

The complaint

Mr S complains that HSBC UK Bank Plc (HSBC) won't refund money he lost in two investments.

What happened

This complaint and decision covers two payments made into two different investments.

What Mr S says:

Investment (1):

On 29 January 2018, Mr S made a payment for £50,000 to an investment in a firm (which I will call 'firm A'). It was intended to be for loan notes in a property development group of companies. The return was said to be 30% per annum in return for a six-month investment.

Mr S says he got documents and brochure from firm A and believed the investment to be genuine. He says he had made investment in firm A before – in 2014.

Date	Payment	Amount
29 January 2018	Faster payment	£50,000
	Fee	£30
28 September 2018	Repaid to Mr S	£25,263
18 January 2019	Repaid to Mr S	£1,000
25 February 2019	Repaid to Mr S	£1,000
22 March 2019	Repaid to Mr S	£1,000
30 April 2019	Repaid to Mr S	£1,000
Net loss – firm A		£20,767

Mr S says that despite requests, he wasn't able to withdraw or recover any funds. Firm A then entered liquidation, followed by dissolution with an estimated £8million (sic) owing to loan note holders.

Mr S says he invested money into a scam operation and firm A misled him. This scam represented a significant amount of his savings. He is now of retirement age and is therefore

classed as vulnerable.

Mr S says the payment was uncharacteristic and HSBC should have intervened and warned him. The bank should have asked him open and probing questions - what the payment was for; how did he hear about the opportunity; what was the promised rate of return; and what did he know about firm A. But HSBC didn't do that.

Firm A went into liquidation in June 2019. Unsecured creditors (loan notes) were £839,000. It was dissolved in November 2023 and no dividend was paid to unsecured creditors.

Mr S says HSBC should refund the money he's lost plus interest at 8% and compensation of £1,000.

Investment (2):

Following contact from an unregulated introducer, Mr S paid £20,000 into another investment (which I call 'firm B'). The payment was made via an accountancy firm and for investment in firm B's shares.

Date	Payment	Amount
14 December 2018	Faster payment - accountancy	£20,000
18 January 2019	Repaid to Mr S	£1,000
25 February 2019	Repaid to Mr S	£1,000
22 March 2019	Repaid to Mr S	£1,000
30 April 2019	Repaid to Mr S	£1,000
Net loss – firm B		£16,000

Mr S says that the investment was to be into an unregulated forex scheme, launched in 2015. Firm B promised to repay the capital after 12 months plus interest of 5% per month, while paying introducers 3% per month. In late 2018, firm B stopped making payments and in 2019 entered voluntary liquidation. The statement of affairs said firm B owed £40 million to creditors. In the creditors' hearing for compulsory liquidation, the judge commented that it was a 'Ponzi' scheme.

Mr S says firm B never intended to pay its investors a return. And it was a scam.

He says he has lost a significant amount of his money. He says HSBC should have intervened in the payment and warned him. The bank should have asked him open and probing questions - what the payment was for; how did he hear about the opportunity; what was the promised rate of return; and what did he know about firm A. But HSBC didn't do that.

Mr S says HSBC should refund the money he's lost plus interest at 8% and compensation of £1,000.

What HSBC said:

In December 2023, HSBC said:

- the Contingent Reimbursement Code (CRM Code) didn't apply as it came into effect in May 2019 – after the payments were made.
- Both payments were made to genuine companies, registered at Companies House. Both companies then entered liquidation.
- HSBC considered the complaint to be a civil dispute.
- The bank said the payments didn't flag on their fraud detection systems.

Our investigation so far:

Mr S brought his complaint to us. Our investigator didn't uphold it. She said:

Investment (1):

- HSBC should have intervened – the payment was out of character.
- But had the bank done so, it wouldn't have made a difference.
- Firm A was incorporated in April 2018 and was registered at Companies House.
- There weren't any scam or investment warnings about it at the time.
- The returns promised weren't unrealistic.
- It was only later – in June 2019 – when firm A was in difficulty and entered liquidation. So when the payment was made, HSBC would not have known or foreseen that.

Investment (2):

- HSBC didn't need to intervene. The payment for £20,000 wasn't out of character – as Mr S had made similar large payments in the past, including £50,000 on 29 January 2018; £20,000 on 2 October 2018; £22,333 on 26 October 2018 and £25,000 on 10 December 2018.

Recovery – as Mr S didn't report the loss to HSBC until much later, it wasn't likely any funds could be recovered.

Mr S didn't agree. He asked that an ombudsman look at his complaint and said:

- The payment of £20,00 was out of character as it was to a new payee and was still a large sum, and so HSBC should have intervened.
- HSBC should have been aware of emerging threats and risks.
- The fact that Mr S received documents about the investments should not have been enough to answer any due diligence questions from HSBC.
- The fact that firm A and firm B were legitimate companies should not absolve HSBC from its duty to make inquiries or take action to protect Mr S.
- The promised rates of return were unrealistic and should have been a cause for

concern on the part of HSBC.

