

The complaint

Mr S complains that HSBC UK Bank Plc didn't protect him from an investment scam.

Mr S is being supported in making his complaint by a representative. But for ease, I'll only refer to Mr S in this decision.

What happened

Mr S has said that other '*veterans*' introduced him to an investment with a company (which I'll refer to here as 'H') in relation to Forex trading. He's also said that a representative from an investment management company (which I'll refer to here as 'C') provided him with information on that investment.

Another company (which I'll refer to here as 'P') facilitated the transfer of the funds Mr S was investing to 'H'. Mr S entered into a loan agreement with 'P' on 3 June 2017 for the sum of £10,000.

Mr S says 'H' promised a refund of the capital within 12 months, plus paying 5% interest per month.

Mr S made the following faster payments, via telephone banking, as part of the investment:

Date	Amount
25/9/2018	£10,000
6/11/2018	£500

On 25 October 2018 Mr S received a return on the £10,000 investment of £500 (the first 5% monthly interest payment), which he then reinvested (the 6 November 2018 payment). But since then, he says he's been unable to recover any funds from 'P' or 'H'. Mr S's total loss is therefore £10,000.

'H' and 'P' went into liquidation in June 2019 and March 2020 respectively. Mr S has since tried to recover his funds by way of the liquidators.

On 1 November 2023 Mr S made a complaint to HSBC. In short, he said he'd been the victim of a scam and that HSBC hadn't done enough to protect him. Mr S therefore held HSBC responsible for his loss. He wanted HSBC to refund him the £10,000 together with 8% interest and £1,000 for the distress and inconvenience caused.

HSBC replied on 21 November 2023. It said it didn't consider the payments to represent fraud and would not reimburse the funds. HSBC said both 'H' and 'P' were genuine companies that had now gone into liquidation, and that neither payment flagged on its fraud prevention system. HSBC considered this to be a civil dispute.

Mr S referred his complaint to the Financial Ombudsman.

One of our Investigators considered the complaint but didn't uphold it. In summary, he said HSBC should've asked Mr S about the purpose of the £10,000 payment during its interaction with him when the payment was made via telephone banking. But given there was no adverse information about 'P' or 'H' available at that time, he didn't think further questioning by HSBC would've given it or Mr S any obvious cause for concern.

Mr S didn't agree. He said HSBC should've recognised that he was making a larger than normal payment to a new payee as part of an unregulated investment. And so, it should've made him aware of the investment risks, advised him to seek financial advice and to carry out further research into 'H' and 'P'. Mr S said there was no evidence to show he would've entered into a high risk investment if HSBC had advised him accordingly.

Mr S said appropriate questioning by HSBC would've resulted in him finding out that neither 'H' nor 'P' were regulated, and he'd have seen warnings around Forex trading investment scams if advised to carry out further research.

Mr S accepted HSBC couldn't have given him investment advice, but he said it should've been aware of the high risks associated with unregulated investments – and advised him accordingly. Mr S added that:

'I am satisfied that a warning from [HSBC] would probably have exposed 'P's false pretences, causing [him] to stop 'trading' and preventing further losses.'

I've been asked to review everything afresh and reach a final 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.

Having done so, I've decided not to uphold this complaint. I know this is not the answer Mr S was hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation he's found himself in, and I can understand why he'd want to do all he can to recover the money he lost. But I need to decide whether HSBC can fairly and reasonably be held responsible for Mr S's loss. Overall, I've decided that it can't be. I'll explain why.

But first, I would like to say at the outset that I have considered this case on its own merits and have summarised it in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. It's simply because my findings focus on what I consider to be the central issues in this complaint – that being whether HSBC could've prevented Mr S's loss.

I accept the £10,000 transaction Mr S made was an authorised payment. So, Mr S is presumed liable for the loss in the first instance.

