

## **The complaint**

Mr and Mrs P complain that HSBC UK Bank Plc (HSBC) won't refund the money they lost when they were the victims of a scam.

## **What happened**

The payments in this case were made from an account in Mr and Mrs P's name but Mr P dealt with the scammer and the payments, so I'll mainly refer to him in my decision.

Both parties are aware of the circumstances of the complaint, so I won't repeat them all here. But briefly, Mr P was looking to invest funds. He received a call and subsequent emails from about a bond from someone who said he worked for a well-known company, which I'll refer to as M. Mr P was taken through a security process and offered a bond that offered a rate of return of 6.875% per year. He was provided with a bond fact sheet.

Mr P was provided with payment details for an account with M abroad and told that this office was dealing with his investment. But Mr P was unable to select the right payee when he tried to make the payment online and says he was advised to call HSBC to make the payment. The investment agent told Mr P that as he'd missed his slot to invest his payment would need to go into an overnight account (as M's system couldn't cope with thousands of transactions at once). He was given account details of a different company called S and told that S would hold the funds overnight and transfer them to the correct account with M the following day.

Mr P says he made a trial payment of £10,000 on 22 June 2020 and later received a security call from HSBC in which he confirmed he wished to make the payment. The following day, Mr P made a larger payment of £40,200 and received a further security call from HSBC.

The agent contacted Mr P about a further investment opportunity in July 2020 and Mr P made a further payment of £20,000 in respect of this.

In late July 2020 Mr P contacted HSBC to report that he was the victim of a scam. Mr P didn't receive a certificate after making the £20,000 payment so tried to contact the agent using M's contact details. He was told that nobody with the name the agent gave Mr P worked for M and realised he was the victim of a scam. Mr P was also told the email address he'd been given was fake, as were the certificate references Mr P had been given.

This last payment was made after the Lending Standards Board Contingent Reimbursement Model Code (CRM Code) came into force. HSBC offered to refund half of this payment but didn't agree to provide Mr and Mrs P with a refund of the earlier international payments. It said that it had done what it could to recover the payments but hadn't been successful.

As Mr and Mrs P were unhappy with HSBC's response, they brought a complaint to this service.

### *Our investigation so far*

While Mr and Mrs P's complaint was with this service HSBC agreed to refund the remaining 50% of the final payment Mr and Mrs P made.

The investigating officer who considered this complaint recommended that the two international payments be refunded in full. He said that HSBC flagged the first payment Mr P made and

had a conversation with him about it. But the conversation didn't go far enough and involved yes/no answers. The investigator said that had HSBC asked more appropriate questions the scam would have been uncovered as Mr P was cold called, wasn't paying the well-known investment company he thought he was dealing with and the reason for this should reasonably have caused HSBC concern.

The investigator didn't think a deduction should be made to account of Mr P's contribution to his loss. He said this because Mr P thought he was dealing with a well-known company and had completed some checks into this company but didn't know he was dealing with a clone of M.

Mr and Mrs P agreed with the investigator's findings, but HSBC didn't. I have summarised the main points made by HSBC below:

- The investigator's view focuses on Mr P's familiarity with M and the apparent checks he completed in respect of M but doesn't cover the other companies and individuals involved and the research Mr P completed in relation to them.
- Had Mr P contacted the genuine M at the time of payment he'd have found out that the agent he was dealing with didn't work for M and the documents he'd received were fake.
- There was no FCA warning about clones of M at the time Mr P made the payments so any warning HSBC could give would just be a general investment scam warning.
- The view didn't include any detail of how Mr P found out he was the victim of a scam. Such information is relevant to how he'd have reacted if he'd been given a warning.
- HSBC think it unlikely Mr P would have chosen not to go ahead with the investment based on an investment scam warning.
- The questions the investigator suggested HSBC could have asked were guided by hindsight.
- The investigator said the fact the payment was made to S should have caused concern and resulted in HSBC making detailed enquiries, but HSBC isn't required to act as an amateur detective. Also, the HSBC agent who called Mr P wouldn't have had investment experience.
- HSBC referred to the general principle that customers should take responsibility for the decisions they make.
- There's no indication Mr P queried why he was paying S.
- Because the checks Mr P made in respect of M were inadequate and he didn't complete any checks into the agent he was dealing with or S, Mr and Mrs P should bear significant responsibility for making the payments.
- Finally, HSBC questioned the 8% interest rate and pointed out that as funds were transferred into the account the appropriate rate would be the one that applied to the originating account.

I reviewed the complaint and told HSBC why I thought it should refund Mr and Mrs P's losses in full. But I agreed with HSBC's point about the appropriate rate of interest to award. HSBC didn't agree and so I have reviewed everything each party has provided to issue this 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 have been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

However, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have 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 make 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 P when he authorised payments from his account or whether it could and should have done more before processing them.

HSBC has made an offer to refund in full the final payment of £20,000 Mr P made on 16 July 2020, so I don't need to consider this payment any further except to say I believe the offer is reasonable. HSBC should also pay interest on this payment as set out below.

*Did HSBC act fairly and reasonably in Mr and Mrs P's case?*

Mr and Mrs P's first payment of £10,000 was unusual and out of character and this is why HSBC flagged it and had a conversation with Mr P. I'd expect HSBC to ask probing questions to verify Mr P wasn't being scammed or at risk of financial harm in relation to the unusual and uncharacteristic payment he'd requested.

