. It meant HSBC were more limited in what they could do. Further, Mr and Mrs T had made many cheque payments before and had sent and received very large payments before – including for investments – so this payment was not that out of character for them. The payment was funded from their investments, and it's not unusual for customers to occasionally transfer investments or make very large payments using long-term savings. And this was a singular payment, rather than multiple rapid ones, sent to a UK registered business, authorised by the genuine customer. So it's arguable that HSBC didn't need to intervene in this case.

On the other hand, I accept that this was a notably large payment, made to a new payee. So I've considered whether things were likely to have gone differently had HSBC intervened.

However, even if HSBC had flagged the cheque and given Mr and Mrs T scam warnings or asked further questions about their reasons for paying, I find it's not likely or plausible that HSBC would have uncovered a scam here, and it's more likely than not that Mr and Mrs T would have still gone forward with the investment.

I say this because Mr and Mrs T were paying an established UK company which had been trading for over two years, for an investment backed by an FCA-registered business. The returns on offer were not unrealistic, and they were given professional documentation setting out a costed plan and the risks involved, and setting out that the bond was safeguarded by an independent security trustee.

At the time, there were no warnings or investigations against the companies involved. It would be unreasonable to expect HSBC to have investigated the individual who advised Mr and Mrs T, or to have assessed the investment advice or given investment advice itself. That would go beyond what I'd expect here. And I can't see that it had grounds to do so – the matter would've looked genuine at the time. I do not think HSBC could have reasonably foreseen that Mr and Mrs T would be scammed, and HSBC was not reasonably on notice that the payment would facilitate fraud. Indeed, the authorities only began looking into this matter some years after Mr and Mrs T's payment and are still investigating. Realistically, it's only with the benefit of hindsight and time that we might reasonably know this was a scam.

So even if HSBC had questioned Mr and Mrs T, I would not expect it to have blocked the payment. And even if it had given them general warnings about cold callers and the possibility of a scam, I do not see that it was likely to have made a difference in this case. At the time, there was ultimately not yet a reasonable basis on which to conclude this was a scam, whereas Mr and Mrs T had been given good reason to feel reassured that this was in fact a legitimate investment.

Next, I've considered whether HSBC should have done more to try to recover Mr and Mrs T's money after it was made aware this could be a scam. Unfortunately, HSBC was only told about this many years after the payment, and the property company had gone into liquidation. Given the time that's passed, the tendency for scammers to move money on as quickly as possible, and what the administrators have said about the likelihood of money being available, I don't think HSBC could have reasonably recovered Mr and Mrs T's funds by the time it was told about the scam allegation.

So while I am very sorry to hear about what happened to Mr and Mrs T, I don't think HSBC should be held responsible for their loss. And so I cannot fairly tell HSBC to refund Mr and Mrs T's money. I realise this will come as a disappointment to Mr and Mrs T, though it is not my intention to disappoint them. But I'm unable to reasonably come to another conclusion.

### **My final decision**

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 2 October 2023.

Adam Charles  
**Ombudsman**