

The complaint

Mr and Mrs R have complained that HSBC UK Bank Plc (“HSBC”) failed to protect them from an investment scam, and hasn’t refunded the money they lost as a result.

What happened

The background of this complaint is already known to both parties, so I won’t repeat all of it here. But I’ll summarise the key points and then focus on explaining the reason for my decision.

Mr and Mrs R have used a professional representative to refer their complaint to this service. For the purposes of my decision, I’ll refer directly to Mr and Mrs R, but I’d like to reassure Mr and Mrs R and their representative that I’ve considered everything all parties have said.

Mr and Mrs R have explained that they were contacted by an individual who Mr R had been in contact with previously, and whom he knew personally, proposing an investment opportunity in a company trading in oil and gas, which I’ll call “G”. Mr and Mrs R agreed to invest in G and made two payments by cheque; one for £25,000 on 8 May 2018 and the other for £50,000 on 28 June 2018.

Mr and Mrs R say that they expected interest payments over the set period of the investment, and their capital returned upon maturity. But apart from returns totalling £21,551.97 they haven’t been able to withdraw or recover any further funds.

Mr and Mrs R made a complaint to HSBC on the basis that it should’ve stopped the cheques to ask them questions about the payments before they were made, as they were significantly out-of-character when considered alongside their usual account activity. They noted the payments represented a sudden and rapid increase in spending, using funds that had recently credited their account. In HSBC’s response to their complaint it said Mr and Mrs R had told it that G had gone into administration and they’d lost their investment as a result of that. It also said it didn’t have any concerns about the legitimacy of the cheques at the time they were presented for payment, and it therefore hadn’t made an error in processing them in line with Mr and Mrs R’s instruction.

Mr and Mrs R remained unhappy so they referred the complaint to this service. To settle the complaint they set out that they expect HSBC to refund the remaining £53,448, alongside 8% interest and £1,000 for the poor service.

Our investigator considered everything and didn’t think the complaint should be upheld. She explained that although the cheque payments ought to have triggered an additional check by HSBC before they were made, she didn’t think that would’ve made a difference in this case. She said that because she thought that even if Mr and Mrs R had explained the circumstances of the payments at the time – such as the fact that they already knew the advisor, they hadn’t been given unrealistic expectations, and they’d received professional literature – it’s unlikely HSBC would’ve detected a scam in any case.

As Mr and Mrs R didn't accept the investigator's opinion, the case has been passed to me to make a 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.

I'm sorry to disappoint Mr and Mrs R but having considered everything I'm afraid I'm not upholding their complaint, although I've added some additional reasoning which I've set out below.

A cheque is a written order from a customer (the drawer), instructing their bank to pay a specified sum of money to a named beneficiary (the payee). Cheques aren't legal tender but are legal documents and their use is governed by the Bills of Exchange Act 1882 and the Cheques Acts of 1957 and 1992. They aren't considered a payment service under the previous or present Payment Services Regulations ("PSRs"), so the provisions of those regulations don't apply to this type of payment instrument.

A bank's principal duty is to process its customer's payment instructions under the terms of the account (and of course the customer's ancillary contract with the third-party payee, e.g., a retailer, creditor, supplier, etc.). This position has long been recognised in common law. So, if a bank fails to comply with a validly executed payment order, it could be held liable for damages – as could the drawer – where the payment method used is a cheque.

What that means is the starting position is that a bank is expected to process payments and withdrawals that a customer instructs it to make without undue delay. So, presented with a cheque drawn in accordance with the terms of the account, a bank must honour the payment unless there are legal, regulatory, or contractual grounds which may, in exceptional circumstances, allow refusal of a payment instruction

In this case it's accepted that the payment mandate was validly executed (authorised) as Mr and Mrs R had written, signed and issued the cheques to the named payee. At that time, Mr and Mrs R intended to pay G, and so there was no mistake made in the execution of the payment. This means, under the terms and conditions of the account, Mr and Mrs R are presumed liable for any loss in the first instance.

But that doesn't always mean that the business should follow every instruction without asking further questions or intervening to ensure requests coming from their customers are firstly genuine, and secondly won't result in harm.

I understand how upsetting this situation has been for Mr and Mrs R, especially given the significant sums of money involved and the financial loss they've suffered. I appreciate that they feel HSBC should have done more to protect them from this loss. But after carefully reviewing the circumstances, I can't fairly say that HSBC acted incorrectly when it processed the two cheque payments, so I won't be asking it to refund the money.

HSBC has a responsibility to ensure that payments are processed safely and securely, but it isn't responsible for assessing whether an investment is a good decision or whether a company is financially stable. In this case, the company Mr and Mrs R invested in later went into administration, which understandably caused them financial loss. However, the company's collapse doesn't automatically mean this was a scam. Before the company entered administration Mr and Mrs R had received returns totalling over £21,000, as payments throughout 2018, 2019 and 2020 which matched their expectations. This pattern

of receiving regular returns isn't typical of a scam, where victims often see little to no return on their money, especially over an extended period.

When it comes to cheque payments, HSBC's role is to verify that the payment request is genuine and authorised by the account holders. Cheques are often used for large, one-off payments, so the amounts of £25,000 and £50,000, while significant, wouldn't have automatically appeared suspicious to the bank. I've also reviewed their account balance and whilst there were some large credits around the time the cheques were paid, Mr and Mrs R had had a healthy account balance for some time, and even once they debited the account, a healthy balance remained.

Once HSBC was satisfied that the cheques were genuine and properly authorised by Mr and Mrs R, I'm satisfied it was reasonable for the payments to be processed without further question.

This situation differs from some other banking transactions, such as online payments, where real-time warnings are often necessary because customers can make quick decisions and lose money rapidly. However, cheque payments are typically more deliberate, giving customers more time to consider their actions. In this case, the payments were also made through Mr and Mrs R's financial advisor, who they've explained they knew personally and trusted. So even if HSBC *had* intervened and given them a warning, it's likely that any concerns Mr and Mrs R had would have been allayed by their advisor, making it unlikely that any intervention wouldn't have prevented the payments or uncovered what they now believe to be a scam.

I've noted that Mr and Mrs R have provided correspondence between them and G, and representatives of G. I've reviewed everything they've provided carefully but as everything I've seen is dated after the payments were made to G, it doesn't affect my reasoning in this case, nor do I believe it influenced their decision to invest.

Recovery of the funds

Given the time between Mr and Mrs R making the payments and HSBC being made aware of their complaint, I don't think attempting to recover their losses from the recipient was a viable option for HSBC.

I know this outcome will be disappointing for Mr and Mrs R, especially given the financial loss they've experienced. But based on everything I've seen and been told I'm satisfied that HSBC acted appropriately and met its obligations. So I don't hold HSBC responsible for the money Mr and Mrs R have unfortunately lost, nor do I require it to pay the £1,000 compensation Mr and Mrs R requested.

My final decision

I don't uphold Mr and Mrs R's complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 10 February 2025.

Sam Wade
Ombudsman