

The complaint

Mr N complains that HSBC UK Bank Plc (HSBC) won't refund the money he lost when he fell victim to a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat them all here. Instead, I'll summarise the key points and focus on giving my reasons for my decision:

- In 2018, Mr N was looking online for investment opportunities and found a company called Wealth Capital. He says their platform seemed easy to use and there were positive reviews online. So he proceeded to set up an account. From 2019, he made various payments to Wealth Capital from different accounts, including the following from his HSBC current account:

| Date | Type | Amount |
|------------|---------------|-------------------|
| 10/03/2020 | payment order | £17,987.76 |
| 10/03/2020 | debit card | £4,385.27 |
| 13/05/2020 | payment order | £17,000 |
| 12/06/2020 | debit card | £4,506.57 |
| 12/06/2020 | debit card | £4,506.57 |
| 12/06/2020 | debit card | £4,506.57 |
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| 12/06/2020 | debit card | £4,506.57 |
| 12/06/2020 | debit card | £4,506.57 |
| 12/06/2020 | debit card | £4,506.57 |
| | Total | £70,919.02 |

- In July 2020, Mr N reported to HSBC that he thought Wealth Capital were a scam, as they were evading withdrawal requests. It said it wouldn't refund him as the loss occurred due him responding to a third party.
- Our investigator upheld the complaint. They thought HSBC could have identified and prevented the scam when Mr N made the £17,987.76 payment. But they also thought Mr N was partly to blame as he'd proceeded despite there being information online in 2019 about withdrawal issues concerning Wealth Capital. They recommended that HSBC should refund 80% of his loss.
- HSBC didn't agree. In summary, it pointed out that the payments hadn't gone straight to Wealth Capital. It also disagreed that intervention would have made a difference – and with how contributory negligence had been considered.
- I issued my provisional decision in May 2022 explaining why I was minded to uphold the complaint. Both parties have now responded to accept this.

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.

As both parties have accepted my provisional findings, and neither have submitted anything new, I see no reason to depart from my provisional decision. For the following reasons, I uphold this complaint:

- It's not in dispute that Mr N was scammed by Wealth Capital. The FCA published a warning that they were operating in the UK without the required authority – a sign of dishonest intentions. And what Mr N has told us about his dealings with them (such as their use of pressure tactics and the issues withdrawing his funds) sounds characteristic of a scammer. There are also reports online of others experiencing similar issues with Wealth Capital. Overall, I'm satisfied Mr N has lost out to a scam.
- It's also no longer in dispute that Mr N authorised these payments. In accordance with the regulations and general banking terms and conditions, HSBC is expected to execute authorised payment instructions without undue delay. So the starting position is that Mr N is liable for the loss incurred. But there are some situations where we believe that banks—taking into account relevant rules, codes and best practice—ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. If HSBC failed to do so, and that failure led to a fraudulent loss, it might be fair to hold it liable.
- I agree with our investigator that the £17,987.76 payment ought to have flagged as suspicious. It appears the account hadn't been used in the months prior to the scam. And this was a substantial payment, not in keeping with those Mr N usually made, to a new payee.
- I'm conscious that, as HSBC has noted, the payments didn't go direct to the scammers. Mr N has confirmed they first went to an account in his name with Speedybits. He'd then enter a code and within a couple of hours, the payments would be credited to his Wealth Capital account. His statements show that the card payments went to Speedybits – and the payment orders show the same reference containing "SB". Although the payment destination wouldn't have alerted HSBC to the fraud risk, I still think it should have recognised this and intervened based on the uncharacteristic account activity.
- If HSBC had asked Mr N reasonable questions, I've no reason to doubt he would have explained he was acting at the behest of Wealth Capital – who had an active FCA warning against them. HSBC could have checked this, or directed Mr N on how to check this, and given him an appropriate warning about the risks and characteristics of such investment scams. I think this would have concerned him, and that he would therefore have realised it was a scam – as he did himself following further interaction with Wealth Capital, who pressured him throughout to pay more and more.
- But for HSBC's failure to intervene appropriately, it would have been on actual notice that Mr N was going to suffer financial harm from fraud. So his losses ought to have been within the contemplation of, and foreseeable to, HSBC. Therefore, and taking into account what's fair and reasonable in all of the circumstances, I'm satisfied it can be held responsible for the loss.

- I've also considered whether Mr N should be held partly responsible by way of contributory negligence. He'd seen positive reviews online when he first started trading with Wealth Capital – who ran a sophisticated scam. He'd had ongoing contact with them, and had been using their trading platform, for several months before making these payments. And he'd made a successful withdrawal (prior to these payments, which recouped a small proportion of the payments made earlier from other accounts). All of this reassured him they were legitimate. On the other hand, he's acknowledged seeing reports online in 2019 about customers struggling to withdraw funds from Wealth Capital. I think that reasonably indicated some risk. Overall, I think Mr N was partly to blame, and that it's therefore fair to expect HSBC to refund 80% of his losses.

My final decision

For the reasons given above, I uphold this complaint and direct HSBC UK Bank Plc to:

- Reimburse Mr N £56,735.22, comprising 80% of his loss; and
- Pay 8% simple interest on that amount from the dates of the payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 8 July 2022.

Rachel Loughlin
Ombudsman