

## **The complaint**

Mr and Mrs W complain that Handelsbanken plc didn't do enough to protect them from the financial harm caused by an investment scam, or to help them recover the money once they'd reported the scam to it.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr and Mrs W jointly held a bank account with Handelsbanken. In 2020, they were victims of a scam, having been referred to an investment by a good friend. Mr and Mrs W took investment advice from someone who I'll refer to as "the scammer" who claimed to work for Company A, which is authorised by an overseas regulator. Unfortunately, A turned out to be a clone of the genuine company.

The scammer said A was registered to provide financial services overseas and that they could make money by investing in foreign currency. They decided to go ahead having completed minimal research and the scammer encouraged them transfer funds via a global money transfer and foreign exchange and international payments company which I'll refer to as "X". Between 22 July 2020 and 7 August 2020, they made five transfers totalling £450,000 to X.

Mr and Mrs W complained to Handelsbanken when they realised they'd been scammed. They said they weren't experienced investors and that if they'd been asked more probing questions about the circumstances of the investment, Handelsbanken would have detected the scam. In a further complaint, they specifically complained about the way Handelsbanken had handled the requests to transfer funds on 6 August 2020 and 10 August 2020.

Handelsbanken refused to refund any of the money they'd lost. It said that before the first payment on 22 July 2020, Mr W said he was aware of the risks of receiving payment details by e-mail and he understood the scam risk. He said the beneficiary had been recommended by a good friend and he'd spoken to them separately to confirm the payment details. In the subsequent calls, he provided clear instructions that he wished to proceed. It said its records showed each payment was referred to the branch for verification and Mr W had spoken to his account manager, confirming the payments were genuine and that he wanted them to be processed.

Mr and Mrs W weren't satisfied and so they complained to this service with the assistance of a representative who said that Handelsbanken should have questioned Mr W about the intended beneficiary. The representative explained that Mr and Mrs W weren't experienced currency traders and had done very limited research because they were referred to the investment by a friend.

Handelsbanken further commented that Mr W was taken through its verification process when they set up the new beneficiary. He was asked how he'd received the beneficiary

details, if he was aware of the risk involved with email fraud and whether he'd spoken to the beneficiary. The subsequent payments followed the same pattern.

Our investigator didn't think the complaint should be upheld. He was satisfied Handelsbanken had intervened at the time of the payments. He accepted the questioning was limited but he didn't think Handelsbanken ought to have refused to put the payments through because, Mr W came across as a foreign exchange specialist, there were no warnings about A either the Financial Conduct Authority ("FCA") or International Organisation of Securities Commissions ("IOCSO") websites and they'd been introduced to the investment by a trusted friend.

Mr and Mrs W asked for their complaint to be reviewed by an Ombudsman. They maintained Handelsbanken only asked whether Mr W had received the payee details by email and that it should have asked what the payments were for and for the basic surrounding context. They said they had no prior experience of foreign currency trading and that they wouldn't have gone ahead if they'd been warned about the risks and told there were red flags present, including the fact they expected a tax-free return of over 30%.

They were adamant that Mr W didn't have experience of foreign currency trading, explaining he'd made some investments with a peer-to-peer lending company which I'll refer to as "R" in 2017 and 2020, but he didn't tell Handelsbanken it was a currency trader.

### **My provisional findings**

I was satisfied Mr and Mrs W 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although they didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of the bank account, they are presumed liable for the loss in the first instance.

There's no dispute that this was a scam, but although Mr and Mrs W didn't intend their money to go to scammers, they did authorise the disputed payments. Handelsbanken is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

### *Prevention*

I thought about whether Handelsbanken could have done more to prevent the scam from occurring altogether. It ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I needed to consider whether it ought to have intervened to warn Mr and Mrs W when Mr W tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Handelsbanken to intervene with a view to protecting them from financial harm due to fraud.

Mr W spoke with a representative from Handelsbanken each time he made a payment, so I considered whether it did enough to protect him during those interactions.

Handelsbanken has produced recordings of four calls that took place before the payments were processed. During the first call, Mr W was asked to confirm how he received the payee details and that he was aware of the risks associated with having received the details by email, in response to which he confirmed he was aware of the risks, he'd spoken to the beneficiary on the phone, and the investment had been recommended by a good friend.

Mr W was making three payments totalling £250,000 to a new international payee offering global foreign exchange services, and in those circumstances I said I would expect him to

have been asked some more probing questions around why he was making the payments, whether there was a third party involved and if so how he'd met them, whether he'd been promised unrealistic returns, whether he'd been coached to lie and whether he'd done any due diligence.

There's no evidence he had been coached to lie and it's clear from his interactions with Handelsbanken that he was being open about the purpose of the payments, so I thought it was likely he'd have explained that he was being advised by a third party who worked for A, that he was sending funds via X for currency trading and that he hadn't done any due diligence because the investment had been recommended by a friend. With this information, I would expect Handelsbanken to have provided a tailored scam warning and some advice on due diligence, including contacting the details on the relevant regulator's website to verify he was dealing with a genuine company.

