

The complaint and background

Ms A seeks to recover around £32,500 from HSBC UK Bank Plc, which was stolen from her bank account in 2020 as the result of an investment scam.

The events that unfolded in this case are well known to both parties, so I don't intend on detailing them here. Instead, I've focused on the key points that are material to reaching my decision – our rules allow me to do so.

In summary, Ms A's complaint concerns six international payments made from her HSBC account between 28 February 2020 and 11 May 2020. Ms A made these transactions in exchange for what she thought was investments in commodities such as gold and oil, having been convinced to invest by an outfit by the name of Global Markets.

It turned out that this firm was operating a scam and Ms A's money was lost. She realised this when she could no longer reach Global Markets and her withdrawal requests had been unsuccessful. Ms A reported this to HSBC in early June 2020.

HSBC declined to refund Ms A, because it said it followed its obligation to process these authorised transactions as per her instructions. Upon bringing the dispute to our service, one of our investigators concluded that HSBC should return all but 20% of the payments lost, because he thought HSBC should have done more to protect Ms A's account from the scam. Ms A agrees with this assessment.

HSBC does not agree – however, it omitted to explain exactly why. I take from this that the bank has not accepted our assessment, so the matter has been escalated to me to decide.

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.

Having done so, I agree with the outcome reached by our investigator for the following reasons:

relevant considerations

- It's common ground that the disputed payments were 'authorised' by Ms A for the purposes of the Payment Services Regulations 2017 (PSRs), in force at the time. These must be regarded as 'authorised payments', even if Ms A believes she was the victim of a sophisticated scam.
- Banks such as HSBC have a duty to execute authorised payment requests correctly and promptly, so that legitimate transactions are made in accordance with a consumer's instructions.

- Even so, there are some situations where we believe that banks – taking into account relevant rules, codes and best practice – ought to have been on alert or notice that something wasn't right or should have looked at the wider circumstances surrounding the transaction before making the payment. Accordingly, I've looked into what this means for this case and whether HSBC should have done more to prevent the payments in question.

unusual or uncharacteristic activity

- I acknowledge there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate transactions. The systems and procedures HSBC puts in place to manage those competing demands are a matter for the bank. That said, it is neither unfair nor unreasonable to expect a bank to double-check payment instructions that ought reasonably to trigger concerns as to whether they are unusual or uncharacteristic for the particular customer and/or account history.
- In light of the payment values involved in relation to how Ms A normally operated her account, I think HSBC ought to have identified the risk of harm from the very first payment; that being, £7,777. This was a highly unusual and uncharacteristic amount compared with the recent history on the account. Especially, given that it was a payment overseas that equated to more than double of the highest outlay in the past twelve months (if ever). Overall, I am satisfied there were reasonable grounds for HSBC to suspect fraud or a scam, and therefore justify an intervention at this point.

causation

- Having concluded that HSBC ought to have intervened with this first payment on 28 February 2020, next I need to determine what difference (if any) such an intervention would've made. This is otherwise known as 'causation'. In order for me to require HSBC to refund the disputed payments on the grounds of causation, I need to be satisfied that the bank stepping in would've prevented the loss here.
- I do consider the level and depth of questioning ought to be proportionate to the situation. I accept that there is a balance to strike – and I'm not suggesting Ms A should've been subjected to an interrogation by bank staff. Therefore, I've thought carefully about whether the kind of questions that I believe ought fairly and reasonably to have been asked by HSBC would have made a difference. In my view, it would have been proportionate for bank staff to have asked Ms A to provide details such as to whom the money was being paid and why it was an international payment.
- I have no reason to think that Ms A would've averted questioning or been obstructive to the bank's queries – everything suggests she would've been open about how her association with Global Markets had come about. It follows that I find it likely she would've revealed that she had been promised very high profits (around 15% per annum), based on her trading on commodities using an online platform that the so-called brokers had set up for her, having provided her proof of address and ID.
- As well as this, Ms A had been instructed to send money to accounts held in the name of "Bit2Bit OU", among others. Yet, these various account names did not match the trading name of Global Markets itself. In simpler terms, Ms A was instructed to send money overseas to account identities that did not correlate to the investment scheme she was being enticed into.

- As a bank that often sees all types of fraud, I'm satisfied that appropriate questioning would have made it apparent to HSBC that this had the hallmarks of a common and well-known investment scam.
- Had the bank carried out its due diligence and intervened with this first payment, I think it's more likely than not that bank staff would have become suspicious about these payment instructions. Particularly, given the apparent discrepancy between where the money was intended to be paid and where in fact it was instructed to go.
- What's more, it's evident from the emails that Ms A shared with the scammers that Global Markets specifically asked her to download an application called AnyDesk. This software's purpose was to grant remote access to Ms A's computer, so that Global Markets could control the device remotely.
- Without a doubt, it's extremely unlikely that a genuine investment scheme would ask a consumer to download an application that gave it the ability to control their computer remotely. Suffice to say, the mention of remote access, in the context of a speculative investment, ought to have made it apparent to HSBC that this had the distinctive features of an array of scams.
- Under these circumstances, I'm persuaded that, if bank staff had sought to establish further details about this first transaction, it seems highly probable that the scam would have been exposed there and then, thereby preventing any losses. Ms A would not have lost the £7,777 and she also wouldn't have been persuaded to send the subsequent payments that were lost thereafter.

contributory negligence

- Finally, there's a general principle that consumers must take responsibility for their decisions. With this in mind, I have duly considered whether Ms A should bear some responsibility by way of contributory negligence.
- Notwithstanding my findings above, I do think that Ms A was partly to blame for what happened. She completed some online research of Global Markets. But by her own admission, she relied heavily on hearsay – she's conceded that, despite being an inexperienced investor, she did not *thoroughly* research the credibility of this firm. This was despite investing her life savings into what was put to her as a high-risk and volatile scheme, with what appear to be profits that were too good to be true.
- That being the case, in these particular turn of events, it's my judgment that Ms A can reasonably be held partially responsible for the situation she now finds herself in. I think it would be fair to reduce compensation by 20% on the basis that Ms A should share some blame for what happened. I agree with our investigator that this constitutes a commensurate deduction in compensation.

Putting things right

For the reasons given above, it's my judgment that HSBC should reimburse Ms A the six disputed payments, less 20%. In other words, Ms A should receive 80% of the £32,505.72 that was lost.

Also, I find it appropriate that HSBC add 8% simple interest (per year) to this sum to recognise the loss of use of these funds. This should be calculated from the date of loss to the date of settlement.

My final decision

My final decision is that I uphold this complaint and require HSBC UK Bank Plc to:

1. Refund the six payments in question, minus a 20% deduction for contributory negligence; and
2. Add 8% simple interest per annum to that sum from the date of loss to the date of settlement (less any lawfully deductible tax).

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 25 May 2022.

Matthew Belcher
Ombudsman