

The complaint

The estate of Mr S complains that HSBC UK Bank Plc (HSBC) won't refund the money Mr S lost to a scam.

What happened

The details of this complaint are well known to both parties. So rather than repeat them all again here, I've summarised the key details and will focus on giving the reasons for my answer.

It's agreed Mr S fell victim to a romance scam. In 2016, he set up a profile on a dating website and matched with someone known to him as 'P'. He believed they were in a relationship. Unfortunately, it seems P was actually a scammer, and was tricking Mr S to send money under false pretences.

After starting the relationship in early 2016, P told Mr S she was travelling abroad for work. She then proceeded to give a range of reasons – such as illness and immigration/legal problems – for why she was unable to return to the UK.

At P's behest, Mr S sent payments exceeding £400,000 between June 2016 and February 2018. He was given various reasons, which now appear to be false, for why he needed to make these payments. Such as that it was to help with P's legal fees and hospital bills (amongst other things). The payments were sent variously via cheque, cash, domestic transfers, and international transfers.

Mr S's family found out what was happening when he fell seriously ill in early 2018. Sadly, he passed away shortly after. Mr S's family enlisted a private investigator and reported the incident to the police. Around late 2021, they complained to HSBC. They said the scam payments were uncharacteristic. And if HSBC had picked up on this, and questioned Mr S about what he was doing, the fraud would have been prevented.

HSBC didn't uphold their complaint. It said it had spoken to Mr S about various transactions made as part of the scam, and he didn't make it aware of the true nature of what he was doing. And the payments couldn't be recovered due to the significant time between when they were made and when the scam was reported.

The estate referred this complaint to our service and our investigator thought it should be upheld. They didn't think HSBC would have been able to dissuade Mr S initially. But by March 2017, they thought HSBC ought to have uncovered things. By that point, a recipient bank had contacted HSBC with concerns about a payment. When it asked Mr S about this, he refused to give a reason for the payment. Then went on to make further similar, large payments to new payees.

The investigator thought this should have caused HSBC serious concern, and that it was a missed opportunity to uncover things – or that HSBC should have refused the payments outright. They recommended HSBC refund Mr S from this point, with a deduction for Mr S's contributory negligence.

The estate of Mr S accepted the investigator's outcome, but HSBC didn't. The case was passed to me, as an ombudsman, for a final decision on how it should be resolved. I've summarised the main arguments HSBC raised in its appeal:

- It says we have applied our current standards for fraud prevention retrospectively, rather than considering what would have been reasonable at the time. For example, the investigator suggested Banking Protocol could have been invoked in early 2017. But it wasn't implemented in Mr S's branch until September 2017.
- Mr S regularly made significant payments, making the scam payments appear less concerning. He also travelled regularly, including nearby the country P claimed to be living in. So, when payments were sent internationally from November 2017 to that region, it didn't appear particularly unusual.
- Mr S was strongly under the spell of the scammer and was determined to make these payments. Even if it had pushed Mr S for an explanation on the flagged payment, it's likely he would have given a plausible cover story. It also doesn't think the link between this payment, and the other scam payments, would have been clear – as they were sent to many different recipients.
- Even if it had refused his payments, HSBC says Mr S's persistence in making them suggests he may have closed his account, opened a new one, and continued to make the payments from there.
- HSBC also says, while it doesn't agree it should be held liable at all, the level of deduction for Mr S's contributory negligence is too low. And it disagrees with the interest the investigator has proposed should be paid on top of the refund.

I issued my provisional decision in January 2023 explaining why I wasn't minded to uphold the complaint:

I've no doubt Mr S fell victim to a cruel and calculating scam. And I think HSBC should have done more to protect him. However, that's not enough for me to uphold this complaint. I'd also need to be persuaded HSBC's failings had a material impact on the loss he suffered. Having considered this point carefully – I'm not persuaded they did.

It may help to start with a broad overview of how our service considers complaints like this. While both parties accept Mr S made these payments due to being tricked by the scammer – it's also accepted he made the payments himself. So, bearing in mind that HSBC has a duty under the Payment Services Regulations (PSRs) to execute authorise payment instructions without undue delay, the starting position is that Mr S is liable for these payments.

However, there are circumstances when it might be appropriate for HSBC to have taken additional steps before processing a payment. Such as when there are grounds to suspect the payment presented a fraud risk. That might occur when a payment is significantly unusual or uncharacteristic compared to the normal use of the account.

The standards for what should be identified as a fraud risk, and what level of response might be proportionate, has evolved over time. But there are long-standing principles underlying this. I've no doubt HSBC did have systems in place at the time of the scam payments to monitor for, and respond to, signs its customers were at risk from fraud. The question is whether those systems were employed adequately here.

I will not go into too much detail about the payments prior to March 2017, bearing in mind both sides have already agreed HSBC shouldn't be held liable to these. But in summary, I do agree with our investigator that HSBC probably couldn't have prevented them.

