

## The complaint

A limited company, C, says that it made payments to HSBC UK Bank Plc accounts as the result of a scam. It complains that HSBC didn't do enough to prevent the loss it suffered.

Mr A (a director) brings the complaint on C's behalf and has used a representative when doing so. But, for ease of reading, I'll mostly just refer to Mr A, where I mean either his company or the representative.

## What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide an overview of some of the key events here. The below table details payments made by C to different accounts held with HSBC. C says all these payments were part of a scam.

Payment Number	Date	Amount	Sent From	Received in HSBC account ending
1	14 February 2019	£10	C's account with 'B'	522
2	14 February 2019	£49,990	C's account with 'B'	522
3	14 February 2019	£50,000	C's account with 'B'	522
4	15 February 2019	£30,321	C's account with 'B'	522
5	28 March 2019	£10	C's account with 'W'	714
6	28 March 2019	£11,027.21	C's account with 'W'	714
7	28 March 2019	£272,349	C's account with 'W'	714
8	26 June 2019	€250,000	C's account with 'W'	871
9	27 June 2019	€250,000	C's account with 'W'	871
10	28 June 2019	€40,000	C's account with 'W'	871

The accounts ending 871 and 714 were held by the same HSBC customer.

Mr A says he was introduced by contacts of his to Private Placement Trading (PPT). He says this is a type of investment where there is a high bar to entry but through which significant returns can be made. Mr A dealt with a Mr H who he believed would help facilitate this type of investment.

Prior to the payments listed above, there had been an earlier investment which didn't ultimately materialise. I understand Mr A had previously sent around €350,000 on Mr H's instruction towards this investment and an almost equivalent amount of funds were returned to C in January 2019.

Mr A says the payments listed above were all made to 'investments' through Mr H. But when no returns were received and Mr H later ceased contact, he concluded he'd been the victim of a scam.

In 2022, Mr A complained to all the businesses involved – B and W on the 'sending' side and HSBC as the recipient bank. None of the complaints were upheld and all were referred to our service. Our Investigator said we couldn't consider all of Mr A's complaint about HSBC.

She explained that, in these circumstances, our jurisdiction only allows us to consider acts or omissions that took place on or after 31 January 2019. And as the account ending 522 had been opened prior to that date, HSBC's actions when doing so couldn't be considered. For what she could consider, she didn't recommend that the complaint should be upheld.

Mr A disagreed and asked for an Ombudsman to review his complaints. In February 2024 I issued a provisional decision in which I said:

*"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'm intending to reach the same overall outcome as our Investigator. But as my reasoning is different, I wanted to issue this provisional decision to give everyone a further opportunity to comment before finalising my decision. I'm also aware of Mr A's linked complaints about W and B, but this decision is solely in relation to HSBC.*

*All the accounts that Mr A paid were linked. I say this as the accounts ending 714 and 871 were held by the same company. And the account ending 522 was held by a person linked to the company that held the other accounts. There is also publicly available information to show that the person behind those accounts was linked to other businesses at the time. So even if (within the context of my jurisdiction) there were failures by HSBC in relation to any of these accounts, prior to the arrival of Mr A's funds, I don't think I could fairly say that would have been the cause of his loss. In such a scenario (and in the absence of any reports of scams being received about those accounts), even if HSBC had concerns as to the operation of any of the accounts – I don't think this would have resulted in Mr A discovering the alleged scam or not making any further payments. It's most likely that the alleged scammer would have simply directed that any payments were to be made to another account with another bank that he was in control of.*

*I've next gone on to look at the arrival and dispersal of the funds Mr A sent. Even if I were to accept the accountholder's intent was to defraud / scam Mr A, from the evidence I've seen they were willing to engage with HSBC and provide explanations if ever challenged about transactions on an account. All the funds were paid to accounts that were who Mr A believed he was paying. There is no suggestion that the money was misdirected to a third party, the allegation here is that funds were transferred for what was believed to be genuine purposes (PPT) but which later turned out to be fraudulent.*

*Given the sums involved, there was some interaction between HSBC and their customer in relation to some of the payments. But even if these checks on the source of funds etc ought to have been more stringent than they were, in this case, I don't think this would ever have ended up in a situation where HSBC reasonably could have withheld those funds from their*

*customer. It wasn't until HSBC received the allegation that the payments were made as a result of a scam (which I can't see happened before Mr A informed them in 2022), that in this case, I think that would have been a reasonable expectation. And by that point, all the funds had already been spent / transferred and so weren't recoverable from those accounts at that time.*

