

The complaint

Mrs N complains that HSBC UK Bank Plc (HSBC) wouldn't refund £88,279.56 which she lost in an investment scam.

What happened

What Mrs N says:

Mrs N is represented by a third-party claims firm, but I will refer to Mrs N as the complainant.

Mrs N told us that her father (who lived with her) and her husband sadly passed away late in 2019. Mrs N then retired in April 2020, and she had to deal with the winding up of their affairs, and this, added to her isolation due to the pandemic, led to her feeling lonely and vulnerable.

In January 2021, Mrs N was phoned by a 'broker' who said that her husband owned shares in an overseas company (A). A was said to be the subject of a hostile takeover and the broker was acting on behalf of a Japanese company (B) which wanted to buy her husband's shares in A. But before this could happen, a fee needed to be paid to register the shares for them to be sold. Mrs N said she had no knowledge of her husband's financial affairs but suspected he may have had some shares in the company at some stage in the past. The 'broker' said that she would receive the money within a few weeks of the initial payment.

Mrs N did some research on A – which was quoted on the New York stock exchange, but couldn't find anything about B. She told us she was initially sceptical about the offer. Throughout the process, she asked some retired friends for advice – they were a little sceptical but said it may be 'worth a go'.

She was called many times by two people at the 'brokers' and they introduced her to two other persons who were said to have gone through the same process – and who vouched for the credibility of the deal. She established regular email and phone correspondence with the brokers. All of this encouraged her to go ahead.

No money arrived, but the 'brokers' then gave various reasons to say that more money was needed and asked for a further four payments. A total of £88,279.56 was sent by Mrs N between February 2021 and October 2021. The broker said Mrs N stood to receive £425,000 from the sale of the shares.

The payments were made in a branch of HSBC. Various reasons were given by the scammers for the amounts which needed to be paid - as shown:

Date	Amount	Beneficiary	Reason given by scammer
8 February 2021	£5,397.11 – paid in euros	Limited Company (1), Belgium	Registration of shares

2 March 2021	£17,256.33 – paid in euros	Limited Company (2), - Lithuania	Purchase of more shares
14 May 2021	£33,319.61 – paid in USD	Limited Company (2), - Lithuania	Pay US withholding tax
12 July 2021	£17,012.68 – paid in euros	Limited Company (2), - Lithuania	Purchase of more shares
12 October 2021	£15,293.83 – paid in USD	Limited Company (2), - Hong Kong via Singapore	Pay US withholding tax
Total	£88,279.56		

The payments were made in a branch of HSBC and each time, Mrs N spoke to a member of staff to arrange the payments. She said that she was asked about the first payment – and said it was to do with shares owned by her late husband. Each time, she took with her information and documents about the transaction. She said it sometimes took up to an hour to complete each payment.

Mrs N says she wasn't questioned by HSBC about the reasons for the payments, nor given any warnings about the possibility of a scam.

During October 2021 and November 2021, Mrs N had difficulty in getting a response from the brokers and by December 2021, she realised she had been the victim of a scam – as all communications stopped. She received no money.

Mrs N says her mental health suffered because of what happened. She became depressed and couldn't discuss this with family and friends. She contacted HSBC in March 2022 to report the scam.

What HSBC said:

In their final response, in June 2022, HSBC said that branch staff discussed each payment with Mrs N and provided warnings before each one was made. The payments weren't covered by the Contingent Reimbursement Model Code – as they were international payments. HSBC said they'd actioned recall requests to the beneficiary banks, but no funds could be recovered. HSBC didn't agree to refund the money.

Our investigation so far:

Mrs N brought her complaint to us. Our investigator said:

- The first payment wasn't unusual compared to Mrs N's normal account usage. So – it

was reasonable that HSBC didn't question it.

- But – the next four payments were sufficiently unusual for HSBC to have asked questions. They were international currency payments and for amounts that Mrs N wouldn't normally make.
- In summary, our investigator wasn't persuaded that HSBC had asked sufficient, probing questions of Mrs N as she made the series of payments.
- She hadn't seen anything to suggest that Mrs N had been coached by the scammers as to what to say, so if HSBC had asked the right questions, it was likely that the scam would've been uncovered.
- She could see how genuine the paperwork and emails from the brokers were; added to the cover story provided by the two people who vouched for the scheme. He didn't think Mrs N should bear any of the loss (other than the first payment).
- She said that HSBC should refund £82,882.45 (the total of the last four payments), plus interest at 8% per annum simple from the date of each payment to the date of settlement.

