DRN-5674162

The complaint

Mr and Mrs K are complaining that HSBC UK Bank Plc didn't do enough to prevent them from making payments to an investment scam.

The complaint is brought on their behalf by a professional representative, but for ease I'll mainly refer to Mr and Mrs K.

What happened

In 2018 Mr and Mrs K were introduced to an investment opportunity by a relative. In December 2018 they made a payment of £25,000 to a broker which I'll call "P" to invest in the scheme (which I'll call "H") from their account with Santander. On the same day an additional £5,000 was transferred from their joint account to Mrs K's sole account, from where it was paid to P to be invested in H, so the total investment was £30,000. Mr and Mrs K also made a payment of £500 to P in April 2019 but I've not seen evidence that was invested in H.

Mr and Mrs K received a monthly return from the investment until the end of April 2019. They said that in May 2019 they found out that H had gone into administration.

In 2024 they raised a complaint with HSBC. They said that HSBC should have recognised that the £25,000 payment they made in December 2018 was a fraud risk and contacted them to ask questions about it. And if it had done so, their loss would have been prevented.

HSBC replied to say, in summary, that it felt that this was a civil dispute between Mr and Mrs K and H rather than a scam, and it wouldn't be reimbursing them.

Mr and Mrs K brought their complaint to the Financial Ombudsman Service. Our Investigator looked into what had happened, but she didn't think Mr and Mrs K's complaint should be upheld. She thought that HSBC should have intervened when Mr and Mrs K made the payment of £25,000 by contacting them directly to discuss it. But she didn't think this would have prevented Mr and Mrs K from making the payment to invest in H.

Mr and Mrs K didn't agree. They said, in summary, that they thought HSBC should have told them H wasn't a regulated investment, and if it had they wouldn't have gone ahead with the payments.

The complaint was passed to me for review and a decision.

I issued my provisional decision on 25 June 2025, inviting both parties to respond with anything else they wished to add. This is what I said.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm very sorry to disappoint Mr and Mrs K but I'm not currently minded to uphold their complaint. I'll explain why.

The Investigator hasn't included the £5,000 payment in her calculation of Mr and Mrs K's loss as she said she wasn't provided with evidence it had been invested in H. But I can see that the payment of £5,000 was ultimately made to H, and that £30,000 in total was invested in H. I've not seen evidence that the £500 payment went on to be invested in H but this doesn't make a difference to the overall outcome here.

HSBC has said it considers this to be a civil dispute. But following a court hearing in July 2020, I think it's reasonable to conclude that Mr and Mrs K have likely been the victims of a scam.

I've thought about the Contingent Reimbursement Model (CRM) code which can offer a potential means of obtaining a refund following Authorised Push Payment (APP) scams. But the CRM code didn't come into force until after Mr and Mrs K's payments were made and isn't retrospective. I've therefore considered whether HSBC should reimburse them under any of its other obligations.

It's not in dispute that Mr and Mrs K authorised the payments, and HSBC do have a duty to act on their instructions. But in some circumstances, HSBC should take a closer look at the circumstances of the payments – for example, if it ought to be alert to a fraud risk, because the transaction is unusual, or looks out of character or suspicious. And if so, it should intervene, for example, by contacting the customer directly, before releasing the payments. I'd expect any intervention to be proportionate to the circumstances of the payment.

I've reviewed the transactions Mr and Mrs K carried out in the six months before the payment of £25,000 and I'm satisfied that this payment was out of character, as they generally made payments of a much lower value. Due to the passage of time HSBC's not been able to give much detail about whether it did intervene in the payment, but I can't see that HSBC provided any warnings or contacted Mr and Mrs K at the time. And, I think a proportionate intervention would have been for HSBC to have contacted Mr and Mrs K directly to ask them some questions about the circumstances of the payment to establish if they were at risk of a scam.

However, to decide whether it's fair and reasonable for HSBC to reimburse Mr and Mrs K, I need to find not only that HSBC didn't intervene when it reasonably should have, but also that a proportionate intervention would have led to their loss being avoided. So, I need to go on to consider what would likely have happened had HSBC intervened in the way I've described. And in all the circumstances here I don't think it's likely that a proportionate intervention from HSBC would have prevented Mr and Mrs K's loss. I'll explain why.

In deciding what HSBC could reasonably have uncovered during a proportionate intervention, I must consider what information was available at the time. H went into liquidation in June 2019 – after Mr and Mrs K made the payments – and there was no negative information in the public domain before that point. The suggestion that H may be operating as a scam only came to light in 2020 when a court hearing took place. None of this information would have been available to HSBC or to Mr and Mrs K at the time of the payments and so there was nothing to indicate H wasn't a legitimate investment.

