

## **The complaint**

E's complaint is that HSBC UK Bank Plc hasn't refunded money it says was lost to a scam.

Mr L is a director of E and has brought the complaint on its behalf.

## **What happened**

The background to this complaint is well-known to all parties and so I'll keep my summary of key events brief.

Mr L was introduced to an investment opportunity by a friend. Investments were to be made through a party I'll call B.

Mr L discussed potential investments with B and carried out some research into them. He was told if he wanted to get involved, he'd need to put money into a loan note and what was called a Percentage Allocation Money Management account (an account which would be held overseas with a separate firm which I'll call A).

Mr L decided to invest on behalf of his business. He made payments in October 2021 and April 2022, with the money being sent from a business account not linked to this complaint.

In May 2022 Mr L decided to invest further on behalf of E. He authorised an international payment for £15,000 to A, this time from the account linked to this complaint.

Come August 2022 Mr L could see that the trading balance on his account with A had dropped to zero, with the money all being lost through trading activity. It was after this that Mr L began to suspect he and E had been caught up in a scam.

Mr L told HSBC about what had happened, seeking reimbursement on behalf of E. But HSBC said it was unable to help as it had correctly followed a valid payment instruction. It said it wouldn't reimburse any loss.

E's complaint was then referred to our service and one of our investigators considered what had happened. He found HSBC had acted fairly and reasonably in the circumstances making two main points:

- He wasn't satisfied there was sufficient evidence to show E had been scammed, rather than it being a case of a failed investment through B;
- That even if it were treated as a scam, he wasn't persuaded HSBC could have detected it at the time.

Mr L asked that an ombudsman review E's complaint as he didn't agree with the outcome.

## **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'm not upholding it. I'll explain why.

The starting point at law is that E is responsible for any payments made from its account which are properly authorised. This position is confirmed in the Payment Service Regulations (2017) and E's account terms and conditions. There's no dispute here that the transactions were authorised, albeit E says as part of a scam.

There are further considerations that might apply to a complaint where the customer has been the victim of a scam. Relevant rules, codes, industry guidance and best practice have established that in some circumstances firms ought to take steps to question unusual payment activity with a view to the prevention of financial harm through fraud. And where a firm – like HSBC – fails to act as it fairly and reasonably ought to have, it might be found it can be held responsible for any subsequent loss.

But any such considerations would only apply where it can be established that a scam has taken place. I'm not persuaded that's the case here. To understand my findings here, it's important to closely consider what happened with E's funds and how the loss occurred.

A is a completely legitimate supplier of a platform used for the execution of a variety of trades. It remains fully licensed and operational. When E engaged with B and started investing, an account was opened with A so that trades could be made on its behalf.

A limited power of attorney was entered into, allowing B to operate E's trading account on its behalf. It would be B that used E's account to direct all trading. And that is what happened. I've seen no evidence to suggest otherwise.

I've also seen no evidence to suggest that B was able to misappropriate funds from E's account for its own benefit or that funds were used in way that was fundamentally outside of the understanding between the parties. A itself has strongly refuted that any investor's funds were used for anything other than legitimate trading purposes.

A has gone on to confirm that in the summer of 2022 B's high-risk trading strategy resulted in it losing all its own investment capital, along with the funds of individual investors who had signed the limited power of attorney documents, as E did. A went on to close all of B's accounts held with it.

This means that E's money was sent to an account in its own name, held by a completely legitimate merchant. The funds were then used for the intended purposes, albeit with catastrophic consequences. So, whilst it's not in dispute that E has lost the money it invested, I'm not persuaded that the loss is the result of a scam. It wouldn't then be fair and reasonable to apply any scam considerations to the complaint. In turn, there are no grounds upon which I can tell HSBC to refund E's loss.

I'm also mindful in making these findings that there might be other activities that B was engaged in, and different methods of investing used, but which are not the subject of this complaint, where a finding could be made that B was operating a scam. Those other activities and methods, even if identified as being connected to a scam, do not alter the outcome of this complaint though. I must consider the facts of the specific payment made and the circumstances surrounding that payment.

### **My final decision**

I don't uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 17 April 2025.

Ben Murray  
**Ombudsman**