DRN-2628594

The complaint

Miss I complains that HSBC UK Bank Plc (HSBC) won't refund €273,000 she lost when she was the victim of a scam.

What happened

What Miss I says

Miss I had funds from an inheritance in a euro account with HSBC. She looked online for a low risk investment and found company B. Miss I received a call from company B and was told she could invest in fixed rate UK treasury bonds.

Before deciding to invest Miss I viewed a brochure from company B and looked it up on the Financial Conduct Authority (FCA) website to confirm it was registered. She found out some more details about the bond – such as the rate of return of 8% and that it matured in 2021. Miss I provided company B with identification and was sent a payment instruction to a US bank account not in company B's name. Miss I thought company B was a well-known international firm.

In May 2020 Miss I made a payment of €273,000 (plus a €12 fee) during a phone call to HSBC. I've set out relevant parts of the call in which payment was made below,

HSBC: Because this is the first time you're paying this particular payee I'd just like to complete a quick scam check to make sure you're not a victim of any kind of scam or fraud when making this particular payment.

So I'm just going to ask a few questions about the payment you're looking to make today. Unfortunately we see fraudulent transactions taking place where criminals pretend to be from organisations or people that you trust including your bank, the police or well-known companies as well as friends and family. So in terms of what's prompted you to make this payment, so you've purchased bonds with this company in the US. Is that correct?

Miss I: Can you repeat the question for me?

HSBC: So in terms of what's prompted you to make this payment and the reason for the payment, you've mentioned that the reason was that you've purchased bonds with this company in the US. Is that correct?

Miss I: Yes, with [company B]

HSBC: And you were expecting to make this payment?

Miss I: Err,was I expect?

HSBC: Were you expecting to make this payment today so it's not sort of an unexpected payment that's randomly like popped up is it?

Miss I: No I actually you know I discussed it like, basically the bond and then I decided it's a good one because, as I say, I wasn't looking…I couldn't find anything basically matching, well you also show me the percent is lower [HSBC fixed rate bonds discussed earlier in the call with returns of 0.45, 0.55 and 0.7% for one, two and three years respectively] so I kind of wanted to go with it.

HSBC: No problem. So were you called unexpectedly and asked to set up a new payee?

Miss I: No

HSBC: Or to move money to a safe, secure or holding account?

Miss I: Err, sorry, say that again

HSBC: So were you called unexpectedly and asked to set up a new payee or move money to a safe, secure or holding account?

Miss I: No

HSBC: And have you been asked to alter any details from the original payee instructions?

Miss I: Any details?

HSBC: So have you been asked to change any details from the original instruction?

Miss I: Oh no, I mean, yeah, no the original instruction I exchanged email on the phone with the person…

HSBC: So following our discussion around the payment and its origins it's important to know that it might not be possible to get your money back if it is inadvertently sent to a fraudster so are you comfortable that this payment is to a genuine source and that the payment details are correct or would you like to contact the payee on a number you know to be genuine to verify the payment details?

Miss I: No, I already did yeah

HSBC: OK, so have you already phoned them to check the payment details are correct or did you just receive an email?

Miss I: I received it by email but then we discussed on the phone, basically ……

HSBC: OK, perfect, and you're happy to proceed with the payment today.

Miss I agreed to make the payment. Following this, the adviser took details of the payee including the name (which wasn't the same as company B), its address, the name of the bank and the routing code for the payee bank. He explained that he'd put in the routing code and needed to pre-select the bank but the city Miss I gave him didn't show. Miss I called company B to check this and offered a different city, that also didn't appear on HSBC's system. Miss I went on to say that the payee told her just to choose anywhere as it didn't matter. Finally, the adviser asked for a reference for the payment. Miss I said she didn't have one but just to put 'services'.

After she'd made the payment the adviser Miss I dealt with at company B told her that due to global expansion company B would be changing its web address and email domain. Miss I couldn't log in to the portal after this or contact the adviser using the new details. She found a phone number for company B online and obtained the adviser's number. But when she called this number the person who answered knew nothing about Miss I or her investment and referred her to the FCA. Miss I then contacted the FCA and found out she'd been the victim of a scam. Company B was a clone of a genuine company and the adviser Miss I communicated with used the name of an employee at the genuine company. Miss I then contacted HSBC to report the scam.