I've listened to the call HSBC has provided in respect of this first payment and, having done so, I don't think HSBC did enough. Below are the questions the HSBC agent asked Mr P and his responses:

- Do you recognise the payment? Yes
- Was it your decision to make the payment? Yes
- How did you get the account number of the beneficiary? Given to me by M
- What is the reason for the payment? A bond
- A question aimed at email intercept scams

*"You have checked about the company just to make sure it's legit and safe? Yes*

I consider HSBC should have asked the purpose of the payment, how he found out about the investment, some information about the investment like the rate of return and what checks he'd completed. I don't consider that asking Mr P whether he's checked "the company", without distinguishing which company or what type of checks is sufficient. I also consider that HSBC should have asked Mr P why he wasn't paying M as this was a clear red flag that something was wrong.

I'd also expect HSBC to provide appropriate investment scam warnings, including the prevalence of fake and cloned investment companies and how to avoid falling victim to this type of scam – but none were given. In its response to the investigator's opinion HSBC said that at the time Mr P made the payments there was no clone warning in respect of M on the FCA website and so it could only have given Mr P a general scam warning. I accept there was no FCA warning but, as I've said above, HSBC should have provided a warning about cloned investment companies.

I've thought carefully about whether the kind of questions I believe ought fairly and reasonably to have been asked by HSBC would have made a difference in this case. Having done so, it's my belief that had HSBC asked proportionate questions and given Mr P a warning about cloned investment scams the scam would have been uncovered quickly.

Mr P was cold called by someone purporting to be from M. The reason Mr P was given to pay S was not plausible to anyone who understands investment scams. Mr P explained to this service that the reason he made the payments to S and not M was as follows:

*"I have missed "my slot" for investing the money would need to go in to an "overnight" account (after being informed that [M] deposited money overnight in a number of bank accounts as "there system could not cope with all the thousands of transaction at once"*

I note HSBC has said its agent wouldn't have been familiar with investments so wouldn't have known it was odd to pay S. But the agent should have had knowledge of investment scams. Paying an account in a different name is a common feature of scams of this nature, as is being cold called and offered an attractive rate of interest.

Had Mr P been provided with a warning I believe he would have taken additional steps before making the payment – and ultimately wouldn't have made it. Mr P wasn't alert to the potential for fake investment companies to appear as genuine ones. HSBC was the expert here and I feel HSBC should have done more to ensure Mr P wasn't at risk of being defrauded. I see no reason why Mr P wouldn't have taken HSBC's warnings seriously if he'd been cautioned to consider and check the legitimacy of the investment and the reason for paying S before proceeding.

HSBC commented that the view doesn't discuss how Mr P realised he was the victim of a scam and that this information is relevant to any consideration of how he'd have reacted to a warning about investment scams. The detail I have provided in the "What happened" section of this decision was provided to HSBC when Mr P reported the scam and is in HSBC's file. Mr P didn't receive a certificate in respect of a bond and used M's genuine contact details to enquire about it.

Given what I have said about the first payment it follows that I also consider that Mr P's second payment should have been refunded – this payment wouldn't have been made if the scam had been uncovered when the first payment was made.

I've also thought about whether Mr P did enough to protect himself. I think he did. Mr P thought he was investing through a very well-known company. He didn't receive any kind of warning about clone investment companies and so had no understanding that it's possible to receive emails and documents that seem as though they've come from a genuine company but in fact have been sent by fraudsters. I'm not persuaded that, particularly in the absence of any knowledge of cloned firms, Mr P should have contacted M to check that the person he was dealing with actually worked there. This is something that those with a detailed understanding of fraud and scams would do, but not the average customer.

HSBC has said there was no indication Mr P queried why he was paying S and not M. I've covered above Mr P's understanding of this. Whilst to those with knowledge of scams the explanation wasn't plausible, I can appreciate why Mr P was reassured by what he was told and went ahead with the payments. I'm not persuaded that the average customer would complete detailed research into S in these circumstances.

I've also noted that Mr P initially made a 'test' payment of £10,000. It was only when he received confirmation of receipt of his funds that he transferred £40,200.

I agree with HSBC's comments about interest in respect of the first two payments. Mr and Mrs P transferred funds into their joint account to make the two international payments and so should not receive interest at the rate of 8% per year as recommended by the investigator. Applying this interest rate would put Mr and Mrs P in a better position than if the scam hadn't taken place. Mr and Mrs P transferred £50,233 from a savings account just before making the scam payments so interest should be paid at the rate applicable to that account. The final payment of £20,000 was transferred from Mr P's business account. HSBC has already refunded 50% of this payment. Interest on the remaining £10,000 should be paid at the rate that applied to the business account – as set out below.

### **Putting things right**

For all the reasons I've explained, I'm satisfied it's fair and reasonable, in the particular circumstances of this complaint, to say HSBC ought to have done more to help Mr and Mrs P. Had it done so, I'm persuaded they wouldn't have suffered the loss of £50,200 so HSBC should refund this amount and add interest as set out below. It should also refund any international payment fees Mr and Mrs P were charged in respect of these payments.

If HSBC hasn't done so already, it should also refund the outstanding 50% of the final £20,000 payment Mr and Mrs P made on 16 July 2020 together with interest as set out below.

### **My final decision**

I require HSBC to:

- Refund Mr and Mrs P's loss (£50,200) plus any international payment fees charged in respect of these payments;
- Pay interest on the above amount at the rate that applied to the savings account the funds were transferred from. This interest should be paid from the date of payment to the date of settlement;
- If HSBC hasn't already done so refund the remaining £10,000 of the final £20,000 payment;
- If HSBC hasn't already done so pay interest on the above amount at the rate that applied to the business account funds were transferred from (if the account attracted any interest). Interest (if any) should be paid from the date of loss to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to

accept or reject my decision before 14 September 2022.

Jay Hadfield  
**Ombudsman**