

## The complaint

Mr P complains that HSBC UK Bank Plc didn't protect him from an investment scam.

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

## What happened

Mr P says that in December 2017 he was looking for an investment opportunity and during an internet search, came across a company (which I'll refer to here as 'H') who dealt in forex trading.

Mr P says he didn't get any professional advice about the investment because '*it was non-regulated*'. But that he carried out his own research and was provided with several documents from 'H' about its performance history and how the investment worked.

Other companies (which I'll refer to here as 'P' and 'M') facilitated the transfer of the funds Mr P was investing to 'H'. Mr P entered into loan agreements with 'P' and 'H' in December 2017 and December 2018 respectively.

Mr P says 'H' promised a refund of the capital within 12 months, plus paying 3-5% interest per month.

In December 2017 Mr P made two payments to 'P' totalling £40,000. He made a further payment towards the investment for £6,000 in March 2018. Between January and June 2018 Mr P received regular monthly returns.

Due to the success of his initial investment, Mr P says he decided to invest more funds and made the following faster payments, via online banking:

Date	Amount
10 July 2018	£10,000
6 August 2018	£6,900
30 November 2018	£7,935
<b>Total:</b>	<b>£24,835</b>

Between July 2018 and December 2018 Mr P received monthly withdrawals totalling £15,525. But since then, he says he's been unable to recover any funds from 'P' or 'H'.

'H' and 'P' went into liquidation in June 2019 and March 2020 respectively.

On 21 May 2024 Mr P made a complaint to HSBC. He disputed that he should be liable for the payments made between July and November 2018 (the 2018 payments) because he said he'd been the victim of a scam, and that HSBC hadn't done enough to protect him. Mr P therefore held HSBC responsible for his loss. He wanted HSBC to refund his loss together with 8% interest and £1,000 for the distress and inconvenience caused. Mr P didn't dispute the December 2017 payments or the March 2018 payment as part of his complaint to HSBC.

HSBC said it didn't consider the 2018 payments to represent fraud and wouldn't reimburse the funds. HSBC said both 'H' and 'P' were genuine companies that had now gone into liquidation. It considered this to be a civil dispute.



Mr P referred his complaint to the Financial Ombudsman.

One of our Investigators considered the complaint but didn't uphold it. In summary, he didn't think the 2018 payments were unusual enough, given Mr P's previous account activity and because 'P' was an existing payee, to have warranted further checks by HSBC. Our Investigator also said there was no reasonable prospect of HSBC being able to recover the lost funds, nor did he think it needed to pay Mr P any compensation.

Mr P didn't agree. He said we should take account of the two £20,000 payments made on 12 and 13 December 2017 as these were unusually large and yet HSBC hadn't questioned him about them. Mr P said:

*'HSBC had the opportunity to check whether I was at financial harm from fraud they in fact failed to act. These sums were out of character and unusual and should have been questioned'.*

Mr P said he appreciated why our Investigator had only considered the 2018 payments – that being the payments he'd submitted in his claim that fell within the six-year time period allowed to raise a complaint. But he still felt these large December 2017 payments should be taken into consideration.

Mr P also maintained that HSBC should've questioned him about the 2018 payments and warned him that his funds were at risk. Mr P said if it had he *'would have given serious consideration to these concerns'*.

Mr P also disagreed with our Investigator's view that he hadn't suffered distress and inconvenience because of his loss. He said he has suffered both financially and mentally, which HSBC could've avoided it if had taken appropriate action.

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 P 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 P's loss. Overall, I've decided that it can't be. I'll explain why.

But first, I would like to say 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 P's loss.

I should also clarify here that whilst the payments Mr P made towards the investment in December 2017 and March 2018 are relevant background to the wider surrounding circumstances of Mr P's complaint, I *cannot* make a finding on HSBC's actions in relation to those payments. As our Investigator has already explained to Mr P – those payments haven't been disputed with HSBC and may be subject to time limits given they were made more than six years before Mr P contacted HSBC with his concerns. If Mr P wants to dispute the December 2017 or March 2018 payments – then he would need to contact HSBC in the first instance.

Following a court hearing in July 2020, it's now accepted that Mr P has likely been the victim of a scam. But I accept the 2018 payments Mr P made were authorised payments. So, Mr P 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 P's 2018 payments — 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 P when he made the 2018 payments. Specifically, whether it should've done more than it did before processing the payments. I also need to decide if HSBC could've reasonably recovered the lost funds.

