

The complaint

Mr H complains HSBC UK Bank Plc won't reimburse money he lost to a scam, and it also handled poorly his related claim.

What happened

The details of this complaint are well known to both parties, so I won't repeat them in detail here. In summary:

- Between 22 April and 1 May 2020 Mr H made 10 debit card and 1 credit card payments, totalling £59,200 to an investment company that he'd found after searching online. He was hoping to earn enough money to buy his house, as HSBC had previously refused to grant him a mortgage. He tried to make a small withdrawal from the investment, but the money was never released and he now thinks he was scammed.
- Mr H notified HSBC about the situation in July 2021 after he was contacted by someone claiming they could help to get his money back. He hadn't raised his concerns previously because he had been experiencing poor mental health.
- HSBC didn't uphold his complaint, so Mr H asked this service to look into the matter.

I issued a provisional decision last month in which I explained why I couldn't fairly instruct HSBC to refund any of the disputed payments. But that it should pay £250 compensation to Mr H. I said, in summary that:

- HSBC had dealt with Mr H's claim about the one credit card payment he made to the investment company as a separate matter. But the circumstances that led Mr H to make the payments were the same, regardless of the payment method. So I thought it appropriate to consider all of the payments Mr H made to the investment company, irrespective of *how* they were made.
- Whether or not Mr H had actually been scammed was less clear-cut in this case than in others I'd seen. He'd made payments to a company which, since 2013, had been authorised and regulated overseas to provide investment services. And, under EU passporting rules, the company was also permitted to operate in the UK. But the FCA made an announcement about a month after Mr H made his final payment which indicated the company had been scamming people for some time. Overall, I thought that although Mr H sent his money to what was – at one time or another – a genuine investment business, it was more likely than not he, personally, fell victim to a scam.
- The FCA's announcement about the company came after Mr H made his payments. But there were warnings about it on the International Organization of Securities Commissions' (IOSCO) website which pre-dated his payments. And HSBC is aware of our approach that it is good industry practice for firms to have up-to-date watch-lists which cover the common types of scams and potential fraudsters and for those watch-lists to be communicated internally with staff within one month of an alert being posted by the FCA or IOSCO. Such an alert should automatically trigger its systems and lead to

payments being paused, pending further intervention – such as making enquiries and/or giving a scam warning. So I thought HSBC ought to have intervened when Mr H tried to make the first debit card payment. And I reached that conclusion despite the payment amount not having been significantly unusual or out of character given the way Mr H had historically operated his account.

- I didn't think intervention from HSBC would have stopped Mr H from making the payments and suffering the financial losses he'd claimed. HSBC ought to have provided a general warning about investment scams – as these were fairly common at that time – and also to educate Mr H about the steps he could take to make sure he was dealing with a legitimate trader. But the IOSCO warnings didn't say explicitly the investment was a scam. And the company was regulated in another country and had passporting rights to offer financial services to UK customers. So I wasn't persuaded anything would have indicated to either the bank or Mr H, that he was looking to invest in, what we've subsequently learned, was likely to have been a scam.
- When concluding that intervention wouldn't have made a difference to Mr H's decision to 'invest' I also took into account that:
 - Mr H said most of his communications with the investment company were undertaken through a portal to which he no longer has access. But he was able to provide a few email exchanges with the investment company. And I could see, within these documents, mention of the company's regulatory status and also some risk warnings about CfDs including that such investments *"involve significant loss of capital"* and *"may result in the loss of your entire balance."*
 - I was able to access some pages of the company's website which, at the time Mr H made payments, also prominently referred to trading Forex and CfDs and mentioned the *"high risk of losing your money."*
 - Mr H had sent a large number of large payments to online gambling companies from his HSBC current account in at least the year prior to making this investment. I could see significant winnings being paid back into his account too, but it seemed likely there may also have been times when he lost money. So it seemed reasonable to assume Mr H wasn't entirely risk-averse and he may have similarly been willing to put his money into a high risk investment in the hope of getting high returns quickly. In fact, he'd told me specifically that this was his ultimate aim.
 - Mr H said he's largely computer-illiterate and had to ask his daughter to help him complete the steps he needed to, to set up his account with the investment company. He also said his mental health was already suffering at the point he made the payments. But it doesn't seem that his daughter raised any concerns about what he was undertaking. And the bank told me there was nothing on its records that indicated Mr H had previously told it about his mental ill-health.
- In the circumstances I didn't think Mr H's money could likely have been reclaimed under the VISA and/or Mastercard chargeback rules or that HSBC had any liability, in relation to the single payment made via Mr H's credit card, under Section 75 of the Consumer Credit Act 1974.
- It wasn't not clear to me why HSBC didn't refer Mr H's concerns to its fraud team when he first got in touch. He was clear in his initial correspondence that he thought he'd been scammed and there's nothing in HSBC records that told me why it instead chose to proceed solely down the chargeback route. When this avenue proved unfruitful HSBC said it would refer the matter to the fraud team but, despite asking, I hadn't seen that the fraud team provided a final response.

- I explained why HSBC should pay £250 compensation to Mr H in recognition of any distress and/or inconvenient it caused due to its poor handling of his claim. In particular, I noted HSBC's failure to call Mr H at a convenient time, the unacceptably long waiting times when he tried to call the bank and its failure to make adjustment given Mr H's mental ill-health and related vulnerabilities.

In response to my provisional decision Mr H noted that he couldn't argue with my findings but was disappointed with the outcome, in particular the £250 award. He asked that this be reconsidered.

HSBC accepted my provisional 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, and as neither party has sent any new evidence or arguments for me to consider about the disputed transactions, I see no reason to depart from the conclusions set out in my provisional decision and summarised above.

I note Mr H's disappointment with the £250 award. But I considered everything that happened and his submissions very carefully before making my decision. I must also keep in mind that some of the distress he was experiencing was likely due to having fallen victim to the scam. I don't doubt that HSBC's poor customer service may well have added to his upset. But I remain satisfied that £250 compensation is fair and reasonable in all the circumstances of this complaint.

My final decision

My final decision is that HSBC UK Bank Plc should pay £250 to Mr H.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 March 2023.

Ruth Hersey
Ombudsman