

Complaint

Mr and Mrs O are unhappy that Handelsbanken plc didn't agree to refund them after they reported falling victim to fraud. The relevant payments were made from a joint account, but as Mr O was the one who interacted with the fraudster, I will generally refer to him in the text of this decision.

Background

The background to this case is well known to both parties, so I do not intend to set it out in full here. I've provided a brief summary of the key details below.

Mr O knew a man I will refer to as Mr N, a partner in an accountancy firm. Mr N offered Mr O an investment opportunity. He explained that the firm had a client account that paid a relatively high rate of interest provided funds above a certain threshold were deposited. Mr O was offered the chance to deposit those funds, with Mr N proposing to share the enhanced returns with him. Unfortunately, this wasn't a legitimate investment opportunity. Mr N has since passed away, and it has emerged that the funds received from Mr O were not held in the client account but transferred elsewhere.

Between March and August 2023, Mr O used his account with Handelsbanken to make several deposits to the firm's client account, totalling a little over £1,000,000. Some funds were returned to him – although it seems likely this was to coax Mr O into making further payments. At the time of this complaint, Mr O's net loss was a little under £400,000.

Once he realised he'd fallen victim to a scam, he told Handelsbanken. The bank declined to reimburse him. Mr O wasn't happy with that response and so he referred his complaint to this service. An Investigator reviewed the complaint but did not uphold it. Mr O disagreed with the Investigator's findings, so the complaint has been referred to me for a final decision.

Findings

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 am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

Fraud prevention

The starting position at law is that a bank is expected to process payments and withdrawals authorised by a customer, in line with the Payment Services Regulations 2017 and the terms and conditions of the account. However, that is not the end of the matter. Good industry practice required Handelsbanken to be alert to payments that were out of character or unusual to the extent that they might indicate a risk of fraud. Where such payments were identified, I would expect the bank to take steps to warn the customer of the risks involved.

Handelsbanken has shown me the written warnings displayed to Mr O when he made these payments online. These warnings were fairly generic, highlighting common scam types. However, their contents were not particularly relevant to Mr O's circumstances. I'm also aware that a conversation took place in connection with one of the later payments.

The values of these payments were substantial. The first payment of £250,000 should not have been processed without the bank first contacting Mr O to establish the circumstances and, if necessary, warn him about the risk of fraud. In other words, it failed to do what I'd have expected of it. However, I can only direct Handelsbanken to pay a refund if the evidence suggests that this failure caused Mr O's losses. In other words, would Handelsbanken have been able to prevent his losses if it had acted differently?

With hindsight, we now know Mr O was being scammed. However, the key issue is whether Handelsbanken could reasonably have identified this at the time. Having considered the evidence, I am not persuaded that, even if it had made enquiries before processing these payments, it would have made a difference. Mr O was transferring funds to a legitimate and well-established accountancy firm. He also had a personal connection with Mr N. The promised returns were not unrealistically high, and there was nothing inherently problematic about the investment as presented to him. On balance, I think it is more likely than not that these payments would still have been made even if Handelsbanken had done everything I would have expected of it.

Recovery of funds

Once notified of the fraud, Handelsbanken needed to promptly contact the receiving bank and request the return of any remaining funds. It took four days to do so, which is significantly longer than I would expect. That said, I have also seen evidence that the firm's client account was reported empty a week before Mr O notified Handelsbanken of the scam.

Unfortunately, once the funds had left the receiving account, Handelsbanken had no further means of recovering them. A bank's ability to recover funds is based on its relationship with the receiving bank, established by the payment instruction. Even if Handelsbanken had tried to follow the money beyond the initial receiving account, it would not have had the legal authority to trace the funds or request their return. Overall, I find it unlikely that Handelsbanken would have been able to recover any funds even if it had acted sooner.

Other issues

Mr O has argued that while Handelsbanken didn't sign up to the Contingent Reimbursement Model (CRM) Code, it operates in the UK and should be aligned with the approach taken by other banks. I understand his point, but the CRM Code was voluntary. While there are hundreds of banks in the UK, only around ten signed up to follow the code's provisions. Handelsbanken was not one of them, and so I cannot apply the CRM Code as a basis for requiring it refund Mr O.

I don't say any of those to downplay what has happened here. Mr and Mrs O are the victims of a cynical scam, and they have my sympathy. However, my role is limited to looking at the actions and inactions of the bank and, while I agree that it ought to have done more here, I'm not persuaded that its failings were the cause of Mr and Mrs O's losses.

Final Decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Mrs O to accept or reject my decision before 2 April 2025.

James Kimmitt
Ombudsman