Mrs N agreed, but HSBC didn't. HSBC argued:

- Mrs N attended the branch several times and spent an hour on each payment. They said they provided warnings to Mrs N each time and had evidenced that.
- They suggested that Mrs N was warned about the possibility of a scam but was happy to go ahead.
- Mrs N should bear at least 50% of her losses. HSBC said:
 - o There was no evidence that Mrs N's late husband owned any shares in A, nor did Mrs N check if he had. If she had acted in the winding up of his estate, she would've had access to information about company A - and whether he had owned shares in it.
 - o It was implausible to pay sums of money to get shares into a 'sellable state' – as the first payment had been for. This made no sense.
 - o Mrs N should've taken steps to check what she was being told – and she had several months during which she could've done the checks.
 - o Mrs N's friends seemed to have been sceptical about the investments, but Mrs N still went ahead.
 - o There were many 'red flags' such as Mrs N being called by the scammer out of the blue; the reasons for the payments were implausible (e.g. payment of withholding tax); payments were made to various payees, none of whom were the broker, nor the company A; given that company A was quoted in New York, and the broker was affiliated with Japan, it made no sense that payments were made to Lithuania, Belgium and Hong Kong.
- HSBC argued that a reasonable person could be expected to have acted more carefully than Mrs N did – and she should therefore bear responsibility for some of her losses.

- HSBC said Mrs N shouldn't receive 8% interest when she has made payments for implausible reasons and any interest that is paid should be calculated from the beginning of May 2022.

Our investigator confirmed his opinion hadn't changed and therefore Mrs N's complaint has come to me to consider.

I reached a provisional decision which said:

I'm sorry to hear that Mrs N has lost money in a cruel scam. It's not in question that she authorised and consented to the payments in this case. So although Mrs N didn't intend for the money to go to the scammer, she is presumed to be liable for the loss in the first instance.

So, 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 is fair and reasonable in this case. But that is not the end of the story. Taking into account the law, regulators 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.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it applies to payments made to a UK beneficiary— and in this case, the payments were made to an overseas account.

I need to decide whether HSBC acted fairly and reasonably in its dealings with Mrs N when she made the payment, or whether it should have done more than it did. I have considered the position carefully.

I firstly considered whether the payments made by Mrs N were unusual for her – given the normal use of her account. I can see she used it for normal living expenses. Other than that, there was a bill payment for £3,300 on 19 October 2020; a cheque payment of £7,762 on 11 November 2020, and a payment of £4,750 on 7 January 2021.

I looked at the five payments:

£5,397.11 - 8 February 2021: I can see this was questioned by HSBC. The form completed says HSBC were concerned it was a scam. It says the reason for the payment was to register the shares before the “cashing in of shares can be completed”; it also said,

“payment for Consultancy Services Rendered”. I think it would’ve been reasonable for HSBC to point out that it didn’t make sense to make a payment of such an amount to register shares and ask why payment for consultancy was required. HSBC read out the warning *“Based on our conversation I’m concerned this may be a scam...”*. But I don’t think that was enough in this case – HSBC should’ve done more. It seems to me that HSBC should’ve been more proactive and shown Mrs N how odd the reasons were for such a large payment – after all, HSBC are the experts, and not Mrs N. The document doesn’t record if anything of that nature was discussed with Mrs N.

£17,256.33 – 2 March 2021: This was to a new payee, to a beneficiary in Lithuania, and in euros. It was for a significant sum – so was out of line with Mrs N’s normal account activity. HSBC told us that they asked Mrs N about the payment. I reviewed the document completed by HSBC at the time. It says, *‘payment for script issue for shares re late husband’s estate’*. So – it does appear there was a conversation with Mrs N about the payment.

The document says Mrs N was asked *“...can you tell me the background behind the payment?”* And says there was a script read which said: *“Based on our conversation, I’m concerned this may be a scam...by choosing to continue, you agree that we may not be able to recover your payments....”*.

We asked HSBC more about this – and they told us they’re not required to record what was discussed with Mrs N at the time. I’ve considered this – and I’m persuaded that without any evidence as to what questions were asked and what Mrs N’s responses were, I cannot say that HSBC asked the necessary open questions about the payment – as they should’ve done.

If HSBC had done what I think it should when these payment requests were made, no further payments would have been made. But I’ve gone on to consider HSBC’s interaction when subsequent payments were made.

£33,319.61 - 14 May 2021: this was to the same payee as the second payment. HSBC’s records show Mrs N said it was to “pay bills”- i.e. US withholding tax. But – the payment was in euros, and to a bank in Lithuania. This should’ve been a ‘red flag’ to HSBC as such a payment didn’t make sense. I can see that HSBC read out a scripted warning about making bill payments – this said: *“based on our conversation, I’m concerned this may be a scam...by agreeing to continue, you agree that we may not be able to recover your payment...”*. Of itself, I don’t think that HSBC did enough and there is no record of any questioning or responses from Mrs N – and I think it’s reasonable to expect that there was.

