

The complaint

Mr and Mrs B are unhappy that HSBC UK Bank Plc, trading as first direct, will not refund the money they lost as the result of an authorised push payment (APP) scam.

Mr and Mrs B brought their complaint through a representative, for ease of reading I will refer solely to Mr and Mrs B in this decision.

What happened

As both parties are familiar with the details of the scam I will not repeat them in full here. In summary, Mr and Mrs B researched a number of fixed term investments online after Mr B retired. In this case they selected a Luxembourg based company, V, and made two international faster payments to an intermediary, R, to purchase bonds in Mrs B's name. The first was on 22 December 2022 for £45,367.67 and the second was on 1 March 2023 for £45,363.74. Following each payment Mrs B received a 'Buy Confirmation' statement. On 18 April 2023, Mr B tried to contact V as he was expecting their first interest payment. When he could not make contact, and after contacting the Luxembourg's financial regulator, he learnt company V had been cloned by scammers. Mrs B contacted HSBC about this on 25 April 2023.

Mr and Mrs B says HSBC did not do enough to protect their money.

HSBC says it gave full effective warnings - Mrs B confirmed that she and her husband had researched investments and gained the bank details by telephone and email. She was happy this was a trusted source and wanted to make the payment. It tried to recover the money once the scam was reported but was unsuccessful.

Our investigator did not uphold Mr and Mrs B's complaint. She said HSBC had intervened appropriately at the time of the first payment. And it had done what we would expect to try to recover the funds.

Mr and Mrs B disagreed with this assessment and asked for an ombudsman's review. Their primary argument was that HSBC should have made them aware of the risk of cloned company scams.

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 have taken into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. To note, as the payments were international the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

There's no dispute that Mrs B made and authorised the payments. Mrs B knew why she was making the payments. At the stage she was making these payments, she believed she was

investing in fixed-term bonds. I don't dispute Mrs B wasn't paying who she thought she was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that HSBC has an obligation to follow Mrs B's instructions. So in the first instance Mr and Mrs B are presumed liable for their loss. But there are other factors that must be taken into account.

This means I think that HSBC should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

It is in this context I am deciding this complaint.

HSBC intervened when Mrs B made the first payment as I would expect it to. Whilst the value of the payment was not out of character for the account, the payment was international and to a new payee. I have listened to the call between Mrs B and the bank. I am satisfied its questioning was proportionate and that Mrs B provided plausible replies. HSBC probed areas such as the purpose of the payment; their research, including which of the accountholders had conducted it and were they satisfied by it; had they taken advice; had they checked V was regulated; and how had they received the recipient's bank details.

Mr and Mrs B argue that the bank ought to have warned them about cloned company scams. But I think it effectively highlighted this risk on the call. It said *"Lot of frauds and scams are going around, and these scammers are using sophisticated investment scams to get money from people. They will appear legit and knowledgeable; their website will look legit too. So, you need to check where you are sending the money by contacting them in person if possible or using the number you trust. We recommend that the number is not in the same email where the account details were provided."*

HSBC may not have used the terminology 'cloned company scam' but it clearly explained, in arguable more accessible language, that investment scammers often operate under the guise of legitimate companies. But Mrs B did not think their money was at risk as she was satisfied with their research. And at the time of this payment there were no relevant published warnings so I cannot fairly conclude that HSBC ought to have been aware of the scam and stopped the payment.

Mr and Mrs B also raised that the bank did not probe why the payment was going to intermediary R, rather than company V. But I don't think had it done so, the spell of the scam would have been broken. I say this as this type of payment journey is not unusual for an investment, Mr and Mrs B had researched the intermediary as well as the final recipient, and there were no warnings about R at the time.

I think it is reasonable there was no intervention at the time of the second payment as by then this was to a known beneficiary and the value was not out of character in the context of

other activity on the account in the preceding months.

It follows I cannot fairly hold HSBC liable for Mr and Mrs B's losses.

I have then considered if HSBC did what we would expect to recover Mr and Mrs B's funds once they reported the scam.

As these were international payments the bank's obligations differ and we look to see if the bank has used best endeavours to retrieve the funds. I can see that it attempted to recall the funds on the day Mrs B reported the scam, but was unfortunately unsuccessful. So I cannot find any failings on its part in this regard.

This means I am not instructing HSBC to refund any money to Mr and Mrs B, nor to pay the compensation they requested. I'm sorry Mr and Mrs B lost such a significant amount of money which must have been very distressing for them. I can understand why they would like to be compensated for their loss. And I do accept Mr and Mrs B have fallen victim to a sophisticated scam. But I can only consider whether the bank, which had no involvement in the scam itself, should be held responsible for what happened. For the reasons set out above I do not find HSBC can be held liable in the circumstances of this case.

My final decision

I am not upholding Mr and Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 4 February 2025.

Rebecca Connelley
Ombudsman