

complaint

Mr S is unhappy because HSBC UK Bank Plc did not reimburse the money he transferred to a fraudster.

background

Both parties are aware of the circumstances of the complaint, so I won't repeat them all here. But briefly, Mr S has engaged the services of an independent financial advisor (IFA) since 2015 in preparation for his retirement. Mr S has explained the IFA has authority to invest on his behalf and that while he does occasionally speak with the IFA by phone or face to face, the majority of their communication is via email.

In July 2019, Mr S and his wife received an email from a fraudster pretending to be his IFA. The fraudster used an email address almost identical to the genuine IFA's, but with one letter removed. The fraudster told Mr S she was recommending a '35 days notice deposit account' with the interest rate fixed at 2.45% AER. The fraudster provided an 'additional terms' document, as well as literature on the Financial Services Compensation Scheme (FSCS).

Over the next week Mr S exchanged several emails with the fraudster asking additional questions about the account on offer, such as what FSCS protection would be available if the account was joint with his wife and which funds should be moved into the new account. Satisfied with the answers received, Mr S confirmed he would be transferring 'at least'

£80,000 initially. In August 2019 Mr S transferred £80,000 from his savings account to his current account, then proceeded to send £25,000 of this to the account set up by the fraudster via mobile banking. Mr S confirmed to the fraudster that his account had a daily transfer limit of £25,000 but that he would be making further future payments.

Two days later Ms S attempted to make a second transfer of £25,000 by mobile banking, but this was referred to HSBC's fraud team. The fraud team spoke to Mr S by phone and asked some additional questions about the payment. These included whether it was Mr S that made the payment, how he got the account details, whether he had transferred money to the account before and if he was "sure the account was given to him" from his IFA and that there was "nothing wrong in it". Mr S confirmed he'd received the account details from his IFA and he had no reason to suspect there was anything wrong as he'd agreed to do it. On this basis the payment was released.

Mr S made a third transfer the following day by mobile banking, again for £25,000 – so in total sent the fraudster £75,000. The fraudster advised Mr S he'd receive a welcome pack in 2-3 weeks with information on how to view his account online. In September 2019, having not received anything, Mr S chased the fraudster for an update but received no response.

He attempted to send another chaser in October 2019 but his email bounced back as undeliverable. At this point Mr S noticed the discrepancy in the email address, so contacted his IFA on her genuine email address requesting an update. His IFA explained that the

emails weren't from her and Mr S realised he'd been the victim of a scam. He reported the scam to HSBC on the same day – 5 October 2019.

HSBC is a signatory of the Lending Standards Board Contingent Reimbursement Model CRM Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. HSBC says one or more of those exceptions applies in this case.

HSBC has said Mr S made the payments without having a reasonable basis for believing they were genuine payments. HSBC considers that Mr S ought to have done more checks to make sure the emails he'd received were genuinely from his IFA.

However, HSBC did recognise it hadn't met the standards it was required to under the CRM Code. It said it could have provided a more effective warning to Mr S that the payments he was making could be part of a scam. HSBC therefore refunded 50% of his loss, as per the provisions of the CRM Code.

I am also mindful that when Mr S made these payments, HSBC should fairly and reasonably also 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). And in some circumstances, irrespective of the payment channel used, have taken additional steps, or made 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.

Mr S feels he should be refunded in full and so he referred his complaint to us. An investigator upheld Mr S's complaint – he felt Mr S should've been reimbursed in full under the Code and due to the nature of the payments, he felt HSBC could've prevented Mr S's loss. HSBC didn't agree with the investigator's opinion, so the complaint has been passed to me for a final decision.

findings

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

Having done so, I'm satisfied that:

- Under the terms of the CRM Code, HSBC should have refunded the money Mr S lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- HSBC should in any event have intervened when Mr S made the first payment to the fraudster as the payment was unusual and if it had done so, I am satisfied the fraud would have come to light and the loss prevented.
- Mr S has received a refund of 50% of his loss already. In the circumstances, HSBC should fairly and reasonably refund the remaining 50% Mr S lost.
- The money Mr S lost originated from a savings account held with HSBC. I'm persuaded HSBC could've prevented the loss and so to put Mr S back into the position he'd have been in had HSBC done what it ought fairly and reasonably to have done, it should also pay interest calculated at the savings account rate

from the date the scam payments were each made to the date HSBC returns the funds.

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I have carefully considered HSBC's representations about whether Mr S had a reasonable basis for believing the transactions to be genuine. But they do not persuade me to reach a different view. In particular I am not persuaded that the consumer failed to take the requisite level of care required for the firm to choose not to reimburse under the terms of the CRM Code.