In considering whether Mr and Mrs W would have followed this advice, I considered the fact they clearly had a good relationship with Handelsbanken, particularly the account manager, and the fact they'd chosen to use Customer Support to make the payments rather than online banking because they preferred the security checks and the fact that the branch would call him to confirm the payments.

I also considered the account manager's comments that *'Mr W telephoned Handelsbanken to advise that he would be sending funds to the payee on 22 July. It asked what the payee did, and Mr W advised that they are a currency trader, similar to R, which Mr W had used for a number of years. Mr W said that his agreement is with A and funds are sent to the payee as the platform for the trading'*. The account manager said in 2022 that the extracts were made from her recollection of events when the fraud report was made by on 10 September 2021, rather than contemporaneously at the time the payments were made.

Mr W doesn't accept he had experience in currency trading. I said I was happy to consider any other evidence Handelsbanken might produce, but as there was no recording of the call that took place between Mr W and the account manager before the payments were processed and the account manager's notes were made over a year later, I wasn't persuaded, on balance, that he said he had experience of trading in foreign currency.

Consequently, I thought it was likely that, even though they were acting on the recommendation of a friend, Mr and Mrs W would have followed some detailed and robust advice to do more checks, which would likely have uncovered that A was a clone of the genuine company and the scam would have been prevented. And because I didn't think Handelsbanken did enough in circumstances which might have prevented Mr and Mrs W's loss, I was minded to direct it to refund the money they lost from the first payment onwards.

### *Contributory negligence*

There's a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence, and, in the circumstances, I didn't think Mr and Mrs W did enough to prevent their own loss.

In recent years instances of individuals making large amounts of money by trading in foreign currency have been highly publicised to the extent that I didn't think it was unreasonable for them to have believed what they were told in terms of the returns they were told were possible, notwithstanding the fact it was highly implausible. And I understood they felt reassured because the investment had been recommended by a good friend who they trusted.

However, Mr and Mrs W have explained the fact they were reassured by having been introduced to the investment by a trusted friend meant they didn't do any due diligence and considering the amount of money they invested, I thought this was unreasonable. They have since discovered their friend was cold called by the scammer, which is a red flag they might have uncovered through a more detailed examination of the circumstances. And as I explained above, more thorough checks might also have uncovered the fact A was a clone of the genuine company. So, I said I was minded to direct that the settlement should be reduced by 50% for contributory negligence.

### *Compensation*

I explained Mr and Mrs W aren't entitled to any compensation.

### *Recovery*

I didn't think there was a realistic prospect of a successful recovery because Mr and Mrs W paid an account in their own name and moved the funds onwards from there.

### **Developments**

Handelsbanken has indicated that it doesn't accept my provisional findings, stating that it provided Mr W with sufficient warnings and opportunities to mitigate the risk of fraud. It has also stated the friend who recommended the investment had expressed concerns, yet Mr W went ahead with the payments without engaging in further dialogue. It has argued that this shows that even if the suggested questions had been asked, it's likely Mr W would have proceeded with the payments.

It has suggested that Mr W's previous experience and understanding of investments played a significant role in his decision-making process, and it maintains he was perceived to be an experienced individual as he'd operated and sold a business and held various investments. It has also explained Mr W was introduced to its Wealth Management adviser in 2019, but he said he'd prefer to continue his long-standing arrangement with an alternative financial adviser.

It has argued that it wasn't Handelsbanken's responsibility to question the basis of the investments, and the level of questioning suggested would represent a high bar, bearing in mind Mr W's refusal to engage in its attempts to warn him about the dangers of email approaches. Further, it followed the standard procedures and warnings in place as per the guidelines from the Financial Conduct Authority (FCA) and Payment Services Regulations 2017, applicable at the time, and the enhanced requirements proposed by the FCA consultation on APP fraud published in 2024 weren't in effect at the time of the fraud in 2020.

Mr and Mrs W have made further representations on the issue of contributory negligence. They've argued that they didn't foresee that they were at risk of financial harm because their friend had told them the investment was a good one and they were reliant on Handelsbanken alerting them to the risk. They've stated that Handelsbanken was familiar with this type of fraud and the terms and conditions of the account allowed it to refuse to make payments where it suspected fraud.

They maintain they had no relevant investment experience and have questioned why their friend's (who also complained to this service) settlement wasn't reduced for contributory negligence.

## **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.

I've considered the further representations made by both parties and the findings in my final decision will be the same as my provisional findings.