Miss I believes HSBC should refund her lost funds as it didn't do enough to protect her. She's also unhappy with the service provided by HSBC once she reported the scam.

What HSBC says

HSBC says the payment was authorised by Miss I and that in the call when the payment was made its adviser clarified and confirmed the payment and provided a warning about scams.

It also says it contacted the bank the funds were sent to abroad but has no control over whether this bank will respond or return any funds. HSBC accepted the service it provided when the scam was reported wasn't as good as it could have been and credited Miss I's account with £200.

Our investigation so far

The investigator upheld the complaint and asked HSBC to refund €273,000, plus interest and £200 compensation. She said the payment was unusual in amount and given Miss I's previous account history. The investigator noted that the questions HSBC asked were generic, covering various scam types. But HSBC didn't ask specific questions about the payment Miss I was making so it could point out red flags and provide relevant warnings. The investigator also said that HSBC failed to pick up on a number of red flags in the payment call, such as the fact Miss I was sending money to the US for UK government bonds, was paying a different company to company B and the payment reference. The reference given was simply "services" and the investigator questioned how a large company could allocate Miss I's funds correctly without further information.

HSBC didn't agree with the investigator's findings but agreed to refund 50% of Miss I's loss together with interest at the rate that applied to the account the funds were transferred from. HSBC did so because it accepted it could have asked Miss I more questions about the payment. In summary HSBC said,

- The starting point is that HSBC doesn't believe it was legally required to question Miss I's payment instructions. HSBC referred to a legal case.
- HSBC spoke to Miss I about the payment in a call. She gave a legitimate reason for the payment (an investment) which didn't cause HSBC any concern. The fact the payment amount was high doesn't mean it was suspicious.
- It accepts that it could have asked more questions but the investigator's conclusion that if it had the payment wouldn't have been made is based on speculation about how Miss I would've acted, and hindsight based on what is known now about the cloned company. There was no FCA clone warning at the time of payment and HSBC should not routinely scare its customers that genuine companies may be cloned when there is no reason to do so.
- Miss I would have gone ahead and made the payment in any event. HSBC reached this conclusion based on the fact that after the payment had been made Miss I accepted "implausible explanations from the fraudster".
- Miss I should be held partially responsible for the loss because she failed to take reasonable steps to protect herself and acted negligently. In particular,
    - Miss I should have realised the rate of return offered was unrealistic. In the payment call HSBC discussed its own savings bond products that all offered rates of return of less than 0.7% and Miss I was being offered 8%.
    - Miss I communicated with the scammer and viewed documentation so was in a far more informed position than HSBC. These documents likely contained red flags that should have been picked up on.
    - Miss I didn't complete sufficient or appropriate checks. She used the details provided by the scammer to check FCA registration and didn't contact the genuine staff member before making the payment. Miss I accepted that she didn't research company B because she knew it was a legitimate company, which isn't a sufficient reason not to do further research and Miss I should have checked the genuine address of the platform provided to her by company B. HSBC said Miss I didn't need to have knowledge of cloned companies as she was able to work out company B was cloned without any

knowledge when the fraudster's website was inaccessible.

- The interest rate applied by the investigator was punitive.

I contacted HSBC and said I agreed with the investigator's findings, largely for the same reasons. HSBC didn't agree so I'm setting out my findings formally in this 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.

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 have been good industry practice at the time.

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.

In this case, I need to decide whether HSBC acted fairly and reasonably in its dealings with Miss I when she made the payment, or whether it should have done more than it did. I have considered the position carefully.

Did HSBC act fairly and reasonably when it made the payment?

As I've explained above, I consider that as a matter of good practice HSBC should have been on the lookout for unusual or uncharacteristic transactions. So I've first considered whether the payment request Miss I made was unusual or uncharacteristic. HSBC has provided screenshots which show the activity on Miss I's account. Having reviewed these, I consider Miss I's payment was unusual. I say this because it was for a large amount (€273,000), was to a new payee, was the first international payment on the account and was much greater than any previous transaction. There were only three other payments from the account and the highest was for €25,000.

