

The complaint

Mr L complains about HSBC UK Bank Plc.

He says that HSBC didn't do enough to protect him when he became the victim of a scam and would like it to refund him the money he has lost.

What happened

The details of what happened are well known to both parties, so I won't repeat them here.

In summary, Mr L received an unsolicited phone call, and was persuaded to invest in trading of gold or silver bullion. Mr L made two payments – one of £500, and another payment of €5000 (£4,562.46, plus a £125.46 non-sterling transaction fee).

Unfortunately, Mr L had fallen victim to a scam, and the money was lost.

Mr L complained to HSBC, but it didn't uphold his complaint, so he brought his complaint to this Service. Our Investigator looked into things but didn't think that Mr L's complaint should be upheld.

Mr L and his representative disagreed – they said that the size of the payments should have triggered an intervention from HSBC which would have uncovered the scam. They also said that the Financial Conduct Authority (FCA) had issued a warning about 'World Markets' which was the fraudulent company behind the scam, and so HSBC should have requested paperwork from Mr L prior to processing the payments which would have shown who he was really dealing with and linked this to the FCA warning.

As no agreement was reached, the complaint has been passed to me to make 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.

Having done so, I've decided not to uphold Mr L's complaint for broadly the same reasons as our Investigator. I know this will be disappointing for Mr L, so I'll explain why.

It isn't in dispute here that Mr L has been the victim of a scam and has lost money as a result. However, even when it is clear that a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that has been lost.

In broad terms, the starting position at law is that a banks, electronic money institutions (EMI's) and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account.

Mr L authorised the payments in question here – so even though he was tricked into doing so and didn't intend for the money to end up in the hands of a scammer, he is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, HSBC should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider HSBC should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr L when he authorised payments from his business account or whether it could or should have done more before processing the payments.

Having considered the payments Mr L has made, I'm afraid I don't think that any of the individual payments were significantly unusual or uncharacteristic enough for HSBC to have first got in touch before processing the payments on request. Mr L had also made several large payments in the months leading up to the scam which would also make even the larger of the payments less suspicious.

I have taken into account what Mr L and his representatives have said about the FCA warning about 'World Markets'. However, the FCA warning was only added twelve days before Mr L made his payments, so I wouldn't have expected HSBC to have updated its own records so quickly, and in any event, Mr L wasn't making payments directly to an account in this name – so even if HSBC had managed to update its own internal systems prior to this, I still don't think that it would have been picked up.

Mr L's representatives have also explained that Mr L was told to conceal he was making payments to World Markets – and not to divulge this to HSBC – so even if I thought that HSBC should have intervened (which as I've said above, I don't think it needed to) then I wouldn't be able to say that Mr L would have told HSBC the true purpose of his payments.

I know that HSBC has attempted to recover the funds on behalf of Mr L, but it was unsuccessful. as the funds had already been moved on by the scammer, so I don't think it could have done anything more here.

I am very sorry for the situation Mr L now finds himself in – I know that he has lost a lot of money here. But this is the fault of the scammers themselves, not HSBC, and I can't ask HSBC to refund him the money he has lost when I don't think that it has done anything wrong.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 11 June 2024.

Claire Pugh
Ombudsman