Looking at Mr P's bank statements in the 12 months prior to the 2018 payments, there are several payments of a similar size (and larger) to the payments made in August and November 2018. And whilst these payments were being made to a new payee ('M'), this was a legitimate payment processor (for 'P') with whom Mr P had received a credit payment from on 20 July 2018.

I accept that the £10,000 payment made on 10 July 2018 is larger than most previous payments made from Mr P's account — but it isn't unusual for customers to make one off, larger payments, during usual account activity. Further, the £10,000 payment was made to 'P' — who was an existing payee to whom Mr P had made two £20,000 payments to in December 2017 and a £6,000 payment in March 2018.

Also, the payments weren't made in close succession, rather they were made over a period of just over four months. This isn't conducive with usual scam activity.

Taking all this into account, I don't find that the 2018 payments were unusual or suspicious enough to have alerted HSBC to the possibility that Mr P was at risk of financial harm.

Mr P has said that if HSBC had intervened in the 2018 payments, and warned him of the risks involved, then it would've made a difference and prevented his loss. As I've explained above, I don't think HSBC missed an opportunity to warn Mr P. But for completeness, I've thought about whether *any* intervention by HSBC is likely to have made a difference — and I don't think it would've done. I'll explain why.

HSBC's primary obligation was to carry out Mr P's instructions 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. And an investment being unregulated doesn't automatically mean it's not legitimate.

HSBC's role here was to make the payments that Mr P had told it to make. Mr P had already decided on that investment — and made payments totalling £46,000 towards it during the previous seven or so months. And I find that HSBC couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing Mr P's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr P (which there wasn't 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.

What matters here is what *any* proportionate intervention by HSBC might be expected to have uncovered at the time. While there may now be significant concerns about the operation of 'H' and 'P', and the legitimacy of the investment, I must consider what HSBC



could reasonably have established during a proportionate enquiry to Mr P about the 2018 payments. I cannot apply the benefit of hindsight to this finding.

Both 'H' and 'P' were genuine companies 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 P has provided about 'H' and 'P', 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 P at the time the 2018 payments were made.

I think it's also likely Mr P would've told HSBC that he had documents from 'H' confirming the terms of the investment, together with loan agreements which all appeared entirely genuine. Whilst Mr P says he was aware the investment in 'H' wasn't regulated by the Financial Conduct Authority (FCA), he was told by 'H' that his funds would be held by an FCA regulated liquidity provider and that his returns could be protected. This would've likely reassured Mr P that his funds weren't at risk.

The crucial point to note here is that by the time of the 2018 payments, Mr P had already invested in 'H' and received his promised monthly returns – which he's said was the basis for his decision to invest more money. This would've likely, in my opinion, allayed any concerns that HSBC might've raised with Mr P.

In summary, I've considered everything submitted and the arguments made, but while there may now be concerns about the legitimacy of 'H' and 'P', everything I've seen indicates that these concerns only began to surface in the public domain after the 2018 payments were made by Mr P.

All things considered; I don't think it would've been readily apparent in 2018 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 P could've uncovered such information at the time – he wasn't 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 2018 would've led to either HSBC or Mr P considering 'H' being anything other than legitimate.

With that in mind, and all considered, I'm not persuaded that any intervention by HSBC in the 2018 payments would've prevented Mr P's loss.

In terms of trying to recover the lost funds; I'd expect HSBC to attempt this at the point it's alerted to the loss. But more than five years had passed by the time Mr P contacted HSBC. Furthermore, both 'H' and 'P' had gone into liquidation by this point and recovery from 'M' wasn't possible as it was acting as a payment processor for 'P'.

Therefore, I can't say HSBC had any reasonable prospect of recovering the funds in 2024 given the passing of time; and because 'H' and 'P' had gone into liquidation more than four years before.

Finally, I don't in any way dispute that Mr P has suffered distress and inconvenience because of the unfortunate situation he's found himself in. But I can *only* look at the actions of HSBC here; and I don't find that those actions have caused additional distress and inconvenience to Mr P that warrants a compensation award.

I have a great deal of sympathy for Mr P 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 P to accept or reject my decision **before 13 May 2025**.

Anna Jackson  
**Ombudsman**