

The complaint

Mr W has complained that HSBC UK Bank Plc (HSBC) has refused to refund him the money he lost falling victim to a scam.

Mr W is being represented by a third party. To keep things simple, I will refer to Mr W throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr W found an advert for the investment business Skyline Markets (X) on Facebook. X's website looked professional so interested in the investment opportunity Mr W completed a form with his contact information. Before long Mr W received a call from X.

X explained to Mr W that he could make money investing with it. X explained it used the latest technology and Mr X could only make money. Mr X read the positive reviews on X's website and persuaded by X's professional approach decided to start investing.

Mr W started by investing a small amount and could see he was making a profit. X then persuaded Mr W to invest larger sums.

Mr W attempted to make a withdrawal from the investment which was unsuccessful. He also tried contacting X by phone and email, but these attempts were also ignored.

Mr W made the following payments to X:

<u>Date</u>	<u>Amount</u>	<u>Payee</u>	<u>Payment Method</u>
8 November 2016	£1,000	Skyline Markets	Credit Card
21 November 2016	£7,500	Skyline Markets	Debit Card
20 November 2016	£10,000	Skyline Markets	Debit Card

Mr W has been unable to recover any of the payments he made as part of the scam.

Our Investigator considered Mr W's complaint and thought it should be upheld in part. Both Mr W and HSBC disagreed with our Investigator's view, so this complaint has been passed to me to decide.

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.

It has not been disputed that Mr W has fallen victim to a cruel scam. The evidence provided by both Mr W and HSBC sets out what happened. What is in dispute is whether HSBC should refund the money Mr W lost due to the scam.

Recovering the payments Mr W made

Mr W made the payments into the scam by debit card and credit card. When a payment is made by card the only option HSBC has to recover the payment is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Unfortunately, Mr W reported this scam to HSBC outside of time limits that would allow HSBC to request a chargeback for the payments he made. So, I am satisfied HSBC was unable to recover the payments Mr W made to X.

Should HSBC have prevented the payments Mr W made?

Mr W has accepted he authorised the payments he made to X, so the starting point here is that Mr W is responsible. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether HSBC should have stepped in when Mr W was attempting to make the payments, and if it had, would it have been able to prevent the scam taking place.

I think it could be argued that the larger payments to a new payee should have triggered HSBC's fraud prevention systems as being out of character for Mr W. However, I don't think HSBC stepping in to check the payments would have made a difference. Mr W would have confirmed he was making the payments himself for the purpose of investing with a broker he had found online. This type of scam was in its infancy at the time, and I think it was unlikely that HSBC would have been able to recognise the scam and stop it from taking place. So, it is not responsible for having not prevented the scam from taking place.

Section 75 Consumer Credit Act 1974

Section 75 Consumer Credit Act 1974 can only be considered for the payment Mr W made on his credit card.

I have considered if HSBC is liable under s.75. As a starting point, it's useful to set out what the Act says:

75(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor...(3) Subsection (1) does not apply to a claim...

- a. under a non-commercial agreement,*
- b. so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000*

To summarise there must be:

1. a debtor-creditor-supplier agreement falling under section 12(b) or 12(c); and
2. a transaction financed by the agreement; and
3. a claim for misrepresentation or breach of contract related to that transaction;
4. but not a claim which relates to any single item which the supplier has attached a cash price below £100 or in excess of £30,000

I will go through each point in turn:

Firstly, I am satisfied that a credit card account is a relevant debtor-creditor-supplier agreement under the Act. And I'm satisfied here there is nothing that 'breaks' the debtor-creditor-supplier chain.

1. Mr W (the Debtor)
2. HSBC (the creditor)
3. X (the supplier)

I'm further satisfied that the payments to X were financed by the agreement, that X misrepresented to Mr W that they were a legitimate company when they were operating a scam and he relied on these misrepresentations to enter into an agreement with them. I'm further satisfied that no single payments to them were below £100 or more than £30,000.

As a result of this I am satisfied the payment Mr W made on his credit card of £1,000 should be refunded.

HSBC has argued that Mr W didn't engage with it about the disputed payments. But I think Mr W's representative clearly explained Mr W's complaint and HSBC had enough to decide whether Mr W should receive a refund under S.75 for the credit card payment he made. So, this doesn't change my decision.

Mr W said HSBC should refund more of the payments he made as it should have been able to prevent the scam taking place. Mr W said regulatory bodies had published articles and warnings about this type of scam before Mr W made the payments. I have considered what Mr W has said but while some information was available, as I've said above, this type of scam was in its infancy when Mr W fell victim to it, and I wouldn't have expected HSBC to have developed an established approach by this time to prevent the scam progressing. So, these points don't change my decision either.

Putting things right

HSBC UK Bank Plc should refund the £1,000 payment Mr W made into the scam via his credit card.

HSBC UK Bank Plc should add 8% simple interest per year to the amount it pays Mr W from the time Mr W made the payment to the time HSBC UK Bank Plc provides the refund (less any lawfully deductible tax).

My final decision

I uphold this complaint and require HSBC UK Bank Plc to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 August 2023.

Terry Woodham
Ombudsman