

The complaint

Mr B complains that HSBC has declined to refund the money he lost in 2017 to what now appears to have been an investment scam. He brings his complaint with the assistance of professional representation, but for readability, in what follows I will refer solely to Mr B.

What happened

In 2017, Mr B invested in an unregulated property scheme (that I'll refer to as W). He made this investment through three Faster Payments bank transfers from his HSBC account in February 2017. In total these amounted to a sum of £25,000 over the course of three days.

W has since entered liquidation and Mr B has highlighted significant concerns that it may have been operating fraudulently.

Mr B reported what had happened to HSBC in 2022. He complained when it did not reimburse him. He said HSBC had breached a duty of care by failing to question him about the original payments and, had HSBC done so, it would have come to light the investment was not legitimate, and his loss would have been prevented.

HSBC said Mr B's payments had been invested with a legitimate company that appeared to have gone into administration. It did not consider Mr B had been the victim of a scam — this had been a failed investment. In any event, HSBC said it wasn't liable for any losses because Mr B had authorised the payments, and it did not have any reason to intervene or block Mr B's payment requests.

Mr B referred the matter to our service and one of our Investigators didn't uphold his complaint. The Investigator thought it likely this had been a scam, contrary to HSBC's position. Furthermore, she thought HSBC should have spoken to Mr B about the payments when he'd made them, given the relatively large value. But even had HSBC done so she didn't think HSBC (or Mr B) would have had sufficient grounds to conclude the investment was not legitimate given what it could reasonably have uncovered at the time. She didn't think HSBC could have prevented Mr B's loss.

Mr B maintained that had HSBC intervened it would have been able to identify several concerning aspects of the investment, and therefore should have warned him this was a scam. Had it done so, this would have stopped him from making the payments, and avoided the loss he has now sustained.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards;

codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

The starting position in law is that Mr B is responsible for transactions he's carried out himself. Mr B doesn't dispute that at the time, he intended to make the payments, albeit in the belief he was investing in a legitimate scheme.

However, taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I'd expect HSBC to have been on the lookout for out of character or unusual transactions, as well as other indications that its customer might be at risk of financial harm from fraud or scam.

I consider it to be appropriate for a customer's previous account activity, among other factors, to be taken into account when deciding whether a payment instruction does, or does not, present a sufficiently heightened risk that it would justify an intervention before processing the transaction.

Here, HSBC did not intervene. Arguably it did not need to. While each payment was for a relatively large amount, HSBC has evidenced multiple similar sized payments sent from Mr B's account over the course of the previous twelve months.

But even if I were to accept that HSBC ought to have intervened here and spoken to Mr B about one or more of the payments prior to processing it, I consider it unlikely this would have prevented his loss. While there are now significant concerns about the legitimacy of W's business, these first began to surface in the period surrounding W's liquidation, and therefore several years after Mr B's three payments were made.

I cannot rely on the benefit of hindsight – I must consider what HSBC could reasonably have established in the course of proportionate enquiry to Mr B about his payments back in February 2017.

And with that in mind, I don't think it would've been apparent in 2017 that W was likely fraudulent rather than simply a risky investment. I'm not persuaded sufficient information was readily and publicly available at the time which would have caused HSBC (or Mr B) specific concerns about this.

Mr B has provided copies of investment literature I understand he received at the time. This appears professional and not obviously anything other than legitimate. It gave an explanation of the risks involved, recommended investors should seek independent financial advice prior to making an investment decision and indicated that the financial promotion had been approved by an FCA regulated firm. On the face of it, I don't think there was enough here for HSBC to have reasonably suspected W was other than it seemed.

It is possible of course that the investment might have represented a greater degree of risk than was suitable for Mr B to take. But HSBC didn't have any obligation to step in to protect its customers from potentially risky investments. Taking steps to assess suitability without an explicit request from Mr B (which there was not) would have gone far beyond the scope of what I could reasonably expect of it in any proportionate response to what, on the face of it, were seemingly legitimate payment requests from its customer.

In short, while I've carefully reviewed all of Mr B's submissions, I don't find that significant concerns would (or could) have been readily uncovered by either HSBC or Mr B at the relevant time. I can only reasonably expect any enquiries by HSBC to have been proportionate to the perceived level of risk. All considered, I don't think it likely that HSBC could have prevented these payments from being made, or otherwise caused Mr B not to

proceed.

Finally, HSBC has evidenced attempts to recover Mr B's money from the recipient bank account. Unfortunately, given the time that had elapsed since the payments were originally made, and with W in administration, no funds remained for recovery at that point. I don't find HSBC could have done more here.

Having carefully considered everything Mr B and HSBC have submitted, I don't find HSBC could have reasonably prevented Mr B's loss here. Neither do I find it materially at fault otherwise.

I appreciate this will not be the answer Mr B would like me to give, and I am sorry to have to disappoint him. He has lost a significant sum. But it is simply the case that I don't consider I can fairly and reasonably hold HSBC liable for that loss.

My final decision

For the reasons given above, my final decision is that I do not uphold Mr B's complaint about HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 October 2023.

Stephen Dickie
Ombudsman