£17,012.68 – 12 July 2021: this was to the same payee and in Lithuania. It was said to “pay bills”. HSBC again read out the script as for the previous payment. But again, there is no record of any discussion or responses from Mrs N.

£15,293.83 – 12 October 2021: this was to the same payees, but to Hong Kong and in USD. The purpose is recorded as *“pay bills”* and *“...husband’s estate...”*. There is nothing recorded about the questions asked of Mrs N or her responses. The same script was read out as for the previous two payments.

The crux of this complaint is therefore that HSBC cannot demonstrate clearly what open questions were asked of Mrs N and her responses. There were several questions that should’ve been asked as there were some red flags which HSBC should’ve reasonably have seen, and asked for example:

- There were a series of five large and unusual payments to the same (or similar) beneficiaries - tell us more about that.

- There were euro payments and USD payments – why was that the case?
- Why were payments relating to share transactions in New York being made in euros and to banks in Lithuania and Hong Kong?
- What was the background to what Mrs N was being asked to do?
- What were the returns to be, and when?
- How was Mrs N contacted about the scheme?

I noted that HSBC said Mrs N was in the branch for some time when arranging each payment. I also noted from emails I've seen between Mrs N and the scammer that Mrs N said she took up to an hour to make a payment on one occasion. But – without firm evidence to say otherwise, I'm persuaded that HSBC didn't ask the necessary questions to warn Mrs N about the scam. I noted that Mrs N said she hadn't been coached by the scammers as to what to say – so it's likely that the scam would've been uncovered and the payments not made if HSBC had asked questions.

I also don't consider HSBC went far enough in saying on multiple occasions that it had concerns Mrs N may be the victim of a scam but still allowing her to make the payments on the basis that it may not be able to recover her money. HSBC is the expert here and I don't consider it fair to simply pass the responsibility to Mrs N. If HSBC had concerns it had the option of invoking the Banking Protocol.

So – I'm persuaded that HSBC should be initially liable for the total of the five payments.

Contributory Negligence:

But that's not the end of the story here. I considered whether Mrs N could've done more to protect herself and whether she contributed to what happened. And I think she should bear some of her losses. I say this because:

- The payment reasons given to Mrs N weren't plausible. It didn't make sense to pay to register shares or consultancy services; it didn't make sense to pay for a script issue (which is the process of creating new shares free of charge); it was odd to pay US withholding tax in euros and to a Lithuanian bank. Even accepting that Mrs N was an inexperienced investor, the series of implausible reasons for the payment should have caused her some concerns.
- Mrs N said she researched company A and it was listed in New York. But she couldn't find any record of company B in Japan.
- The payments were made over an eight-month period – so, she had time to do more research and ask questions during that time, but didn't.
- She told us she spoke to some retired friends who said it might be 'worth a go' - but no more than that. I also noted that Mrs N said in an email to the scammer – that her daughter was sceptical. It would've been reasonable that Mrs N sought some professional advice when making an investment of over £88,000 and over a period. But I couldn't see she did.
- The scammers promised Mrs N a payment within two weeks after the first payment (in February 2021), but nothing arrived - this should've caused her to question the scheme.
- A return of £425,000 for an investment of £88,000 should've appeared to a reasonable person to be too good to be true.
- She could've checked whether her husband owned shares in company A – possibly she may have had access to that information when dealing with his estate, or by going through old papers or emails.
- The payments were made to various payees, none of whom were the broker, nor company A.

- Given that company A was quoted in New York, and the broker was affiliated with Japan, it made no sense that payments were made to Lithuania, Belgium, and Hong Kong.

Therefore, I'm persuaded that Mrs N should bear some of her losses here – I think it's reasonable that she should bear 50%. So – HSBC should refund £44,139.78. And add 8% per annum simple from the date of the payments to the date of settlement.

Recovery

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. HSBC told us that they didn't immediately contact those banks when Mrs N called HSBC in March 2022. But by June 2022 – they had done so, but no funds remained. So - HSBC were slow to act here. I've considered this – and given that the scam took place between March 2021 and October 2021 – I think it's very unlikely that any money would've still been available to be repaid after so long in any case. So – the delay made no difference to the outcome. And it is rare for a firm to achieve any recovery from an overseas bank – as they have fewer obligations to do so.

Interest

HSBC is aware that this service awards 8% simple interest per year to reflect the cost to a consumer of being deprived of money. Interest should be payable from the date of each payment because this is the point at which the loss should have been prevented.

Responses to the provisional decision:

Mrs N's representatives agreed, on behalf of Mrs N. HSBC had no comments.

I now need to make a 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.

As both parties agreed, or had no comments, my final decision is the same as the provisional decision.**(continued)**

My final decision

I uphold this complaint. HSBC UK Bank Plc must:

- refund £44,139.78, plus interest at 8% per annum simple from the date of each payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 26 September 2023.

Martin Lord
Ombudsman