

The complaint

Mr F complains that HSBC UK Bank Plc won't refund the money he lost when he was the victim of what he feels was a scam.

What happened

In August 2022, Mr F was looking to invest some money he'd received from a property sale and so contacted a friend of his he'd invested with previously. He says he was told his friend would trade with the money he paid them and that he would receive his money back, plus the profit made from the trading, after 12 months. And Mr F then made a series of payments from his HSBC account to his friend's account, as set out below:

Date	Amount
3 August 2022	£8,000
3 August 2022	£2,000
8 August 2022	£9,000
10 August 2022	£3,900
15 August 2022	£1,250
19 August 2022	£2,200
24 August 2022	£3,400
25 August 2022	£1,000
30 August 2022	£480
30 September 2022	£600
4 October 2022	£1,000

Unfortunately, when Mr F later asked to be paid some of the profit made with his investment, his friend told him they'd had issues with their bank account and they couldn't pay the money back. Mr F then reported the payments he'd made to HSBC as a scam and asked it to refund the money he'd lost.

HSBC investigated but said Mr F had told it the first payment he made was to pay back a friend who had loaned him money. So it said it hadn't been able to provide him with the relevant information to ensure his safety, and didn't agree to refund the payments he'd made. Mr F wasn't satisfied with HSBC's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the available evidence showed the friend never intended to act in line with their agreement with Mr F, and so didn't think this met the definition of a scam. They also didn't think any further intervention would've stopped Mr F going ahead with the payments. So they didn't think HSBC should have to refund the money Mr F had lost. Mr F disagreed with our investigator, 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 don't think it would be fair to require HSBC to refund the payments Mr F made here. I'll explain why below.

Banks are expected to make payments in line with their customers' instructions. And Mr F accepts he made the payments here. So while I recognise he now feels he has been scammed by the friend he was sending the money to, he did authorise the payments. And so the starting position in law is that HSBC was obliged to follow his instructions and make the payments. So Mr F isn't automatically entitled to a refund.

There are certain activities banks are expected to carry out to try to protect their customers from falling victim to scams, and certain protections in place for customers who do fall victim to scams. But, before looking at whether HSBC has done what we'd expect it to do or whether these protections apply, I must first be satisfied that Mr F has been the victim of a scam.

The relevant test for whether someone has been the victim of a scam comes from the FCA handbook. This defines a scam as where a customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person. Or where the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

So in order to determine whether HSBC should refund the payments Mr F made, I first need to consider whether he has been the victim of a scam – or, in other words, whether he was deceived about the purpose of the payments to the point where he and the friend he was paying intended different purposes for the payments and the friend set out from the beginning with the intent to defraud him.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

I've seen copies of the text messages between Mr F and the friend he sent the payments to. These messages start nearly two and a half years before the payments Mr F is now disputing and show the two of them had an existing relationship as friends before these payments were made. The messages also appear to show them discussing a previous investment Mr F had made with the friend. And the messages show it was Mr F who approached the friend about investing again, shortly before the payments he is now disputing were made. So these payments didn't come about in the way I would usually expect a scam to.

Mr F has said the friend told him they would trade with the money he sent them and he would then receive the profit and his money back after 12 months. And he's sent us a contract between him and the friend, which he says relates to the investment. But the contract isn't dated or signed by Mr F, and the amount mentioned in the contract doesn't match any of the payments Mr F made to the friend. Mr F also reported the payments as a scam less than 12 months after the first payment he is now disputing, which would be before the end of the contract if it did relate to these payments. So I'm not satisfied the contract he has sent us relates to the payments he is now disputing.

The messages between Mr F and the friend also appear to mention a number of different investments or uses for the money Mr F was sending, including one occasion where Mr F appears to have sent money for day-to-day expenses because the friend was struggling financially. And there isn't significant detail in the messages about what any individual investment amount is for or what the friend will be doing with the money Mr F is sending.

The friend also continues to respond to Mr F for many months after the last payment Mr F is disputing, which I wouldn't necessarily expect from a scammer who intended to steal someone's money. The friend maintains that they are in the process of getting access to the money. And they offer a number of apologies for what has happened to Mr F's money and explain that it has caused them significant financial difficulties too. So I don't think the messages show that the friend didn't use the money as Mr F intended.

And so, based on the evidence I have, I'm not satisfied the purpose of the payments was an investment as Mr F has described. I think it's likely the payments were for a variety of purposes, rather than one specific investment. I also don't think the evidence available shows that the friend didn't use the money for the purposes agreed between them and Mr F.

I think this was likely a series of agreements between Mr F and the friend, including some about investments which ultimately went wrong and lost money. I don't think the friend intended different purposes for the payments than Mr F, or set out from the beginning with the intent to defraud him. And so I don't think the circumstances here meet the definition of a scam from the FCA handbook.

So I don't think the protections in place for victims of scams apply here, or that it would be fair to require HSBC to refund the payments Mr F has disputed.

I understand Mr F has said a number of other people lost money and the friend is being investigated by the police. But the outcome of this investigation, or of any subsequent action taken against the friend, is not yet known. If significant new evidence subsequently becomes available which suggests the friend was operating a scam, I would suggest Mr F raise this with HSBC directly. And I would expect HSBC to consider his claim in light of that new evidence. But, based on the evidence I have at the moment, I can't see that this investigation shows the friend was operating a scam here.

I sympathise with the position Mr F has found himself in, as he appears to have lost a significant amount of money. And I'm in no way saying he doesn't have a legitimate grievance against the friend he sent the payments to. But I can only look at HSBC's responsibilities and, for the reasons I've explained out above, I don't think it would be fair to require HSBC to refund the payments Mr F made.

My final decision

For the reasons set out above, I don't uphold this complaint.

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

Alan Millward
Ombudsman