- Mr S was an inexperienced investor and would have heeded HSBC's warnings.

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 hear that Mr S has lost money. It's not in question that he authorised and consented to the payments in this case. So, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider HSBC should fairly and reasonably:

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

I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr S when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances. But – it doesn't apply in this case. That is because it came into effect in May 2019 – after the payments in question.

Investment (1):

The first consideration here is: if the payment was of a sufficient size and was out of character with how Mr S normally used his account – then we would expect HSBC to have intervened and spoken to him about it.

I looked at Mr S' account – it looks like he used it mostly to fund his investments. He made one, or two payments out of the account each month, each up to a value of £10,000. So, it is fair to say that the payment of £50,000 wasn't normal for him and HSBC should've reasonably intervened.

HSBC was the expert in such matters and if they'd intervened, held the payment and contacted Mr S we would have expected them to ask open questions such as:

- Why are you making the payment?
- Who to?
- For what purpose?
- How did you hear about the investment?
- How were you contacted about it?
- Where did the money come from that you're investing?
- What is the rate of return?

But – I must make a decision based on what I believe Mr S would have said at the time - and therefore whether any intervention would have made a difference. And on balance, I don't think it would have. I say that as:

- Mr S says he had made investments with firm A before (in 2014) and they were reasonably successful.
- He had seen documents and investor prospectuses.
- He had been introduced to the investment by an advisor who he appeared to trust.
- The emails he exchanged with the introducer shows that Mr S knew the investment was high risk. He signed a 'High Net Worth Individual' statement on 13 January 2018.
- This included : *By signing this statement I may lose significant rights... I may have no right to complain to either of the following:*
 - (i) *The Financial Services Authority.*
 - (ii) *The Financial Ombudsman Scheme....*

I am a certified high net worth individual because at least one of the following applies:

- *(a) I had, during the financial year immediately preceding the date below, an annual income to the value of £100,000 or more.*
- *(b) I held, throughout the financial year immediately preceding the date below, net assets to the value of £250,000 or more....I accept that I can lose my property and other assets from making investment decisions based on financial promotions. I am aware that it is open to me to seek advice from someone who specialises in advising on investments."*
- Firm A was incorporated and registered at Companies House – there weren't any warnings about it at the time.

Therefore, I'm persuaded that he would've told HSBC that he was an experienced investor and was making his own decisions; he had been introduced to firm A by an advisor; and had seen firm A's prospectus and other documents.

I don't think HSBC could reasonably have been expected to have advised Mr S not to go ahead based on this information; and I don't agree that HSBC had any duty to do further research into firm A, its financial performance - or its investment forecasts, and whether those were reasonable or not.

Investment (2):

Our investigator says HSBC didn't need to intervene, and I agree with that. Mr S made regular and large payments out of his account – each up to £10,000 each month. And additionally made the following larger payments:

- October 2018: £20,000; £22,333
- December 2018 (prior to the disputed payment) - £25,000

So, I don't think HSBC needed to intervene – but even if they had done so, I'm persuaded that Mr S would still have gone ahead in any case, I say that as:

- In making the investment with firm B, he signed a declaration which said '*I understand what a financial derivative is...I understand that in the case of a global financial crisis...I may lose all or part of my investment....(firm B) doesn't guarantee a return of my investment capital...if I lose all of my investment it will not significantly jeopardise my financial situation...I am ultimately responsible for the decision....and where necessary I gave sought advice from a suitably experienced and qualified Independent Financial Advisor*'.
- The signed statement also said he could afford to lose £50,000. And said he had shares of £400,000; a trust of £350,000 and £250,000 in loan notes.
- I refer also to the evidence I quoted for investment (1) – the signed High Net Worth statement.
- He had taken advice from an advisor and had been told other clients had been successful.
- I noted Firm B was registered at Companies House and there were no online warnings about it at the time.

Therefore, even if HSBC had intervened, I'm persuaded that Mr S would have said he was making his own decisions, had been introduced to firm B by a broker, had seen investment documents about firm B; knew what he was doing, and could afford to lose the money if it went wrong. In other words, even if HSBC had said the returns were high (which I agree they were) and questioned investing with a non-regulated firm, I think Mr S would likely have gone ahead.

I don't think HSBC had a duty to look further into the affairs of firm B.

Recovery:

We expect firms to quickly attempt to recover funds from recipient banks in these circumstances.

HSBC told us they contacted the recipient banks, and no funds remained to be repaid. Given that the payments were made in 2018, and Mr S complained to HSBC in late 2023 – this wasn't a surprise. I can see that the liquidators of firms A have said there are no funds to be paid to investors.

I can also see that the liquidation of firm B is still going on – there was a liquidator's report in December 2024 and it appears the liquidators are still evaluating the claims by investors. I would encourage Mr S to ensure he contacts the liquidators to see if any of his money can be recovered.

I am sorry that Mr S has lost a lot of money, but for the reasons I've explained, I am not asking HSBC to do anything here.

My final decision

I do not uphold this complaint.

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

Martin Lord
Ombudsman