

The complaint

Mr P complains that HSBC UK Bank Plc won't refund the money he lost when he was the victim of what he feels was a scam.

What happened

In late 2018, Mr P made two payments from his HSBC accounts to an investment company. The payments were made in order to invest in bonds offered by the investment company, and Mr P was told he would receive interest payments on the money he invested. I've set out the payments Mr P made below:

Date	Amount
9 November 2018	£125,000
15 November 2018	£15,000

Unfortunately, other than relatively small returns of £1,800, Mr P says he never received the interest he was told he would receive and has not been able to withdraw or recover the money he invested. He therefore reported the payments he had made to HSBC as a scam and asked it to refund the money he had lost.

HSBC investigated but said the investment company was listed on the government register of limited companies and was going through what appeared to be a genuine insolvency process. So it said it deemed this to be a civil dispute, rather than a scam, and didn't agree to refund the payments Mr P had made. Mr P wasn't satisfied with HSBC's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think HSBC would have had any concerns if it had asked Mr P about the payments at the time, so didn't think it had made an error in allowing the payments to go through. And so they didn't think HSBC should have to refund the payments. Mr P disagreed with our investigator, so the complaint has been passed to me.

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.

HSBC has argued that the investment company Mr P made the payments to wasn't operating a scam, and so it isn't responsible for refunding the money he lost. But, even if this was a scam, I don't think it would be fair and reasonable to require HSBC to refund the payments Mr P made here. I'll explain why below.

Banks are expected to make payments in line with their customers' instructions. And Mr P accepts he made the payments here. So while I recognise he now feels he has been the victim of a scam, he did authorise the payments. And so the starting position in law is that HSBC was obliged to follow his instructions and make the payments. So Mr P isn't automatically entitled to a refund.

However, the regulatory landscape, along with good industry practice, sets out requirements for banks to protect their customers from fraud and financial harm. So, in line with this, I think 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.

And so I've also considered whether HSBC should have identified that Mr P was potentially at risk of financial harm from fraud as a result of any of these payments and did enough to protect him.

The first payment Mr P made to the investment company was for a significant amount of money, and for an amount significantly larger than any other payment made out of his account in the previous months. It also used up the entire credit balance in his account at the time. And so I think HSBC should have identified that he could be at risk of financial harm as a result of this payment, and intervened to carry out additional checks before allowing it to go through.

From what I've seen of the interaction HSBC had with Mr P when the payment was made, I also don't think it carried out the level of checks we would expect it to have done to address the risk I think it should have identified. And so I don't think it did enough to protect him.

But, even if HSBC had carried out the checks I would've expected it to have done, I don't think it would've uncovered significant concerns and I don't think the payment Mr P was trying to make to the investment company would have been stopped.

In these circumstances and given the size of the payment Mr P was making, I think it would be reasonable to expect HSBC's checks to include questions about the purpose of the payment and then relevant follow-up questions about the investment Mr P thought he was making and what checks he had done to satisfy himself it was genuine.

Mr P thought he was investing in a bond offered by the investment company where he would provide capital and the company would pay him interest each year. And as this is a fairly standard format of investment, I don't think this will have seemed particularly suspicious to HSBC or that the returns Mr P was told he would be paid would have seemed too good to be true.

At the time, the investment company – or its parent company – had been listed on the governments register of limited companies and filed accounts for several years. And I wouldn't necessarily expect this of a company intending to operate a scam, so I think this would have reassured both Mr P and HSBC that the investment company was genuine.

I've also seen copies of promotional literature the investment company issued in relation to the bonds, and I think this looked relatively professional and legitimate. So, if HSBC had asked to see any of this paperwork associated with the investment, I don't think this would have raised any concerns either.

And so if HSBC had carried out the checks I would've expected when Mr P tried to make this payment, I think it would have been satisfied with the information it was given and I don't think anything it was told or shown would've caused it significant concern. Based on the information I would have expected it to uncover at the time, I think this would have looked like a genuine investment to HSBC. And so I wouldn't have expected it to stop Mr P making the payments.

During this complaint, Mr P has sent us a significant amount of detailed information about the investment company, which he suggests shows there were irregularities with how the company was conducting its business around the time of his payments. But this information has only come to light since the payments he made, and wouldn't have been available to either him or HSBC at the time. I also wouldn't have expected HSBC's checks to go into the level of detail necessary to uncover this kind of information, as the information it would've been given from the checks I would've expected it to do earlier wouldn't have uncovered any significant concerns. So I don't think this information Mr P has sent us means HSBC acted unreasonably in allowing the payments to go through.

I appreciate that Mr P has lost a significant amount of money and I sympathise with the position he has found himself in. I'm also in no way saying he did anything wrong himself or that he doesn't have a legitimate grievance against the investment company. But I can only look at HSBC's responsibilities and, for the reasons I've set out above, I don't think HSBC acted unreasonably in allowing the payments Mr P made to go through or that anything I would reasonably have expected it to have done would have prevented the loss he suffered. I therefore don't think it would be fair to require HSBC to refund the payments Mr P made.

My final decision

I don't uphold this complaint.

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

Alan Millward
Ombudsman