I'm satisfied that HSBC has not shown that Mr S lacked a reasonable basis for believing the transactions to be genuine because:

- The fraudster used an email address almost identical to the one used by his genuine IFA. I think, considering the similarities in the email address, it was understandable that Mr S didn't identify the discrepancy. I'm also satisfied that at the time, Mr S wasn't aware of email impersonation scams – the scam Mr S fell victim to. And HSBC has accepted it didn't take steps to warn Mr S about such scams. In the absence of this knowledge, I don't consider it to be reasonable for Mr S to closely analyse the email address to check it was exactly the same. It's not realistic for firms to expect customers to look out for tiny discrepancies in an email address, particularly when a firm has not alerted a customer to the possibility of a fraudster posing as a recognised contact.
- I don't think the content of the fraudster's emails should reasonably have raised suspicions with Mr S. The initial email contained the IFA's genuine business footer, as well as convincing account literature and a realistic investment returns rate. There were no pressure sale tactics applied that might've indicated something was amiss, and the fraudster was able to give plausible answers to Mr S's questions about the account.
- Mr S has said that he largely communicates with his IFA via email and I've seen email chains Mr S had with his genuine IFA alerting Mr S to opportunities and obtaining his agreement to invest. So it wasn't out of the ordinary to have received contact in this form. Mr S didn't call his IFA before making the transfers, but based on the convincing communication he had with the fraudster I don't think it was unreasonable for him not to have done so. I'm also mindful that in the absence of any warnings on these types of scams from HSBC, Mr S was not alive to the possibility he was dealing with a fraudster, and therefore had no reason to depart from his usual method of communication.

It is not clear whether or not HSBC have refused to fully reimburse Mr S on the basis that they consider him to have been grossly negligent in his actions though they remarked that Mr S might've been grossly negligent following the investigator's opinion. For completeness, I do not think Mr S was grossly negligent in making any of the payments. I've already set out above why I think Mr S had a reasonable basis for belief that he was making legitimate payments, and gross negligence would require a very significant degree of carelessness on Mr S's part. I am not persuaded his actions or inaction in this particular case meets that very high bar.

I don't think Mr S's actions show a lack of care that goes significantly beyond what a reasonable person would have done in the same situation, and in the absence of any clear reasons from HSBC, I'm not persuaded HSBC has established a case for it here given all of the circumstances.

I'm also persuaded HSBC could've prevented Mr S's loss by doing more to protect him when he attempted to make the first payment.

Having reviewed Mr S's statements for around six months leading up to the scam I think the first transaction was out of character and unusual. All other payments out of the account were for under £4,000, other than one internal transfer of £20,000 Mr S made to another of his HSBC accounts. Whereas the first payment Mr S made to the fraudster was to a new payee and was the maximum amount he could send in one day. I therefore think the first transaction was sufficiently out of the ordinary for HSBC to have intervened at this point, and to have asked further questions before processing the payment. HSBC ought fairly and reasonably to have asked Mr S how he'd been contacted about the investment opportunity and how he'd been provided with the account details he was paying. This is because both email impersonation scams and investment scams were prevalent at the time; something I'm satisfied HSBC was aware of.

I've no reason to doubt Mr S wouldn't have answered HSBC's questions honestly and in response to his answers, HSBC ought fairly and reasonably to have informed Mr S about the possibility this might be a scam.

Had HSBC told Mr S about the existence of email impersonation scams and how he can protect himself – for example, calling his IFA directly first on a known number - I think Mr S would more likely than not have made additional checks before making the payment. Had Mr S done so, I'm satisfied this scam would've been revealed and Mr S's loss prevented.

I understand HSBC did make a call to Mr S before processing his second payment, but I don't think this call went far enough to protect Mr S from financial harm. In this call Mr S confirmed the account he was transferring the funds to had been set up by his IFA for him - and that he hadn't checked if the first payment he'd made had been received into his 'new account'. The telephone advisor didn't ask any further questions about the account opening process, or suggest Mr S ensures his account had been credited. The advisor also didn't discuss email impersonation scams with Mr S and how they might feel, or give Mr S any advice on how to ensure it was his genuine IFA he was speaking to. The advisor did ask if Mr S was sure the account was given to him by his financial advisor and that there was "nothing wrong with it", but without any context surrounding this question, I think Mr S's response that he had "no reason to suspect anything is wrong" was reasonable.

For clarity, my findings that HSBC ought to have prevented Mr S from losing the money he sent to the fraudster have a limited impact on the outcome of this complaint given I have decided Mr S should've been reimbursed under the provisions of the CRM Code. The impact relates to the interest payable only.

decision

For the reasons I've explained, my final decision is that I uphold Mr S's complaint against HSBC UK Bank Plc. I require HSBC UK Bank Plc to:

- Refund Mr S the £37,500 he lost to the scam
- Pay the respective account interest rate at the time, on the £37,500, from the date each payment was made to the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 May 2021.

Kirsty Upton
Ombudsman