*Mr A has also said that he believes another bank 'B', closed an account linked to the same person who was HSBC's accountholder. On this basis, he thinks that HSBC too should have closed their accounts. Firstly, I can't make a finding on the actions of B in this decision about HSBC. But our Investigator did reach out to B to find out why the account was closed. The response received didn't say this was because B had concluded its customer was operating a scam – so I don't think this helps Mr A's argument. As I've mentioned above, even if HSBC ought to have done more in their monitoring of the accounts and the activity on them, I don't think this would have resulted in Mr A ending up in a meaningfully different position. And if the activity had resulted in action being taken and the accounts being closed, then as above, it's most likely the payments would have been directed to the accounts of another entity the accountholder was linked to.*

*I appreciate this complaint involves an incredibly significant amount of money. And I'm sorry that C is at a loss. But overall, I'm not persuaded I can fairly say that HSBC are responsible for the loss and there isn't therefore a reasonable basis upon which I can require them to do more to resolve this complaint."*

HSBC responded to say they had nothing further to add. Mr A responded and made some further clarifications / points which I'll address below.

### **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.

Mr A's prior submissions on a linked complaint (a letter of complaint to B dated 27 September 2022) said: *"The engagement with [Mr H] started with a number of "failed investments" where money was moved around and eventually resulted in most of the money being returned. Numerous excuses were made for why the investments didn't go ahead... These investments included... a 350k euros investment..."*

In response to my provisional decision Mr A has clarified that Mr H told him that the funds he'd invested in the prior investment were actually 'tied up or blocked' waiting for the 'trader' to use in a PPT investment. So when funds were returned in January 2019, these were treated as belonging to Mr H and not the return of the initial investment. Although he acknowledges it was reassuring to have the money back under his control and accepts that it's likely it was in fact his own money that was returned.

I appreciate Mr A's clarification; however, I don't think this makes a material difference to the outcome of this complaint. Mr A also sought to clarify that he had doubts about the investments with Mr H earlier than he thinks the background that I've set out suggests. I accept what Mr A has said in this regard.

Mr A also disagrees with my reasoning that if there were failings by HSBC prior to the arrival of his funds, then he would have been directed to have paid funds elsewhere. He thinks this isn't a suitable approach to receiving bank cases and is far too wide a test. He also asked some questions about our service's approach to these cases and whether I've looked at HSBC's procedures when they identify payments as fraudulent.

For me to be able to make an award, I'd need to be persuaded that there was an act or omission by HSBC which I could fairly and reasonably say has caused Mr A's loss. And here, for the reasons given, I don't think anything HSBC did in relation to the account prior to the arrival of Mr A's funds would have made a difference. I don't agree this is too wide a test, even if there were a failing, there must be causation for it to be fair and reasonable for me to make an award. In this case, there weren't any other reports of fraud or scams (at the relevant time).

So I don't think at the material time HSBC would have been in a position to conclude that there had been a scam, or to take further steps such as recording a Cifas marker against their accountholder as Mr A suggests.

And following the arrival of the funds from Mr A in the HSBC accounts, I similarly don't think there were failings by HSBC which can be said to have caused the loss. Mr A argues that Mr H didn't have credentials or licences to do what he was doing. But offering unregulated investments is not illegal, and HSBC aren't required to forensically investigate the actions of their accountholders or their businesses in this way. They are obliged to monitor for, and be alert to the potential of fraud, scams and the misappropriation of funds. At that point, I don't think there was anything that would have given HSBC reason to suspect that the incoming payments had been made as the result of an alleged scam, and certainly not to the extent where I think it would have been reasonable for them to have withheld the funds from their own accountholder. Particularly when he most likely would have been able to plausibly explain the activity on the accounts and the incoming payments appeared to be intended for the accountholder. I also don't agree that the alleged scammer wouldn't have had other accounts to use even if HSBC had closed any of his accounts. Information in the public domain shows he was linked to numerous other businesses.

So whilst I've considered all Mr A has said, I'm not persuaded to deviate from the outcome explained in my provisional decision. The crux of the matter is that in the circumstances of this case, and for the reasons given, I don't think HSBC are responsible for failures which can fairly be said to have caused Mr A's loss. And whilst I acknowledge this will be disappointing and Mr A has my sympathy for the loss suffered, there isn't a reasonable basis upon which I can require HSBC to do more to resolve this complaint.

### **My final decision**

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 18 April 2024.

Richard Annandale  
**Ombudsman**