

The complaint

Mr E complains that HSBC UK Bank Plc (trading as First Direct)) didn't protect him from an investment scam.

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

What happened

Mr E explains that he was first introduced to an investment in a company (which I'll refer to here as 'H') whilst at a Christmas party with his wife's company in 2016. And that towards the end of 2016 he (and a close friend) met with representatives of a broker (which I'll refer to here as 'EW') in person, as well as with the directors of 'H' at their offices to discuss the investment in more detail. Mr E says he didn't invest with 'H' at that time, but that he later decided to do so.

Mr E entered into a loan agreement with 'H' on 12 October 2017 for the sum of £50,000.

Mr E says the investment with 'H' was based on the buying and selling of commercial bank papers, as opposed to forex trading. He says he was promised a return of double his investment within six months – but that no payments were received.

Mr E made the following online payment as part of the investment:

Date	Amount
19/10/2017	£50,000

Before the payment was released, HSBC spoke with Mr E who confirmed it to be genuine.

'H' went into liquidation in June 2019.

On 27 September 2023 Mr E 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 E therefore held HSBC responsible for his loss. He wanted HSBC to refund him the £50,000 together with 8% interest and £1,000 for the distress and inconvenience caused.

HSBC replied on 6 November 2023 to say it had spoken to Mr E before processing the £50,000 and he'd confirmed it to be genuine. It also said that it had tried to recover the lost funds – but that this had been unsuccessful.

Mr E referred his complaint to the Financial Ombudsman.

One of our Investigators considered the complaint but didn't uphold it. Essentially, she said HSBC should've asked Mr E about the purpose of the £50,000 before processing it. But given there was no adverse information about 'H' available at that time, she didn't think further questioning by HSBC would've given it or Mr E any obvious cause for concern.

Mr E didn't agree. In summary, he said the purpose and value of the payment should've been of concern to HSBC; so much so that it should've intervened in the payment and invoked the banking protocol.

Mr E said HSBC should've explored with him the risks associated with unregulated investments. He said:

'If HSBC had given an investment scam warning and discussed the reason behind the payment, ... [Mr E] would have paused and looked more closely into ['H'] before proceeding'.

Mr E says he then would've discovered that 'H' was unregulated and that there were various regulatory warnings associated with unregulated forex investment scams. Mr E says this *'would probably'* have uncovered 'H's *'false pretences'* at which point his loss would've been prevented.

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 E 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 E'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 E's loss.

I accept the £50,000 transaction Mr E made was an authorised payment. So, Mr E 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 E's £50,000 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 E when he made the £50,000 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.

HSBC did flag the £50,000 payment for fraud checks and spoke to Mr E on 18 October 2017 to obtain his confirmation that the payment was genuine. Mr E confirmed this to be the case and HSBC processed the payment. 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 payment than usual payments for Mr E'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 E 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've 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 E'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 E had told it to make. Mr E 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 E's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr E (which there was not here) would've 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 the legitimacy of the investment, I must consider what HSBC could reasonably have established during a proportionate enquiry to Mr E about his payment back in October 2017. I cannot apply the benefit of hindsight to this finding.

'H' was a genuine company 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 E has provided about 'H', it appears that allegations that '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 E at the time the £50,000 payment was made.

I think it's also likely Mr E would've told HSBC that he had documents from 'H' confirming the terms of the investment, together with a loan agreement and a '*confirmation of understanding form*' which all appeared entirely genuine. And that he'd met with 'EW' and representatives from 'H' towards the end of 2016 about the investment opportunity where they discussed how 'H' traded and reviewed its trading history. Mr E said he was also told 'H' had been successfully trading for approximately ten years and that 'EW' had told him it:

'had no issues with returns for all [its] clients, some had been paid back their initial investment and more'.

And significantly, Mr E says the two representatives from 'EW' told him they'd invested in 'H' previously, and in this investment opportunity. 'EW' had also provided Mr E with a clear and detailed overview of the investment terms prior to him making the payment.

It therefore seems to me that Mr E made an informed decision to invest in 'H' – a decision he made ten months after first being introduced to 'H'. All this would've likely reassured both HSBC and Mr E that he wasn't at risk at the time the 19 October 2017 payment was made.

In summary, I've considered everything submitted and the arguments made, but while there may now be concerns about the legitimacy of 'H', everything I've seen indicates that those concerns only began to surface in the public domain after the £50,000 payment was made by Mr E.

I've thought next about how Mr E found out about the investment. Mr E was introduced to 'H' by 'EW', an unregulated broker.

Had HSBC asked Mr E who'd advised him about the investment, then the involvement of 'EW' would've likely come to light at the time. But 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 E was).

So, the status of 'EW' 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 E asked HSBC to make the payment.

Further to that, I've not seen any evidence to suggest Mr E ever doubted the advice he was being given by 'EW'. They met in person and maintained a relationship long after the investment in 'H' – with 'EW' offering support to Mr E when his investment returns from 'H' weren't realised. And such was this level of trust, Mr E took further advice from 'EW' in 2020 about another investment opportunity where a further £50,000 was invested.

'EW' also made Mr E aware that this was a different investment opportunity than those normally offered by 'H'. 'EW' explained to him that:

'This trade opportunity is different to the FX product that ['H'] normally offers. It is, instead, based on the buying and selling of Commercial Bank Papers'.

Given this communication, I don't think, on balance, that any advice or warning from HSBC about 'EW' would've likely resonated with Mr E or given him any cause for concern. And any concerns that might've been raised with Mr E about 'H' (including it deviating from its usual forex trading) would've likely, in my opinion, have been allayed by 'EW'.

All things considered; I don't think it would've been readily apparent in October 2017 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 E 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 October 2017 would've led to either HSBC or Mr E 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 E from making his payment.

In terms of trying to recover the lost funds; I've seen evidence that HSBC attempted this at the point it was alerted to the loss; but this was unfortunately unsuccessful. Given almost six years had passed by the time HSBC was able to attempt recovery, and 'H' had gone into liquidation four years previously, I think HSBC took reasonable steps to try to recover the lost funds.

I have a great deal of sympathy for Mr E 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 E to accept or reject my decision **before 26 November 2024**.

Anna Jackson

Ombudsman