So I'm not saying HSBC should have treated the payment with suspicion simply because of its value – there are a combination of factors here – but the value is high enough to place a greater burden on HSBC to check Miss I wasn't at risk of financial harm. And I don't consider that because Miss I was able to provide a plausible reason for the payment HSBC didn't need to ask probing questions. The payment reason for many scams sounds legitimate.

HSBC spoke to Miss I when the payment was made, so I've gone on to consider what was discussed in this call. The adviser asked Miss I various questions designed to check she wasn't at risk of financial harm, but I don't consider he went far enough in the circumstances of this case. The adviser established that Miss I received payment details by email and had spoken to company B on the phone. But he didn't go on to ask where Miss I got the telephone number from to ensure she hadn't in fact spoken to a fraudster. The adviser also knew that Miss I was buying bonds, but he didn't ask her anything about the checks she had completed in respect of company B and the bonds. He also didn't warn her of the existence of cloned investment companies and the steps Miss I should take to keep her funds safe given the number of cloned companies offering investments. I note HSBC accepts it should have asked Miss I further questions in this call.

- Miss I was making a payment in US Dollars to the US for UK treasury bonds.
- Miss I's payment wasn't to company B.
- The reference for the payment to company B was simply "services". I can't see how a large company would know the source of the funds with no additional information about Miss I.
- There was a discrepancy in the payee bank address (HSBC couldn't find the address using the routing code). It seems to me that it's unlikely the genuine company that was cloned would get this wrong.

I've thought carefully about whether the kind of questions I believe ought fairly and reasonably to have been asked by HSBC would have made a difference in this case. Having done so, it's my belief that had HSBC asked proportionate questions and given Miss I a warning about investment scams and in particular cloned companies she would have taken additional steps before making the payment – and ultimately wouldn't have made it. HSBC has commented that the investigator's views on what would have happened if it had asked more detailed questions and provided a specific warning are based on speculation and hindsight. But given that HSBC didn't ask these questions this service must look at what's most likely to have happened if it had.

Miss I wasn't alert to the potential for fake investment companies to appear as genuine ones and provide a fake platform. HSBC was the expert here and Miss I an inexperienced investor and I feel HSBC should have done more to ensure Miss I wasn't at risk of being defrauded. I see no reason why Miss I wouldn't have taken HSBC's warnings seriously if she'd been cautioned to consider and check the legitimacy of the investment before proceeding. If she'd been made aware that investment companies could be cloned, I believe Miss I would have used the contact details on the FCA register to get in touch with the genuine investment company, at which point the scam would have been uncovered. I've seen no indication that Miss I was so anxious to proceed that she would have ignored warnings or been unprepared to postpone the payment to reflect on the matter and make these further enquiries.

I've thought about HSBC's submission that it shouldn't routinely scare its customers by saying genuine companies may be cloned. I'm not suggesting that HSBC should scare customers, but that proportionate questions should be asked, and clone warnings given when an investment payment is being made that is unusual or suspicious. As I've said above, many customers won't be aware of the potential for fake companies to appear as genuine companies or of the steps they need to take to protect themselves, but HSBC is aware of this risk.

HSBC has referenced a legal case in its submission to me. Notwithstanding what the judge said, we have a duty to resolve complaints based on what we think is fair and reasonable in all the circumstances of the case, taking into account not just the law, but also regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. My fellow ombudsman and I have referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions, both to HSBC and published on our website.

I've also thought about whether Miss I did enough to protect herself before making the payment. I've commented above on the fact that Miss I checked the FCA website to ensure that company B was registered. Without any knowledge of cloned companies, I don't consider it reasonable to expect Miss I to know that to minimise the risk of falling victim to a scam she needed to go further. I'm not persuaded that many customers would be aware of the need to contact a company they plan to invest with using the contact details shown on the FCA register. But HSBC did know of the importance of this.