However, I consider that as a matter of good industry practice at the time (and now) that a bank, such as HSBC, ought to have taken steps to intervene prior to processing a payment instruction where it had grounds to suspect a payment might be connected to a fraud or a scam. Any such intervention should've been in proportion to the level of risk perceived.

The question then arises whether HSBC ought reasonably to have held such suspicions or concerns in relation to Mr S's £10,000 payment — and if so, what might've been expected from a proportionate intervention.

So, taking all of this into account, I need to decide if HSBC acted fairly and reasonably in its dealings with Mr S when he made the £10,000 payment. Specifically, whether it should've done more than it did before processing the payment – and if it had, would that have made a difference. I also need to decide if HSBC could've reasonably recovered the lost funds.

Arguably, there was justification here for an intervention by HSBC prior to processing Mr S's payment instruction. The payment was also made by way of telephone banking; and where there is an interaction between a bank and its customer, we'd expect it to take that opportunity to find out more about the reason for the payment. This was also a significantly larger than usual payment for Mr S's account, and one being made to a new payee.

But for me to find it fair and reasonable that HSBC should refund the payment to Mr S requires more than a finding that HSBC ought to have intervened.

I would need to find not only that HSBC failed to intervene where it ought reasonably to have done so — but crucially I'd need to find that but for this failure the subsequent loss would've been avoided.

That latter element concerns causation. A proportionate intervention will not always result in the prevention of a payment. And if I find it more likely than not that such a proportionate intervention by HSBC wouldn't have revealed the payment was part of a fraud or scam, then I couldn't fairly hold it liable for not having prevented it from being made.

In thinking about this, I've considered what a proportionate intervention by HSBC at the relevant time would have constituted, and then what I think the result of such an intervention would most likely have been.

To reiterate, HSBC's primary obligation was to carry out Mr S's instruction without delay. It wasn't to concern itself with the wisdom or risks of his payment decision.

In particular, HSBC didn't have any specific obligation to step in when it received a payment instruction to protect its customers from potentially risky investments. The investment in 'H' wasn't an investment HSBC was recommending or even endorsing.

HSBC's role here was to make the payment that Mr S had told it to make. Mr S had already decided on that investment. And I find that HSBC couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing Mr S's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr S (which there was not here) would have gone far beyond the scope of what I could reasonably expect of HSBC in any proportionate response to a correctly authorised payment instruction from its customers.

That said, I think it would've been proportionate here for HSBC, as a matter of good industry practice, to have taken steps to establish more information about this payment.

What matters here is what those steps might be expected to have uncovered at the time. While there may now be significant concerns about the operation of 'H' and 'P', and the legitimacy of the investment, I must consider what HSBC could reasonably have established during a proportionate enquiry to Mr S about his payment back in September 2018. I cannot apply the benefit of hindsight to this finding.

Both 'H' and 'P' were genuine companies and there was no negative information about 'H' in the public domain until *after* it went into liquidation (June 2019). Having carefully reviewed all the material Mr S has provided about 'H' and 'P', it appears that allegations 'H' was operating as a scam *only* came to light during the liquidation process which included a court hearing in 2020. As such, this correspondence or information couldn't have been accessed by either HSBC or Mr S at the time the £10,000 payment was made.

I think it's also likely Mr S would've told HSBC that he had documents from 'H' confirming the terms of the investment, together with a loan agreement with 'P' which all appeared entirely genuine. And that 'C' had provided him with a clear and detailed overview of the investment opportunity several months prior to him making the payment, which included its endorsement of the investment:

'Our team of Agents have now been working/trialling ['H'] for 18 months and we are pleased to report the clients we put into this have all received the funds quoted each month, on time and without interruption. As such, we are now happy to introduce this trading operation to our wider client base.'

'C' also explained to Mr S that 'H' offered a 'capital protection' scheme, saying:

'So whilst no form of trading can ever be guaranteed to be risk free this "capital protection" service ensures a very low level of risk to client funds in reality.'

This would've all likely further reassured Mr S that other investors had made money from the investment and that his money was protected.

