

The complaint

Ms A complains that HSBC Bank UK Bank Plc (HSBC) has declined to refund the money she lost when she invested into what now appears to have been an investment scam.

What happened

On 23 February 2024, I issued my provisional findings on Ms A's complaint.

I wanted to set out the facts as I saw them and give both parties a chance to respond on my proposed outcome before I issued my final decision.

I provided greater detail on the factual background to Ms A's complaint in that decision.

As neither Ms A, nor HSBC, have raised any points of dispute about those facts, I will not reiterate them fully here. I will however briefly summarise the key points.

Ms A entered into an investment in 2021. At the time, she had believed this was legitimate in nature and initially all seemed well. However, the scheme later ceased to pay the expected interest, and ultimately it proved impossible to re-establish contact with the investment provider. Ms A lost her invested capital. Ms A realised that the investment had in fact not been legitimate and reported the matter as a scam to HSBC.

HSBC attempted to recover the payments Ms A had sent to the investment. However, no funds could be retrieved from the beneficiary banks. Ms A was left with a substantial loss.

HSBC said it wasn't liable for any of Ms A's losses because she had authorised the payments, and it did not have any reason to intervene or block Ms A's payment requests. The beneficiary accounts were not UK domiciled, and so the Contingent Reimbursement Model Code did not apply.

In my provisional decision I explained that I didn't consider HSBC had acted unfairly in saying it wasn't liable to reimburse Ms A for the money that had been lost. I will briefly summarise my rationale for reaching that outcome.

However, before doing so, I want to reiterate that I am extremely sorry to hear about the impact these events have had on Ms A, both financially and non-financially. She has been the victim of a callous and cynical crime here.

I explained in my provisional decision that I have no power to consider the actions of the fraudsters who were ultimately responsible for what happened. The complaint I am limited to deciding is the one Ms A brings against HSBC. That means I must focus on whether I consider HSBC was at fault in any way - and if so, what difference I think that fault likely made.

In doing so, where the evidence is incomplete or missing, I am required to make my findings based on a balance of probabilities – in other words what I consider is most likely given the information available to me.

The starting position in law is that Ms A is responsible for transactions she carried out herself. Both sides accept that Ms A gave the relevant payment instructions (albeit in the belief that she was making a wholly genuine investment).

HSBC's primary obligation was to carry out Ms A's properly authorised instructions without delay. It could have been held liable had it not done so (if for example, a loss had resulted from an unmerited delay).

I explained though that in some circumstances, I'd have expected HSBC to have intervened prior to processing Ms A's payment instruction – potentially even by telephoning her to discuss the intended payment and its purpose. Any such intervention should be proportionate to the level of risk of fraud or scam identified by the bank at that time.

But even if I found HSBC should have taken such a step here and that the bank was therefore at fault for not having done so, it wouldn't necessarily follow that this fault would make HSBC responsible for any resultant loss. I have to consider the question of causation.

In other words, if HSBC's proportionate intervention wouldn't have uncovered the scam (or otherwise prevented the payment) then I could not fairly say that a failure to make such an intervention left HSBC responsible for the resulting loss suffered by Ms A. That loss would have most likely occurred in any event.

In this case, I thought it relevant that the investment was of a specific type and geographical location which Ms A had prior experience of investing in. I also considered that her previous professional financial experience was relevant. She had carried out due diligence into the investment and did not have concerns prior to making the payments. In these specific circumstances I didn't think HSBC was necessarily any better placed to have uncovered cause for concern than Ms A.

And while HSBC didn't see (and wouldn't likely have been shown) the investment brochures, even if it had, again I didn't consider this would have prompted concern. This was a very sophisticated deception, and the documentation would likely have appeared exactly as might have been expected. I didn't think it would likely have prompted concern from HSBC that Ms A might be about to suffer financial loss through fraud or scam. And it wasn't for HSBC to provide investment advice unsolicited or otherwise comment on the suitability of the scheme for Ms A.

In any event I thought that Ms A having already being convinced of the suitability of the scheme, and that being based on her own knowledge of the area and due diligence, even a targeted scam warning from HSBC wouldn't likely have resulted in her deciding not to make the payments.

So, in short, I didn't think a proportionate intervention by HSBC would have led Ms A not to have made the payments. That meant I didn't think HSBC was responsible for the losses that resulted.

Separately, the payments were not made to UK domiciled accounts, so the voluntary Contingent Reimbursement Model Code (which can sometimes provide additional protection) would not apply.

I noted that once the scam had come to light, HSBC took the appropriate steps to attempt to recover Ms A's funds. I didn't find it could have done more in the circumstances.

Overall, despite my natural sympathy for the impact of this scam on Ms A, I couldn't fairly and reasonably find HSBC was liable for her losses.

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.

I asked both sides to respond to my provisional decision by 21 March 2024. Both sides have now replied but neither has raised any new arguments or provided other information that might affect the rationale behind the outcome I reached in my provisional decision.

In these circumstances, I see no reason to depart from my provisional findings as summarised above and for the same reasons.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 19 April 2024.

Stephen Dickie
Ombudsman