Mr and Mrs K have pointed out that H was unregulated – and they said if HSBC had told them about this, they would have looked further into the risks and not gone ahead. It's true that H wasn't a regulated investment, and I can also see that P wasn't a regulated broker. But P wasn't required to be regulated, and in any case, I can't see that Mr and Mrs K had much direct contact with P before they invested – they appear to have arranged the investment mainly through their relative who was emailing them the relevant paperwork. And I'm also not sure that Mr and Mrs K weren't already aware that H wasn't regulated - the information their relative sent to them about H specifically says that H isn't authorised or *regulated by the Financial Conduct Authority, and this has been annotated by hand.*

It is not for HSBC to provide financial advice about an investment as part of a proportionate scam intervention and it had no obligation to step in to protect Mr and Mrs K from a potentially risky investment. I think, however, that HSBC could potentially have pointed out the regulation status of H to Mr and Mrs K in a proportionate intervention and assuming they weren't aware of this, have encouraged them to carry out due diligence to appraise themselves of the risks of investing in it (assuming they hadn't already).

But I must also consider here that Mr and Mrs K were introduced to the investment by a relative who had visited their house and shown them that he'd been receiving returns from the investment for a year. Mr and Mrs K said that they invested as they trusted their relative. I think that Mr and Mrs K would have been reassured by this and by the evidence of the returns their relative had received. And any concerns that might have been raised for Mr and Mrs K about the risk of investing in an unregulated investment such as H would've likely have been put to rest by the fact that their relative was already investing in H and receiving the promised returns.

Taking everything into account, I don't think that any advice or warning from HSBC about the regulation status of H would have resonated with Mr and Mrs K. I think Mr and Mrs K would have told HSBC to proceed with the payment and there was no reason for it not to follow their instructions. So, I'm not persuaded that a proportionate intervention from HSBC would have prevented Mr and Mrs K from making the payment to invest in H.

I would expect HSBC to try to recover Mr and Mrs K's funds immediately on being informed of the loss. HSBC's notes suggest that on receiving Mr and Mrs K's complaint it did contact the receiving bank to attempt to recover the funds, but this was unsuccessful. But this isn't surprising, seeing that it was over five years since the payment had been made and in any case, we know their funds had been invested in H which had gone into liquidation. I don't think HSBC ought to have done anything else to attempt to recover the funds.

Once again, I'm really sorry to disappoint Mr and Mrs K. It does appear they've been the victims of a scam, and I can understand why they'd think they should get their money back. But for the reasons I've explained, I don't think HSBC ought reasonably to have prevented their loss. So, it wouldn't be reasonable for me to ask it to refund the payments they made."

HSBC replied to say it accepted my provisional decision.

Mr and Mrs K replied with some further points they wished me to consider, which were, in summary:

- HSBC had a duty to intervene and a proportionate intervention would have identified that H was unregulated and promising implausible returns.

- HSBC could have prevented the loss with a warning – Mr and Mrs K didn't appreciate the implications of H not being regulated, they were not sophisticated investors and were relying on HSBC's protection. A simple warning about H's regulation status would have caused them to pause and Mr and Mrs K have said they would have stopped and looked into things further if this was pointed out, which should be given due weight.

- HSBC had obligations to prevent fraud by taking steps such as asking the customer the purpose of the payment, checking whether the payee is FCA-authorised and warning the customer about the risk of scams, especially involving unregulated, unsolicited investment opportunities.

- The delay in Mr and Mrs K reporting the scam doesn't excuse HSBC's failure to intervene and it can't shift the burden to Mr and Mrs K simply because recovery was impossible later.

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.

It's not in dispute that HSBC should have intervened here in the way Mr and Mrs K have set out in their response to my provisional decision. The point that remains in dispute is whether such a proportionate intervention would have prevented them from investing in H, so I'll concentrate my findings on this.

In reaching my conclusion on this point I must decide what would most likely have happened if HSBC had intervened in the way I've described. I'm not disregarding Mr and Mrs K's testimony, but taking into account all the circumstances I still don't think a proportionate intervention from HSBC would have prevented them from investing in H. Mr and Mrs K have mentioned that the H was promising implausible returns, but I must weigh this against what they would have known at the time, which was that their trusted relative had apparently been receiving the promised returns from their own investment in H. With this in mind, I'm simply not persuaded that an intervention from HSBC pointing out the regulation status and encouraging them to carry out due diligence would have made a difference in these circumstances.

I have mentioned recovery of the funds because there are industry standards around attempting recovery of funds when a scam has been reported. Here, it didn't become clear that H was a scam until some time after the payments were made and recovery wasn't possible. I don't think the delay in the scam being reported excuses HSBC's failure to intervene and my decision doesn't suggest this; I've concluded HSBC should have intervened, I've considered if an intervention would have made a difference, and I've also considered if HSBC did what it should have to recover the funds.

I am sorry to disappoint Mr and Mrs K – I realise that they've lost a lot of money here. But I still don't think HSBC ought reasonably to have prevented their loss, so I'm not going ask it to refund the payments they made.

My final decision

My final decision is that I'm not upholding Mr and Mrs K's complaint.

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

Helen Sutcliffe
Ombudsman