And without knowing of the risk of cloned investment companies I also don't think Miss I would have had any reason to find contact details for the genuine adviser at the genuine company and speak to him before making the payment. She took these steps when the fraudster stopped communicating with her and she no longer had access to the platform. As Miss I didn't recognise and wasn't made aware of a risk prior to this I can understand why she didn't take this step before the payment was made.

I turn now to HSBC's comments about the rate of return on the bond and the fact Miss I went ahead with the payment when she should have realised the rate was too good to be true. Miss I was an inexperienced investor who wished to invest inheritance funds she'd received. She was told by the fraudster that fixed rate treasury bonds were a safe way to invest these funds. In her call with HSBC Miss I said she'd looked at other bonds and the one with company B had the best rate, so she wanted to go ahead. She considered that the bonds she was investing in were a different type of bond to the fixed rate bonds HSBC offered with much lower rates of return. The HSBC adviser didn't suggest Miss I might be wrong to differentiate the bonds and returns in this way or question whether the deal may be too good to be true. If a member of HSBC's high value payments team didn't recognise this risk, I don't consider it would be fair to conclude that Miss I fell below the standard expected of a reasonable person when making the payment.

HSBC has also referred to the fact Miss I didn't research company B because she knew it was a well-known company and said this isn't sufficient reason for failing to carry out checks. The genuine company Miss I thought she was dealing with is a very well-known and respected company so in the absence of any warning about cloned investment companies I think it's understandable Miss I didn't know she could do more to protect herself.

Finally, I've seen the documents company B provided to Miss I and can't see that they contained warning signs that it may not be a genuine company.

Recovery of funds

In light of my conclusions above, it's not necessary in this case to consider whether HSBC also exercised enough care and urgency in trying to recover Miss I's funds from the payee bank. But for completeness, I'm satisfied that HSBC did what it could to try to recover the money. After Miss I contacted HSBC with concerns about the payment, HSBC contacted the receiving bank promptly but unfortunately the payment could not be recovered.

Service

HSBC accepts the service it provided to Miss I wasn't as good as it could have been and credited her account with £200. It noted that when Miss I reported the scam there was confusion over which area of the bank should deal with Miss I's concern and later she was told her complaint had been closed when this wasn't the case. Having considered the service provided by HSBC I'm satisfied the award already made is reasonable.

Trouble and upset

Finally, I've considered whether HSBC should pay Miss I compensation for the distress and inconvenience she's experienced as a result of its actions. In considering what's fair compensation, I've specifically thought about the impact of HSBC's actions, rather than the impact of the crime itself and I've also taken into account that much of the distress and inconvenience Miss I has experienced was ultimately the result of the actions of a cruel scammer.

Overall, I think HSBC's failure to act has had an impact on Miss I. She was clearly distressed by the scam. And I think the strain this placed her under could've been prevented if HSBC had acted as I think it ought to have. So for these reasons I think HSBC should pay Miss I £200 for the trouble and upset caused.

Interest

I have considered HSBC's comments about the rate of interest awarded by the investigator but consider 8% is the appropriate rate. HSBC say 8% is a punitive rate and that Miss I would not have achieved this rate if the funds remained in the account or if she invested elsewhere. It's clear Miss I wanted to invest her funds to maximise them so it's likely that had Miss I not made the scam payment she'd have found an alternative means of investing through a legitimate company. She has lost the opportunity to invest and earn a greater level of interest than she'd have earned if the she'd left the funds in the account she transferred them from. It's not possible to say what rate of interest Miss I would have achieved so I think that applying the current statutory rate is appropriate.

My final decision

For the reasons I've outlined above, I direct HSBC UK Bank PLC to:

- Refund Miss I €273,000 less any sum returned from the receiving bank;
- Refund the €12 fee Miss I was charged when she made the payment;
- Add interest to this amount at the rate of 8% simple per year from the date of payment to the date of settlement. If HSBC deducts tax from this interest, it should provide Miss I with an appropriate tax deduction certificate;
- Pay Miss I £200 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss I to accept or reject my decision before 24 August 2021.

Jay Hadfield
Ombudsman