

The complaint

Mr S complains that HSBC UK Bank Plc (HSBC) hasn't reimbursed him for payments he made in 2018 to what he now believes to have been a fraudulent investment.

This decision concerns the payments Mr S made from his account with HSBC. Separate payments made Mr S in his capacity as director of a limited company (which were sent from that company's account, held with another bank) are dealt with in a separate decision.

Mr S brings this complaint with the benefit of professional representation. In what follows, for clarity, I will refer however solely to Mr S, even where comments or submissions were made on his behalf by that representative.

What happened

Mr S holds a personal account with HSBC. In 2017, he says he learned of an investment opportunity in another company (which I will refer to as 'H'). He initially invested into H in his capacity as director of a limited company (which I will refer to here as Company N).

The expected returns were paid to Company N, and the investment appeared to be performing as Company N had anticipated.

On 20 and 21 November 2018, Mr S made two payments from his personal HSBC account. These equated to a total of £30,000. While these were made from his personal account, Mr S has explained he made the payments for the benefit of Company N.

Again, the investment appeared to be operating as expected. Mr S received returns from the investment in H in December 2018, April 2019 and May 2019. These returns totalled a little under £3,000.

However, just one month later, in June 2019 H entered a liquidation process. In August 2019 the High Court ruled that H should be wound up under the Insolvency Act.

In October 2020, the joint liquidators reported that unsecured creditors were owed over £41m which left a deficiency of at least £40m. A trading account held by H was reported by the joint liquidators to have a nil balance despite having been listed by H as holding around £580,000. As a result, unsecured creditors such as Mr S and Company N remain out of pocket. Based on the latest report from the joint liquidators earlier this year, it is unclear what, if any, funds will be available to distribute to unsecured creditors.

In April 2024, Mr S reported to HSBC that he had been the victim of a scam.

HSBC declined to reimburse Mr S and did not uphold his complaint. It issued its final response on 24 April 2024. It explained that the payments made by Mr S pre-dated the introduction of a voluntary APP scam reimbursement scheme (the Contingent Reimbursement Model Code) and so that scheme did not apply. It said it had no reason not to have carried out Mr S's payment instructions at the relevant time. It was not liable to

reimburse Mr S.

Unhappy with this response, Mr S referred his complaint to this service.

Our Investigator looked into the matter. However, he didn't think HSBC needed to reimburse Mr S. He said that the payments ought to have prompted HSBC to intervene by contacting Mr S prior to processing his instructions. But he said that even had HSBC done so, this would not have prevented the payments from being made. He thought that in November 2018 there would not have been sufficient information available about the potentially fraudulent nature of H to have led to the prevention of Mr S's payments.

Mr S didn't accept this outcome. I have therefore been asked to reach a final decision on the matter.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time. Where the evidence is incomplete or missing, I am required to make my findings based on a balance of probabilities – in other words what I consider is most likely given the information available to me.

In broad terms, the starting position at law is that a bank such as HSBC is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the relevant Payment Services Regulations and the terms and conditions of the customer's account.

These payments pre-date the introduction of the Contingent Reimbursement Model Code or the later APP Scam Reimbursement Rules. Neither has retrospective effect, and therefore these reimbursement schemes do not apply to Mr S's payments.

All of that being said, taking into account longstanding regulatory expectations and requirements as well as what I consider to have been good industry practice at the time, banks should have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances.

Having reviewed the payment made by Mr S on 20 November 2018 in the context of his prior account history, I'm satisfied that this was sufficiently unusual and out of character that HSBC ought to have contacted Mr S prior to processing his instructions. It was a much larger than usual payment from Mr S's personal account, and to a payee he'd not previously paid from that account.

Of course, a legitimate payment could equally have been for a larger than usual sum and to a new payee – these factors need not necessarily mean a payment will result in loss to fraud or scam.

I would need to find not only that the bank failed to intervene where it ought reasonably to have done so — but crucially I'd need to find that but for this failure the subsequent loss would have been avoided. That latter element concerns causation.

Specifically, I don't consider that a proportionate intervention by a bank in relation to a payment will always have the result of preventing the payment. Nor should it. In many instances the initial concerns that prompted the intervention will appear upon enquiry to be unwarranted. And if I find it more likely than not that such a proportionate intervention by the bank wouldn't have revealed the payment was part of a fraud or scam, then I couldn't fairly hold the bank liable for not having prevented it from being made.

