

## **The complaint**

Mrs M complains that HSBC UK Bank Plc (“HSBC”) has failed to refund £20,000 she says she lost to an investment scam.

## **What happened**

The details of this complaint are well known to both parties, so I will not repeat everything again here. Instead, I will focus on giving the reasons for my decision. But in summary, Mrs M made two payments in 2018 and these funds were intended to be used for investing in a company called that I will call B. Mrs M was promised payments from B but she did not receive the promised payments. B entered liquidation in 2020. Mrs M did not receive her investment back.

Mrs M raised a complaint with HSBC as she believed that it should have stopped the payments. She therefore requested that HSBC refund her. HSBC declined to do this.

One of our investigators looked into this matter and they did not think that HSBC had done anything wrong. Mrs M disagreed and therefore her complaint has been passed to me to issue a decision.

## **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.

Firstly, I should explain that I have considered all the points that both parties have raised. But I will not address each of them in this decision, instead I will address the points that I think are most relevant to my decision. This isn’t intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

The starting point in law and under the Payment Services Regulations 2017 is that Mrs M is generally liable for payments that she’s authorised. And, as the Supreme Court has recently reiterated in *Philipp v Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with the customer’s instructions. It is not for the bank to concern itself with the wisdom or risk of its customer’s payment decisions.

There’s no dispute here that Mrs M authorised these payments to the company and so she is liable at first instance. However, that isn’t the end of the story. The relevant regulations and industry guidance makes it clear that banks should fairly and reasonably be monitoring accounts in order to protect consumers from the risk of financial harm, including fraud and scams.

But the expectation to warn customers of the risk of such financial harm will only reasonably have been engaged if there were sufficient grounds for suspecting the payee was a fraudster; meaning that HSBC could have declined the payments while concerns about the payee were discussed with Mrs M.

Mrs M's representative has raised a number of points that it believes mean that HSBC should have intervened and prevented the payments. These include the size of the payments, the fact that they happened on consecutive days and the fact that the investment was a risky one. That said Mrs M had made large payments before including over £30,000 to a different investment company a few months prior so I don't think that the payments were particularly out of character. I also note that the payment whilst made in branch was made using an electronic kiosk so essentially was done without needing a staff members help. So overall I am not satisfied that HSBC needed to intervene at all in relation to these payments.

That said even if HSBC had intervened and asked questions about the payments I don't think that this would have resulted in the transactions not being made. HSBC do not have a duty to provide financial advice when a consumer attempts to make a payment or prevent people from investing in risky investments. Any concerns about the financial advice Mrs M may have received prior to these investments would need to be directed to the company that provided this advice.

So, I would need to be satisfied that there were concerns that B was operating a scam when Mrs M made the payments from her HSBC account in 2018 in order to expect HSBC to have done anything further if it did intervene.

I've consulted the official organisations that publish warnings about merchants that operate in the UK and abroad, including the Investor Alerts Portal of the International Organisation of Securities Commissions ("IOSCO"), as well as the FCA's own warning list. These watchlists, along with other reputable sources, lead me to believe that there were no warnings about B at the time Mrs M made her payments.

At the time Mrs M made her payments, B was or at least appeared to be a legitimate property developer offering fixed rate bonds. I appreciate it later filed for bankruptcy in 2020 and there are ongoing investigations as to whether they were operating a "ponzi" scheme, but that does not mean that HSBC should have been aware that it was operating fraudulently when the payments were made. Rather, HSBC at the time would only have known that Mrs M's money went to a business that was operating legitimately at the time.

Overall, I'm not persuaded that there was any reason for HSBC to have been aware that B was fraudulent or operating a scam at the time of the payments. So had it intervened I don't think that HSBC would have been aware there were any issues with the payments and therefore I don't think that the payments would have been stopped.

I note Mrs M's representative has mentioned that the type of investment should have caused concerns but as stated above, HSBC is not obligated to involve itself in providing investment advice. I accept that unregulated collective investment scheme (UCIS) can sometimes be scams, but not all are, so unless there were some other warnings about B I don't think HSBC should reasonably have prevented the payments simply because they were being sent to a UCIS.

Ultimately, I'm not persuaded there was anything suspicious at the time that ought reasonably to have concerned HSBC. I understand that there are concerns that the company that the money was sent to was not B and that it was not authorised to receive the payment on B's behalf. But I wouldn't have expected HSBC to have known this, or to have prevented a payment being made as a result, given it was going to a seemingly legitimate company. So, I don't consider there to be any basis in which HSBC can fairly or reasonably be held liable for her loss on this basis either.

I've also thought about whether HSBC ought to have done anything to recover the funds after Mrs M reported her loss. Mrs M didn't dispute the payment with HSBC for some years after the transactions. Given B has since become insolvent, it would be highly unlikely HSBC could have recovered any funds, particularly given it was several years after the payments had been made. HSBC also wouldn't have been under any obligation to consider refunding the payment under the Contingent Reimbursement Model (CRM) Code either, given the payment was made before the Code came into force.

Mrs M has explained that she was a vulnerable consumer at the time of the payments. And that this should have meant that HSBC denied the payments or at the very least provided a warning. But I don't think that this was the case, ultimately Mrs M was sending funds for an investment with no warnings at the time via a company that at the time (appeared to be legitimate). I accept with the benefit of hindsight both companies may not have been operating correctly but HSBC was not to know this at the time, so I don't think it did anything wrong in allowing the payments.

I appreciate this will likely come as a disappointment to Mrs M, and I'm sorry to hear she has lost a significant amount of money. However, in the circumstances, I do not consider it would be fair and reasonable to hold HSBC liable for her loss.

### **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 Mrs M to accept or reject my decision before 17 April 2025.

Charlie Newton  
**Ombudsman**