

The complaint

Mr L complains about HSBC UK Bank Plc.

He says that HSBC didn't do enough to protect him when he became the victim of a scam and would like HSBC to refund him the money he has lost.

What happened

In September 2020, Mr L was contacted by phone by an individual offering an opportunity to invest. Mr L had recently retired and thought this would be a good way to make some extra money.

He was provided with access to a portal where he could see his supposed investment, and told to download a screen sharing app so he could be shown how to trade.

Mr L's daughters found out about the investment scheme and tried to withdraw the money that Mr L had paid – but were told they needed to pay more funds in order to do so. His daughters then realised this was a scam.

By this point, Mr L had made three payments, totalling £5,835.96.

Our Investigator looked into things but didn't think the complaint should be upheld. They said that while it was clear Mr L had been the victim of a scam, the payments weren't covered by the contingent reimbursement model (CRM), and they weren't significantly unusual enough for HSBC to have got involved before processing the payments.

Mr L asked for an ombudsman to make a final decision, so the complaint has been passed to me.

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, I've decided not to uphold this complaint for broadly the same reasons as our investigator. I know this will be disappointing for Mr L, so I'll explain why.

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 having 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.

Mr L authorised the payments in question here, so although he didn't intend for the money he lost to end up in the hands of a scammer, he is presumed liable in the first instance. However, this is not the end of the story.

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

Having considered the payments Mr L made as part of the scam, I am not persuaded that HSBC should have stepped in and questioned Mr L about the payments he was making.

I say this because I don't consider the payments sufficiently unusual, uncharacteristic or suspicious to reasonably say HSBC should not have processed them without first getting in touch with Mr L to ensure they were legitimate and not related to a scam.

While I accept that two of the payments were higher than Mr L's usual spend, I don't consider them to be so unusual that they would have triggered a response from HSBC. It isn't that uncommon for people to make larger than normal purchases from time to time, and there was also a month between the payments being made, and businesses can't reasonably be expected to be involved in every transaction.

I also don't think that there was anything HSBC could have done to recover the payments once they had been made – the payments had been made to a legitimate business before being transferred on to the scammer, so there was nothing left for HSBC to recover by the time the scam was uncovered.

I am very sorry for the situation that Mr L now finds himself in – he has been the victim of a cruel scam. However, the loss he has suffered has been caused by the scammers, and not HSBC, and I can't ask HSBC to refund him the money he has lost when I don't consider it has done anything wrong.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 14 March 2024.

Claire Pugh
Ombudsman