In thinking about this, I've considered what a proportionate intervention by HSBC at the relevant time could reasonably have constituted. I've then considered what I believe the most likely result of such an intervention would have been.

To reiterate, the bank's primary obligation was to carry out its customer's instructions without delay. It wasn't to concern itself with the wisdom or risks of the customer's payment decision.

In particular, HSBC didn't have any specific obligations to step in when it received an instruction to make a payment to protect its customers from potentially risky investments. The investment in H wasn't an investment the bank was recommending or even endorsing. The bank's role here was to make the payment it was instructed by Mr S to make. Mr S had already decided on that investment.

I find that HSBC couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing Mr S's circumstances, investment needs and financial goals. Taking such steps to assess suitability without an explicit request from Mr S (which there was not here) would have 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 customer.

That said, I think it would have been proportionate here for the bank, as a matter of good industry practice, to have taken steps to establish more information about the initial payment made by Mr S on this account.

What matters here is what those steps might be expected to have uncovered at the time.

While there may now be significant concerns about the operation of H, and about the legitimacy of the investment, I must consider what HSBC could reasonably have established in the course of proportionate enquiry to Mr S about his payment instruction back in November 2018. I cannot apply the benefit of hindsight to this finding.

Mr S explains he had first learned of H through a regular business network forum he belongs to. He'd not received formal financial advice to invest in H. While most companies in which a retail investor could invest in 2018 were likely to require FCA regulatory approval, that was not necessarily the case. Some investments (by way of example, mini-bond issuers) did not require such approval.

As a consequence, H's lack of FCA regulation wouldn't necessarily have been a sign to either HSBC or Mr S that it wasn't legitimate at the time. I don't find a question from HSBC about this would have been sufficient to prompt Mr S not to have made the payments he did.

Mr S says he'd visited the offices of H at the time, undoubtedly providing reassurance at the time about H's purported legitimacy. He also says he found no negative information online at the time of the payments. On a balance of probabilities, I think it most likely therefore that had HSBC asked Mr S what steps he'd taken to investigate the investment prior to making these payments, it would have appeared Mr S had already taken appropriate steps to

assure himself.

Furthermore, by the time Mr S was making the payments from his HSBC account, he'd already invested through Company N (a limited company of which he is a director). The earliest investment made by Company N had been over a year prior to the first payment Mr S made from his personal account at HSBC.

Company N had apparently received regular credits linked to H – supposedly representing the expected monthly returns on Company N's investment.

The rate of return being offered by H was high. I don't doubt this was part of the attraction of the investment for Mr S. It appears to have been an expected level of return - but one that would be based on performance rather than something that was being guaranteed. With that in mind I don't consider this was necessarily something that should have appeared too good to be true either to Mr S or HSBC at the time. The potential of a significantly higher than usual rate of return might well be consistent with a legitimate but risky investment.

But such investment risk isn't at all the same thing as the risk of fraud or scam that I'd expect HSBC to have been alert for. And with this in mind, I don't consider a rate of return such as that offered by H would necessarily show an investment was fraudulent. It might more commonly reflect a legitimate investment risk.

Taking all of this into account, and considering what Mr S reasonably knew or could have known at the time, I don't think proportionate questioning by HSBC would have uncovered sufficient concerns that Mr S would not have proceeded to make the disputed payments from his personal account.

When Mr S later reported the matter to HSBC, there would have been no reasonable prospect of recovering his funds from the beneficiary account. The payment had been made nearly six years earlier. Further, H had already entered the process of liquidation with the liquidator taking charge of distributing any remaining assets including any cash held at bank to creditors.

If Mr S has yet to register with the liquidator, that is something he may wish to do. Having carefully considered everything Mr S and HSBC have submitted, I don't find HSBC could have reasonably prevented the losses Mr S incurred here. Neither do I find the bank materially at fault otherwise.

In saying this, I don't underestimate the impact on Mr S of the loss of such a significant sum. However, it is simply the case that I don't consider I can fairly and reasonably hold HSBC liable for that loss.

My final decision

For the reasons given above, my final decision is that I do not uphold Mr S's complaint about HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 July 2025.

Stephen Dickie
Ombudsman