

The complaint

Mr and Mrs T complain that HSBC UK Bank Plc won't refund money they say they lost to a scam.

What happened

Mr and Mrs T invested in an unregulated property scheme (that I'll call W). They made two payments from their HSBC joint account to the scheme. Those payments were £10,000 on 3 April 2017 and £5,000 on 4 April 2017. W subsequently entered administration and, eventually, liquidation.

Mr and Mrs T complained to HSBC through a representative in 2022. They argued that HSBC had breached its duty of care by failing to question the payments and, had it done so, the scam would have come to light and the loss would have been prevented. HSBC said that the payments were not considered suspicious and it acted in accordance with the procedures it had in place at the time.

Mr and Mrs T referred the matter to our service, but one of our Investigators didn't uphold the complaint. They thought that HSBC ought to have considered the payments suspicious and intervened but, had it done so, it wouldn't have been concerned about the investments based on information that was available at the time.

Mr and Mrs T's representative's maintained that had HSBC intervened it would have been able to identify several concerning aspects of the investment, such as the way in which Mr and Mrs T had been contacted, the fact the scheme had been inappropriately marketed to them and that they'd have no protection if something went wrong.

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.

The starting position in law is that Mr and Mrs T are responsible for transactions they've carried out themselves. There's no dispute about that here.

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, HSBC should, fairly and reasonably, have been on the lookout for out of character and unusual transactions, as well as other indications that its customer might be at risk of financial harm from fraud.

I agree with the Investigator that given Mr and Mrs T's previous account activity, the size of the first payment and the fact it was going to a new payee, HSBC ought to have identified a scam risk and questioned the first payment before it debited Mr and Mrs T's account.

However, it's difficult to see how any intervention would have prevented their loss. After all, it doesn't appear that any significant concerns were raised about W until after this payment was made. While there's no dispute that W was unregulated, it appeared to be operating legitimately at that time and, I understand, paid returns to some investors for some time after Mr and Mrs T made their payments.

I've considered Mr and Mrs T's representative's submissions carefully and I do recognise that there were some concerning features of the investment. But I also have to consider what would reasonably come to light in a relatively brief telephone conversation between the bank and Mr and Mrs T. I think some of the suggestions made by Mr and Mrs T's representatives, such as the bank being able to establish that W or intermediaries acting on its behalf did not act in accordance with relevant regulations (for example by breaching rules around the marketing of unregulated investments) are likely to have been beyond the scope of such a conversation.

While the bank might have advised Mr and Mrs T that they would lose their money if something went wrong, it would not have been able to establish that Mr and Mrs T were definitely falling victim to a scam. And, I'm not persuaded that merely highlighting the risk to their money would have deterred Mr and Mrs T from going ahead with the payments when set against the weight of evidence that W was operating legitimately.

Overall, based on what appears to have been known at the time, I can't reasonably conclude that an intervention by HSBC would have prevented Mr and Mrs T's loss.

Finally, any chance of recovering Mr and Mrs T's funds so long after the event would have been very small. Despite that, HSBC did try to recover their money but was unsuccessful. I think its efforts to recover their money were reasonable.

I'm sorry that Mr and Mrs T have lost out, but I've decided that HSBC aren't responsible for their loss.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 25 October 2023.

Rich Drury
Ombudsman