

## **The complaint**

Mr H complains that HSBC UK Bank Plc has not refunded the money he says he lost in two investment scams.

Mr H is represented in this matter by a claims management company (CMC), but for ease of reading I will refer to Mr H throughout this decision.

## **What happened**

The details of this complaint are well known to both parties, so I will not repeat everything again here. Instead, I will focus on setting out the reasons for my decision.

In summary, Mr H made two payments from his HSBC account to a company called BK Law in September and November 2016 for a total of £17,800. These funds were intended to be used for investing in a company called Dolphin Capital ('Dolphin'). Mr H says he was promised a guaranteed return from Dolphin of at least 10% but did not receive any payments. Dolphin entered liquidation in 2020. Mr H says he has not received any proceeds from this investment. I understand that Mr H was 'advised' on this investment by an unregulated introducer.

Mr H also made three payments totaling £7,000 to Rhombus Trading LLC to invest in gold. I understand this company was based in Dubai. The payments were made in July 2017 (£5,000) January 2018 (£1,000) and August 2018 (£1,000). Mr H received a payment of £1,060 from this company in June 2018. I understand that the unregulated introducer also assisted Mr H with these investments.

Mr H says he was unaware that he may have fallen victim to two investment scams until he contacted the CMC representing him in early 2023.

Mr H's representative complained to HSBC on his behalf. It said it felt HSBC should have stopped the payments and it asked HSBC to refund Mr H.

HSBC did not uphold Mr H's complaint. It noted that the payments Mr H had made pre-dated the implementation of the Contingent Reimbursement Model (CRM). As this was the case it said the payments Mr H had complained about could not be considered for a refund under the scheme.

It said it was of the view that the payments Mr H had made were to investments that appeared to have failed and as such it felt the matter was a civil dispute and wouldn't in any case have been considered under the CRM.

One of our investigators looked into this matter. Having done so he said he didn't think HSBC had acted incorrectly. Mr H did not accept our investigator's view.

## **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 have reached the same view as that of our investigator, and for much the same reasons. I'll explain why.

Firstly, I should explain that I have considered all the points that both parties have raised. But I will not address each point in this decision, instead I will address the points that I think are most relevant to my decision. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

The starting point in law and under the Payment Services Regulations 2009 (which was in force at the time the payments were made) is that Mr H is generally liable for payments that he's authorised. And, as the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with the customer's instructions. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.

There's no dispute here that Mr H authorised these payments and so he is liable in the first instance. However, that isn't the end of the story. The relevant regulations and industry guidance makes it clear that banks should fairly and reasonably be monitoring accounts in order to protect consumers from the risk of financial harm, including fraud and scams. But the expectation to warn customers of the risk of such financial harm will only reasonably have been engaged if there were sufficient grounds for suspecting the payee was a fraudster; meaning that HSBC could have declined the payments while concerns about the payee were discussed with Mr H.

#### Should HSBC reasonably have prevented the payments Mr H made?

Mr H's representative has raised a number of points that it believes mean that HSBC should have intervened and prevented the payments. These include the size of the payments, that the payee was a new payee, one of the payees was an overseas company and the fact that the investments were high risk. I agree that given the circumstances HSBC should have intervened and asked questions about the payments in question.

That said, I also need to consider what would likely have happened had an intervention occurred. HSBC does not have a duty to provide financial advice when a customer attempts to make a payment, or to prevent people from investing in risky investments. Any concerns about the financial advice Mr H may have received prior to these investments would need to be directed to the company that provided the advice. So, I would need to be satisfied that there were reasonable grounds for suspecting that these companies might be fraudulent when Mr H made these payments from his HSBC account, and not with the benefit of hindsight.

Like our investigator, I've consulted the official organisations that publish warnings about merchants that operate in the UK and abroad, including the Investor Alerts Portal of the International Organisation of Securities Commissions ("IOSCO"), as well as the FCA's own warning list. These watchlists, along with other reputable sources, lead me to believe that there were no warnings about Dolphin or Rhombus Trading LLC at the time Mr H made his payments.

I accept (as Mr H's representative has noted) that there was a company with a similar name to Rhombus Trading LLC on the FCA's warning list from April 2016 onwards. Many legitimate companies have similar names to those on IOSCO and/or the FCA's warning list. So I can't reasonably agree with Mr H's representative that HSBC was required to take steps to establish whether there was any connection between a company with a similar name to one

on the FCA's warning list, before allowing a payment to proceed.

I note that at the time Mr H made the payments to BK Law, to invest in Dolphin, it was, or at least appeared to be, a legitimate property developer offering fixed rate bonds. I appreciate it later filed for bankruptcy in 2020 and there are ongoing investigations as to whether it was operating as a "Ponzi" scheme, but that does not mean that HSBC should have been aware that it was operating fraudulently when the payments were made. Rather, HSBC at the time would only have known that Mr H's money went to a business that was operating legitimately at the time.

Overall, I'm not persuaded that there was any reason for HSBC to have been aware that Dolphin or Rhombus Trading LLC was fraudulent or operating a scam at the time of the payments. So, had it intervened, I don't think that HSBC would have been aware there were any issues with the payments and therefore I don't think that the payments would have been stopped.

I note Mr H's representative has mentioned that the type of investments should have caused concerns but as stated above, HSBC is not required to involve itself in providing investment advice. I accept that unregulated collective investment schemes (UCIS) can sometimes be scams, but not all are, so unless there were some other warnings about Dolphin I don't think HSBC should reasonably have prevented the payments simply because they were being sent to a UCIS. Likewise, I accept that trading in gold bullion, as it appears Mr H's investment with Rhombus Trading was intended to do, is a risky activity but again this, in itself, was not a reason for HSBC to have prevented these payments.

Mr H's representative has raised concerns that HSBC ought to have done more in terms of anti money laundering. I have considered all the relevant law, regulations and good industry practice when considering this complaint. This includes anti money laundering regulations, because although non-compliance with these regulations is more a wider matter for the regulator rather than our service, it is still something we consider when looking at whether a business could have prevented a fraud or scam.

I am also mindful that Mr H's representative has referred to other decisions issued by this service in relation to regulated investment advice. As I set out above, HSBC was providing a payments service. It was not required or obliged to consider the suitability of the investments Mr H wanted to make when carrying out that function.

Ultimately, I'm not persuaded there was anything suspicious at the time that ought reasonably to have concerned HSBC or led it to prevent the payments. As this is the case, I don't consider there to be any basis in which HSBC can fairly or reasonably be held liable for Mr H's loss.

#### Recovery of funds

I've also thought about whether HSBC ought to have done anything to recover the funds after Mr H reported his loss. Mr H didn't dispute the payments with HSBC for some years after the transactions. Given that Dolphin has since become insolvent, it would be highly unlikely HSBC could have recovered any of these funds, particularly given it was several years after the payments had been made. And, as Mr H's representative has noted, HSBC also wouldn't have been under any obligation to consider refunding the payment under the Contingent Reimbursement Model (CRM) Code either, given the payments were made before the Code came into force.

I appreciate this will likely come as a disappointment to Mr H, and I'm sorry to hear he has lost a significant amount of money. However, in the circumstances, I do not consider it would

be fair and reasonable to hold HSBC liable for the loss Mr H has suffered.

### **My final decision**

For the reasons I have set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 March 2025.

Suzannah Stuart  
**Ombudsman**