

The complaint

Mr E has complained that HSBC UK Bank Plc won't refund the money he lost after falling victim to a scam.

What happened

In 2021, Mr E was introduced to an established regulated financial advisor by a friend. The advisor successfully helped Mr E with a pension matter. In 2022, the advisor persuaded Mr E to invest through them, and in April 2022 Mr E sent them £5,000 from his HSBC account by cheque.

The advisor stopped providing updates, and Mr E found out that other investors had serious concerns about the legitimacy of the investments. It emerged that the advisor had never actually invested the money as agreed. In September 2023, Mr E reported the matter to HSBC as a scam. In 2024, the advisor was convicted of fraud.

HSBC tried to recover the funds from the receiving bank but this was unsuccessful. HSBC didn't think they were liable for Mr E's loss.

Our Investigator looked into things independently and didn't uphold the complaint. Mr E didn't agree, so the complaint's been passed to me to decide.

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.

First of all, I understand that Mr E fell victim to a scam, for which he has my sympathy. I appreciate this cannot have been an easy time for him, not least as he's been going through a truly tough time more widely, and I certainly appreciate why he wants his money returned. It's worth keeping in mind that it's the advisor who's primarily responsible for what happened, who primarily caused the undue stress Mr E is facing, and who really owes Mr E his money back. But I can only look at what HSBC are responsible for. Having carefully considered everything that both sides have said and provided, I can't fairly hold HSBC liable for Mr E's loss. I'll explain why.

It's not in dispute that Mr E authorised the payment involved. So under the Payment Services Regulations he is liable for the loss in the first instance. And broadly speaking, HSBC had an obligation to follow his instructions – the starting position in law is that banks are expected to process payments which a customer authorises them to make.

HSBC should have been on the lookout for payments which could be the result of fraud or scams, to help prevent them. But a balance must be struck between identifying and responding to potentially fraudulent payments, and ensuring there's minimal disruption to legitimate payments. I've thought carefully about whether HSBC should have done more in Mr E's case.

While the payment involved was large, it was not especially out of character for Mr E's account. Mr E had a very substantial balance and had made other payments of a similar type and amount in the months beforehand. This was not a series of rapid payments, it did not go to a foreign account, and it did not drain Mr E's account by any means – the vast majority of the balance was left over. I don't think cheque payments are inherently more suspicious, as Mr E suggested, and he did use cheques for other transactions. Nor do I think that the payment going to an individual was sufficient to mean that HSBC should've intervened. And I can't see that HSBC had been made aware of any other reason to think that Mr E was at particular risk of being scammed at the time.

Further, even if HSBC *had* flagged the payment and given Mr E scam warnings or asked further questions about his reasons for paying, I find it's more likely than not that HSBC would not have uncovered a scam and that Mr E would've still gone ahead. I say this because Mr E was paying an FCA-regulated financial advisor, working for a real limited company, which was registered on Companies House and had been trading for over a decade. He was introduced to this advisor through a friend's recommendation, not through a cold call or any suspicious method. He'd met the advisor in person, had been in touch for months, and had signed a contract. He'd received financial advice, and the advisor had successfully helped Mr E in a previous financial matter of some significance. So even if the payment was going to an individual account, the matter would still have looked legitimate overall. HSBC would not have had sufficient reason to conclude that this was a scam, nor to block Mr E from paying the advisor. And HSBC were not providing financial advice as part of this transaction, so I would not have expected them to research the investment or to assess its suitability for Mr E.

Next, I've considered what HSBC did to try to recover Mr E's money after he told HSBC about the scam. Unfortunately, Mr E only contacted HSBC well over a year after paying the money. And it's a common tactic for fraudsters to move on the money as quickly as possible, before the victim realises what happened. While HSBC could have been a bit quicker about contacting the receiving bank, it's very unlikely it would've made a difference in this case. It wasn't realistically likely that HSBC could've recovered anything after this time, and here the receiving bank have not returned any funds. Further, as this payment was made by cheque, it was not recoverable under the CRM Code.

Mr E pointed out that another customer got a refund. And I can understand why he thought to raise this. But we looked at each case on its individual merits. I've explained above why, in this particular case, HSBC are not liable for the loss.

So while I'm very sorry to hear about what the advisor did to Mr E, I cannot fairly tell HSBC to refund the money in this case. I hope that Mr E is able to recover his money from the perpetrator now that they've been convicted.

My final decision

For the reasons I've explained, I do not uphold this complaint against HSBC UK Bank Plc.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 2 December 2024.

Adam Charles
Ombudsman