In summary, I've considered everything submitted and the arguments made, but while there may now be concerns about the legitimacy of 'H' and 'P', everything I've seen indicates that these concerns only began to surface in the public domain after the relevant payment was made by Mr S.

I thought next about how Mr S found out about the investment. Mr S has recently told us that he was introduced to the investment via 'other veterans' and that he did receive information from the representative from 'C' and met with her, but that he was unaware of her connection to 'C'. As such, Mr S said he never associated his investment with 'C'. 'C' isn't FCA regulated.

So, had HSBC asked Mr S who'd advised him about the investment, then the involvement of 'C' would've unlikely come to light at the time, given Mr S has told us he was unaware of 'C's direct involvement. But even if it had, this type of unregulated investment could be entered into without obtaining regulated financial advice; and might be made available to clients of an unregulated adviser (as Mr S was, albeit he was unaware of that at the time).

So, the status of 'C' and the investment weren't something that would necessarily have indicated 'H' was fraudulent (or that the investment was a scam) at the time Mr S asked HSBC to make the payment.

Further to that, I've seen emails sent from 'C' to Mr S in 2017 which suggest an element of trust between Mr S and 'C'. Mr S has also told us he:

'... was advised to invest his funds and subsequently met an individual who appeared knowledgeable in the investment process. [He] entrusted an investment company, as he was not experienced in this area'.

'C' was also clear with Mr S about the investment not being regulated. In an email to Mr S from February 2017 'C' explains:

'Here is the info about the investment. You can't go over it with an IFA as this is unregulated and the two don't mix. It is in essence a product for sophisticated investors who are deemed knowledgeable enough to make their own decisions after getting the information. I cannot "advise" anyone to do any of our investments only present the information for the person to make the decision'.

On 5 June 2017 'C' sends the following to Mr S via email:

'Here is the agreement for your £10k. It is now being done through ['P'] as with the new arrangements for 'H' banking that is now done through an offshore trust and I didn't think you would want to go down that route at the moment although it is still an option for the future. This is the easiest option ...

The bank details to send your funds to are also attached. Once you do that I will get a receipt and then you will be notified of the payment date'.

Given this communication, I don't think, on balance, that any advice or warning from HSBC about 'C' would've likely resonated with Mr S or given him any cause for concern. And any concerns that might've been raised about 'H' or 'P' would've likely, in my opinion, have been allayed by 'C'.

All things considered; I don't think it would've been readily apparent in September 2018 that 'H' might be fraudulent rather than a higher risk investment. I simply don't think HSBC could readily have uncovered information – especially through proportionate enquiry in response to a payment - that would've led to significant doubts about the legitimacy of 'H' at that point in time. Neither do I think Mr S could've uncovered such information at the time – he was not at fault here.

To recap, I can only reasonably expect any intervention or enquiries made by HSBC to have been proportionate to the perceived level of risk of 'H' being fraudulent. I don't think that a proportionate enquiry in September 2018 would've led to either HSBC or Mr S considering 'H' being anything other than legitimate. With that in mind, and all considered, I'm not persuaded that HSBC was at fault for carrying out the relevant payment instruction, or for not preventing Mr S from making his payment.

In terms of trying to recover the lost funds; I'd expect HSBC to attempt this at the point it's alerted to the loss. But more than five years had passed by the time Mr S contacted HSBC. Furthermore, both 'H' and 'P' had gone into liquidation by this point.

Therefore, I can't say HSBC had any reasonable prospect of recovering the funds in 2023 given the passing of time; and because 'H' and 'P' had gone into liquidation more than three years before.

I have a great deal of sympathy for Mr S and the loss he's suffered. But it would only be fair for me to direct HSBC to refund his loss if I thought it was responsible – and I'm not persuaded that this was the case. And so, I'm not going to tell it to do anything further.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision **before 5 November 2024**.

Anna Jackson
Ombudsman