I'm conscious the payments, while sizeable, were made in a variety of formats (such as cash withdrawals and transfers). Making the links between them less obvious. While many were made to the same account – these started off as (relatively) smaller payments. There were initially gaps of weeks between the payments, making it less obvious Mr S might have been put under pressure to make them. Over time, the recipient appeared to be a regular and expected payee.

This pattern of activity over time meant it didn't appear unusual for Mr S to make larger payments. This is also considering that he used his account for other high-value payments unconnected to the scam.

There are also signs, as I'll expand on in more detail below, suggesting Mr S was very taken in by the scam and was adamant about making the payments. All of this leads me to conclude it wouldn't be fair to hold HSBC at fault for not preventing the scam payments prior to March 2017.

However, I can see why the investigator concluded HSBC ought to have done more around March 2017. Mr S sent just under £10,000 to a new payee. And the bank who the account was held with got in touch with HSBC, asking it to check why Mr S had made the payment.

At that point, I consider HSBC was on notice of a fraud concern in connection with one of the scam payments, given the unusual contact from the recipient bank. As requested, I can see it did ask Mr S about the reason for the payment. It appears he wouldn't give one – instead simply confirming it was "fine".

I do agree with the investigator that refusing to give a reason for the payment was an indication Mr S might be at risk of being scammed. But it wasn't the only explanation. That said, I still would have expected HSBC to probe Mr S further than it appears it did.

The investigator thought HSBC should have insisted Mr S give a reason for the payment, perhaps getting him to go to branch to confirm. That may have made it easier to question him and to get to the bottom of what was going on. But I don't think I can safely conclude the scam would have been uncovered at this point, even if those steps were taken.

If HSBC had insisted on a payment reason, I think there are indications Mr S would have consulted with P and provided a reason matching that given by the recipient. This is because another recipient bank got in touch a few months later asking about the reason for a payment. Mr S said he was purchasing a car. That wasn't true; it appears he thought he was paying P's lawyer.

This shows Mr S was convinced to give a cover story to HSBC about what he was doing. That in itself shows a determination to make these payments. It's not clear to me why, if Mr S thought what he was doing was genuine, he wouldn't disclose this to his bank. This leads me to conclude it's unlikely further questioning about the earlier flagged payment would have uncovered the scam and prevented Mr S from proceeding. Or to have given HSBC enough concern to refuse the payment(s) outright. I'd point out there is a high bar for this, bearing in mind its primary duty to act on authorised payment instructions.

I do consider it relevant that Banking Protocol wasn't in place at the time. It means HSBC had less cause to involve the police if it still had concerns despite Mr S's insistence to proceed. Overall, I'm not persuaded it's fair to hold HSBC at fault for failing to stop further fraudulent losses at this point.

I have thought about whether there was a later point at which HSBC ought to have prevented Mr S's loss. As mentioned, a payment was also questioned by a recipient bank a few months later, and Mr S gave a cover story. This was also towards the end of the scam – and the further payments he made after this went to different recipients.

The spread of accounts paid is relevant here. Even if HSBC had been concerned enough to refuse a payment (which, to be clear, I'm not persuaded it should have) – I'm not convinced it would have been obvious to HSBC which further or previous payments were linked to the scam. That is, unless Mr S had been forthcoming on this point. For the reasons I've explained above, I'm not persuaded it's likely he would have been.

Mr S seemingly overlooked some concerning signs that P was misleading him – such as her failing to show up to meet him; the various evolving reasons given for why he needed to make these payments; and agreeing to lie to his bank about what he was doing. It seems these were outbalanced by the connection he had formed, and the supporting evidence P provided (such as passport ID and correspondence) about who she was and why she needed the payments.

Seeing how persuaded Mr S was, and his reluctance to divulge what he was doing – going so far as to complain about payments being delayed when the recipient bank froze them – I'm not convinced further probing by HSBC would have caused him to reveal much more.

I am aware of Mr S's health difficulties that may have impacted his decision making, particularly towards the end of his life. But I am also mindful of when the scam started – and how long it went on for. It's not clear to me HSBC ought to have had concerns about Mr S's understanding of what he was doing. For example, I note he fell victim to a telephone deception scam around June 2017 (so towards the end of the romance scam). He was able to identify and report this to HSBC at the time. That shows some level of ability to identify concerns and to engage with his bank about them.

Overall, I'm not minded to conclude HSBC should reimburse the estate of Mr S for the loss. I do appreciate how disappointing this will be for them. I'm aware scams like this often have a significant impact not only on the victim, but on those connected to them.

I can see it will have been difficult for the estate to have compiled the extensive information they provided to support the case. It will have taken an emotional toll alongside their time and effort. However, in considering whether HSBC ought to have been able to prevent Mr S's losses – overall, I'm not persuaded that's likely. And given the time between when the payments were made, and when the scam was reported to HSBC, I'm not persuaded it missed an opportunity to recover the loss either.

I invited both parties to provide further evidence or comments in response. As both parties have replied, I can now proceed to issue my final decision.