### *Further comments from Handelsbanken*

I've noted Handelsbanken's additional comments around the interactions it had with Mr W when he made the payments. It has stated that he was provided with sufficient warnings, but he was only asked to verify the payments and to confirm he knew the risks associated with having received the payee details by email. I don't accept this went far enough. I maintain the intervention wasn't effective or proportionate to the risk presented by the payments and that, considering the amount of money involved and the nature of the payee, it should have asked probing questions about the payments and provided advice about the risk of scams and how to check the investment was genuine (which would include asking his friend for more information about he learned about the investment and contacting the details on the regulator's website to verify he was dealing with a genuine company).

Handelsbanken has also suggested the fact Mr W proceeded with the payments after his friend had expressed concerns about the investment demonstrates that he'd have gone ahead notwithstanding a better intervention. I accept it's difficult to anticipate how Mr W would have reacted to more effective questioning and advice, but the friend didn't say he thought the investment might be a scam, merely that it was risky, and I maintain the fact Mr and Mrs W had a good relationship with their account manager, and chose to use Customer Support to make the payments suggests they'd have listened to and followed some robust advice from Handelsbanken.

Handelsbanken has also explained that it perceived Mr W had investment experience, but this wouldn't obviate the need for it to question him about the payments. I note he was introduced to a Wealth Management advisor in 2019 and he said he'd prefer to continue using his financial adviser. I accept this supports that he had some investment experience, albeit not in currency trading, but the fact he declined investment advice from Handelsbanken doesn't alter my view that it didn't do enough when he made the payments. And having concluded that it should have asked Mr W more questions and provided relevant and effective scam advice, I have no reason to think he wouldn't have been open about the circumstances of the investment and then listened to and acted on advice around how to check he was dealing with a genuine company.

Significantly, there's no evidence they'd ignored any effective warnings or advice from Handelsbanken or another reliable source, or that they'd ignored any other red flags, and while I accept it was unreasonable for them to have gone ahead with the payments without having conducted reasonable due diligence, I maintain my view that they would likely have listened some detailed and robust advice from Handelsbanken.

Finally, regarding Handelsbanken's comment that the suggested level of questioning, taking into account longstanding regulatory expectations and requirements and what I consider to have been good industry practice at the time, Handelsbanken should, in August 2020, fairly and reasonably have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments and I don't think the level of questioning I've detailed is unreasonable.

### *Mr and Mrs W's further comments*

Mr and Mrs W have mentioned another complaint in their submissions, but each complaint we receive is considered on its own particular facts and merits, so the outcome of that case has no bearing on the outcome of this complaint.

Mr and Mrs W have argued that they didn't foresee that they were at risk of financial harm and that Handelsbanken should have refused to make the payments. But there's a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence, and, in the circumstances, I remain satisfied that they didn't do enough to protect themselves from the risk of financial harm.

I've carefully considered the circumstances of this investment and I accept Mr and Mrs W didn't ignore any effective warnings. I also accept they'd felt confident because the investment was recommended by a trusted friend, it was a sophisticated scam, and A would have appeared genuine because it was a clone of a genuine company.

Further, I note they demonstrated some caution in opting to use Handelsbanken's Customer Support function to make the payments because they preferred the security checks and the fact that the branch would call to confirm the payments.

However, considering the amount of money they were investing, the returns they believed they would gain and the fact I accept they had no experience investing in foreign currency, I think it's unreasonable that they went ahead without doing any due diligence, especially as I haven't seen evidence that they were given any paperwork or documents to verify the investment, or that they received any returns, or sought any independent advice beyond that of the scammer or their friend.

There's no evidence that Mr and Mrs W made any effort to monitor their friend's investment before committing their own funds and I'm satisfied some basic questioning of their friend would have shown there were red flags present, including the fact they were cold called by the scammer. Further, there were no warnings about A on either the Financial Conduct Authority ("FCA") or International Organisation of Securities Commissions ("IOCSO") websites which would have alerted Mr and Mrs W that A was operating a scam. But as I explained in my provisional findings, I'm satisfied they could have detected that A was a clone of the genuine company by taking steps to contact the details on the relevant regulator's website.

I understand Mr and Mrs W will be disappointed, but, in the circumstances, I maintain that they ought reasonably to have done some more due diligence before parting with such large amounts of money, and that it was wholly unreasonable for them to have gone ahead without taking steps to verify what they were told by the scammer on the basis that the investment was recommended by a friend.

### *Conclusion*

I maintain my position that Handelsbanken should refund Mr and Mrs W's loss and that the settlement should be reduced by 50% for contributory negligence.

### **My final decision**

My final decision is that Handelsbanken plc should:

- refund the money Mr and Mrs W have lost from the first payment onwards.
- this settlement should be reduced by 50% to reflect contributory negligence.

- pay 8% simple interest\*, per year, from the respective dates of loss to the date of Settlement.

\*If Handelsbanken plc deducts tax in relation to the interest element of this award it should provide Mr and Mrs W with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 3 December 2024.

Carolyn Bonnell  
**Ombudsman**