

The complaint

Mr D and Mrs D are unhappy that HSBC UK Bank Plc (“HSBC”) won’t refund money they lost as a result of a scam. They are being represented by a representative.

What happened

Although the account from which the payment in dispute was made was held by Mr D and Mrs D, it was Mr D2 (their son) who interacted with the fraudsters.

In late 2019, Mr D2 was approached by a scammer that I will call B. They purported to be an investment company that was investing in a fast-growing pharmaceutical company. After two months of research, Mr D2 decided to invest in some bonds that B were offering.

Between January 2020 and May 2020 Mr D and Mrs D sent over £96,000 from their bank accounts to two different international payees and these were supposed to be joint investments with Mr D2.

In June 2020, B’s website disappeared and at this point all of the parties involved realised that they had been scammed.

A few years later Mr D and Mrs D reported the matter to HSBC and requested a refund of the payments that they made. HSBC didn’t think it had made an error, so declined their claim.

Mr D and Mrs D referred the matter to our service and one of our Investigators thought that HSBC should have questioned the payments, given their unusual nature. He noted that there was evidence of a call with HSBC around this time, but from the notes of the call the questions asked were not sufficient. That said though, he did not think an intervention would have changed Mr D and Mrs D’s decision to carry on with the transactions - given the circumstances that led to them investing in the first place.

Mr D and Mrs D, through their representatives, didn’t agree. As no agreement could be reached, the case was passed to me for a final decision.

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.

Mr D and Mrs D have accepted they authorised the payments they made, so the starting point here is that they are responsible for making the payments. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

There is no doubt that the payments made were unusual compared to the typical transactions on Mr D and Mrs D's account, and they did prompt HSBC to call to check that they were legitimate payments. Due to the circumstances of the payments that were made, I think that HSBC should have asked Mr D and Mrs D more probing and in-depth questions, to find out what the payments related to. Had HSBC done this, I think it's likely they would have explained the reason they were making the payments.

Had HSBC asked these questions they would have discovered Mr D and Mrs D were making the payments in order to invest in the bonds of a company. I think it would've also become apparent that they were investing alongside their son (Mr D2) who had done extensive research into the company and was confident that it was legitimate. I think this would have reassured HSBC that the payments were unlikely to be part of a scam, as this does not have the hallmarks of a common scam. There were also no official warnings or negative reviews about B at this point that I can find.

It is possible that HSBC should have provided a scam warning despite the above. But had HSBC warned Mr D and Mrs D that the payments they were making could be part of a scam, I'm not persuaded that they would have been dissuaded from going ahead with the transactions. I say this because they had been assured by Mr D2 that the investment was legitimate and that he had carried out sufficient research into B. So I don't think any warnings or intervention from HSBC would have stopped the scam from happening.

I have thought about whether the payments could have been recovered by other means. My understanding is that the payments were international transfers. So the Contingent Reimbursement Model does not apply. HSBC have contacted the beneficiary banks to try and recover the funds, but it was unsuccessful. In the circumstances I don't think that it needed to do anything more.

It therefore follows that I can't reasonably tell HSBC to refund any money to Mr D and Mrs D.

I'm sorry that Mr D and Mrs D have lost a considerable amount of money and I can understand why they would like to be compensated for their loss. I do accept they have fallen victim to a sophisticated scam. But I can only consider whether the bank, which had no involvement in the scam itself, should be held responsible for what happened. For the reasons set out above, I do not find HSBC can be held responsible – even partly - in the circumstances of this case.

My final decision

Because of the reasons given above, I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 8 February 2024.

Charlie Newton
Ombudsman