

The complaint

Mr E complains that HSBC UK Bank Plc, trading as First Direct (HSBC) is refusing to refund him the amount he says he lost as the result of a scam.

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 E has told us that in May 2016 he fell victim to a multi-layered scam with companies Stock Pair and Second Investment. As such payments were made by Mr E via his HSBC account into what he was led to believe were genuine investments.

Mr E has disputed the following payments:

<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
31 May 2016	Stockpair.com	Debit Card	£750.00
22 August 2016	Stockpair.com	Debit Card	£500.00
30 August 2016	Stockpair.com	Debit Card	£600.00
2 September 2016	Stockpair.com	Debit Card	£500.00
2 August 2017	Stockpair.com	Debit Card	£379.10
4 August 2017	Stockpair.com	Debit Card	£3,813.50
10 August 2017	M-Program Ltd	International Transfer	£11,853.92
31 August 2017	Vision 7	International Transfer	£19,824.12
1 December 2017	Vision 7	International Transfer	£909.90

Our Investigator considered Mr E's complaint and didn't think it should be upheld. Mr E disagreed, 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.

The rules under which I work provide that, I can't consider a complaint which is more than six years after the event complained of; or (if later), three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint.

A copy of Dispute Resolution rule 2.8.2R can be found online in the DISP section of the Financial Conduct Authority Handbook.

Mr E first made his complaint to HSBC on 22 September 2022, so with the above information in mind I am unable to look at any payments made before 22 September 2016. The first four payments Mr E has complained about are before this date.

I have considered whether Mr E would have been aware he had cause to complain less than

three years before he made his complaint, but Mr E has told us he realised he had fallen victim to a scam when he was no longer able to access his funds. So, I think he would have known from this point that he had reason to complain.

I am therefore unable to consider the first four payments Mr E made. I can however consider the remaining payments.

Considering the time that has passed since Mr E made the payments he has complained about and the limited information now available, it is difficult to say with certainty that Mr E did in fact fall victim to a scam.

Recovering the payments Mr E made

Mr E made payments into the scam via his debit card and via transfer. When payments are made by card the only recovery option HSBC has 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 E made his complaint to HSBC outside of the allowed time to raise a chargeback and therefore HSBC has been unable to attempt a chargeback for the payments Mr E made into the scam.

When payments are made by transfer HSBC can ask for a refund of any funds that remain in the payee's account. But considering the time that has passed since Mr E made the payments it is very unlikely any funds would remain, and I don't think it is unreasonable that HSBC did not make this request.

Should HSBC have reasonably prevented the payments Mr E made?

It has been accepted that Mr E authorised the payments that were made from his account with HSBC. So, the starting point here is that Mr E 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 intervened when Mr E made the payments. And if it had intervened, would it have been able to prevent Mr E's loss.

Having looked at the way Mr E operated his HSBC account before he made the payments, I can see that it wasn't unusual for Mr E to make large payments in relation to investments so I don't think HSBC would have considered Mr E's payments being made to another investment company as being particularly unusual. So, I don't think it was unreasonable that the payments didn't trigger HSBC's fraud prevention systems prompting it to intervene.

Even if HSBC had intervened when Mr E made the payments, I think it's unlikely it would have been able to prevent Mr E's loss. At most I would have expected HSBC to have suggested that Mr E should research the company he was investing with before making the payments, which considering the amount Mr E was sending I would have expected him to

have done anyway.

There was limited information available at the time Mr E made payments to Second Investment and nothing I can see that would have given Mr E any concerns that he might have been falling victim to a scam.

There was a warning at the time Mr E made the payments on the International Organization of Securities Commissions investor alert portal about Nextrade Worldwide Ltd (the parent company of Stock Pair). However, the company was also regulated by the FCA until several years after Mr E made the payments, further suggesting Mr E was making a genuine investment and had he completed this research I think this information would have given him even greater confidence he was making a genuine investment.

I don't think HSBC missed an opportunity to prevent Mr E's loss and it is therefore not responsible.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 31 May 2024.

Terry Woodham
Ombudsman