HSBC responded to confirm it had nothing to add. The estate of Mr S provided further commentary, which I've summarised below:

- HSBC didn't take all reasonable steps to identify and prevent fraudulent transactions.
- They disagree with the characterisation Mr S was a high-value spender, making the scam harder to spot.
- They have provided a £25,000 invoice for a car, dated from August 2017 – which they say was for a fake garage, noting the funds were being sent to a personal account. They say this shows Mr S didn't lie to HSBC about the reason for these payments – and it presented an opportunity for HSBC to have uncovered the scam.
- Mr S had a second account which he could have used – but had no cause to do so as there was no intervention or querying by HSBC.
- HSBC should have realised Mr S was vulnerable and offered him further support.

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. This is largely for the reasons given in my provisional decision – which are set out above and form part of my final decision. So, I'll focus here on responding to the points raised in response to my provisional findings.

I do agree with the estate that HSBC didn't do enough to protect Mr S. The key issue here is whether appropriate intervention would have affected his fraudulent loss. For the reasons given above, and as I'll expand on below, I don't think it would have.

The point about Mr S being a high-value spender is relevant to the extent to which HSBC ought to have intervened. But I'd point out that I've already found HSBC should have intervened more – it's just that I'm not persuaded this would have prevented the loss.

However, the estate's summary does miss out a number of high-value transactions, from around the period of the scam, which have informed my view of what level of spending looked usual for Mr S. Such as three payments to a financial company totalling almost £55,000 in March 2016, and two payments in July 2016 for over £70,000. This will have made the initial scam payments appear less unusual – and then over time, a pattern of high-value spending came to look normal for Mr S.

I've considered the invoice the estate have provided in relation to those payments Mr S told HSBC were for a car. It does fit that the invoice relates to those payments. However, it still appears Mr S wasn't honest with HSBC about them. As its notes from the time say (with my emphasis):

*“Have spoken to customer who purchased a car from this account held at [account provider’s name]. happy all is genuine and **our customer has the car and is happy with it...**”*

As it’s alleged that these payments were part of the scam, and that Mr S never did receive a car, that shows he wasn’t honest with HSBC about the payments.

I’d also point out the invoice contradicts what the estate (via a professional representative) initially told us these payments were for. As their original submissions said they related to a civil lawsuit against P. They said Mr S was told an individual suing P would accept a settlement of £50,000, and Mr S agreed to pay £25,000 towards this.

Overall, it’s unclear to me how and why buying a car from a dealership (claiming to be) based in the same area Mr S lived in would have been part of the scam as described to us. As P, and those Mr S was dealing with on her behalf, were meant to be based abroad.

That suggests Mr S may have known the invoice was false – but was still willing to make the payments, and to provide a false explanation/document to HSBC. Which supports my argument for how persuaded he was, and how difficult it therefore would have been for HSBC to dissuade him.

It also raises a question over the reliability of the account of the scam submitted to us. The reply I’ve received from the estate (via their representative) doesn’t account for why the explanation given for these payments has changed. This highlights the difficulty in looking into complaints like this, raised so long after the event, where there is no longer an opportunity to get a first-hand account from the victim. And I’d need confidence in the account provided about the scam, to support any conclusions around why HSBC ought to have uncovered it.

The point about Mr S’s second account doesn’t affect my decision. Overall, I’m still not persuaded HSBC ought to have been able to dissuade Mr S, or ought to have known to outright refuse the payments reportedly made as a result of the scam. If anything, it shows Mr S had other payment methods available even if HSBC had outright refused the scam payments.

I do appreciate the points raised around Mr S’s vulnerability. I’d point out there are limited records available about the contact with him from that time, given how long has passed. And I don’t consider it necessary to request more extensive records from HSBC covering all of its contact with Mr S from this time to reach a fair decision here.

This is bearing in mind the medical information provided by the estate, and their testimony, around Mr S’s capability. While I appreciate he fell very ill towards the end of the scam, it’s unclear to me he was noticeably lacking capacity before that point.

I note there were some direct interactions before this point, such as queries about the reasons for the payments (such as the notes I’ve included above about the alleged car payments). These don’t include anything suggesting HSBC had, or should have had, concerns over Mr S’s understanding. For example, I haven’t seen any suggestions Mr S’s family had taken steps (such as notifying the bank or putting other arrangements in place) due to concerns over his ability to handle his affairs.

I understand the argument that, had HSBC triggered the last few scam payments, it may have realised Mr S was vulnerable and taken different action. But based on the activity up to that point, and Mr S’s explanations for previous payments, I can see why it didn’t identify these payments as presenting a clear fraud risk. By that point, the payments would have appeared similar to other payments made months prior which hadn’t been disputed.

Overall, while I appreciate this will be disappointing to the estate of Mr S, I'm not persuaded it's fair to hold HSBC liable for these losses.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr S to accept or reject my decision before 29 February 2024.

Rachel Loughlin
Ombudsman