

The complaint

Mr and Mrs W complain that HSBC UK Bank Plc ('HSBC') won't refund money they lost when they say they were the victims of a scam.

What happened

Mr and Mrs W say that in March 2019 they paid a cheque from their joint account with HSBC to a company I'll call H in this decision. The payment was for loan notes in H. Mr and Mrs W believe H was operating a sophisticated scam and had no intention of providing investors with the 12% fixed annual rate of return that was promised. Mr and Mrs W received returns of £9,875 but have not been able to withdraw or recover any further funds.

Mrs and Mrs W's professional representative sent a letter of complaint to HSBC in September 2023. They set out why they believe H was operating a scam and referred to HSBC's duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe.

HSBC said it wasn't responsible for Mr and Mrs W's loss. It said the transaction was authorised and HSBC followed its legal obligation to process it.

Mr and Mrs W were unhappy with HSBC's response and brought a complaint to this service. In addition to the points raised with HSBC, they said HSBC should have encouraged them to check the FCA register, have asked to see the documentation H provided them with, and noted the history of bankruptcy of a director of H.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. He said that he hasn't been able to identify who the cheque referred to above was payable to and hasn't seen any documentation to show Mr and Mrs W invested in H. But even if this evidence was available, the investigator set out why he didn't think Mr and Mrs W were the victims of a scam. And, whilst there were occasions when HSBC should have intervened in a cheque withdrawal, the investigator said there was no publicly available information HSBC could have identified that would have raised any concerns.

Mr and Mrs W don't agree with the investigator's findings and have asked for a final decision, so their 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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

I haven't seen any evidence to show that the £50,000 cheque withdrawn from Mr and Mrs W's account in March 2019 was payable to H. HSBC says that due to the passage of time it no longer has an image of the cheque, and all that appears on Mr and Mrs W's statement is the cheque number. Mr and Mrs W also haven't provided any documentation which demonstrates they invested with H at the time. So there is no evidence to say Mr and Mrs W invested in H.

Even if Mr and Mrs W had demonstrated that they invested in H, I wouldn't be asking HSBC to reimburse them. The payment Mr and Mrs W say was made to H pre-dated the inception of the CRM Code, but in any event would not be covered as the CRM Code doesn't apply to payments made by cheque. At the time, HSBC should have been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things) and taken additional steps before processing some payments.

It's debateable whether HSBC should have intervened when the cheque was drawn. I note that in March 2019 there were four £10,000 transactions over a two day period to the same payee, so a £50,000 payment was broadly in line with this activity. In any event, I'm not persuaded that any intervention by HSBC at the time the payment was made would have made a difference here. H was a legitimate company and there was nothing in the public domain at the time to suggest Mr and Mrs W wouldn't receive the returns they expected. I don't consider HSBC should have completed a detailed analysis of documentation Mr and Mrs W say they were given or investigated the directors of H.

Overall, whilst I'm sorry to hear that Mr and Mrs W have lost money, I can't reasonably require HSBC to reimburse them.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 25 November 2024.

Jay Hadfield
Ombudsman