DRN-3607493

The complaint

Ms T complains that HSBC UK Bank Plc won't refund the money she lost when she was the victim of two scams.

What happened

Ms T says she was interested in earning some more money by learning how to trade, so filled in an enquiry form she found online. She was then called by a company who said it could help her learn how to trade. The company got her to create an account with a cryptocurrency exchange and on their trading platform. They would then call her to talk her through how to make trades. Ms T would send money from her HSBC account to the cryptocurrency exchange and use this to buy cryptocurrency. The cryptocurrency would then be sent from her account at the cryptocurrency exchange to the company's account. And she could then see the result of the trades on the company's trading platform.

Ms T says she was told she could withdraw her profits at any time, but the company would often make up excuses why she couldn't withdraw or try to persuade her to wait so she could have better returns in the future. Ultimately the company stopped responding to Ms T's emails and she realised it was a scam but, as she had recently given birth at the time, she didn't take the issue any further.

Around a year later, Ms T says she received an email from a second company saying they knew she had been scammed and could help her get her money back. They said she would need to pay an amount upfront so they could start investigating her case and suggested she do more trading and that they would take a cut of the profits she made to pay for the investigation. Ms T sent further payments to her account at the cryptocurrency exchange and then on to the account details the second company gave her, and was given access to a trading platform to monitor her trades.

Ms T says she realised the second company was also a scam when she asked to withdraw some of the profit she had made but didn't get a response. The trading platform then showed the profit she had made had turned into a significant loss and the company told her they could only help if she invested further. Ms T then reported the payments she had made to HSBC.

I've set out the payment Ms T made for each company below:

Date	Amount	Details
12 November 2018	£2	first company
15 November 2018	£18,000	first company
14 May 2019	£7,850	first company
27 April 2020	£2	second company
28 April 2020	£3,000	second company
8 May 2020	£2	second company
8 May 2020	£1,500	second company
28 May 2020	£3,000	second company
15 June 2020	£5,000	second company

22 June 2020	£5,000	second company
29 June 2020	£2,000	second company
7 July 2020	£750	second company
7 July 2020	£1,000	second company

Ms T has also mentioned a number of payments she made to other cryptocurrency exchanges. But as these payments were made using her card, HSBC has said these will have to be raised separately if Ms T wants to dispute these too.

HSBC investigated and said it felt some of the payments were covered by the Lending Standards Board Contingent Reimbursement Model (the CRM code), but some of them weren't. It didn't agree to refund the payments that weren't covered by the CRM code, as it didn't think Ms T had done enough research into the companies she was paying. But it did offer to refund 50% of the payments covered by the CRM code. Ms T wasn't satisfied with HSBC's response, so referred her complaint to our service.

I sent Ms T and HSBC a provisional decision on 4 July 2022, setting out why I felt HSBC should refund some of the money Ms T had lost. An extract from my provisional decision is set out below:

"Does the CRM code apply to these payments?

I've first considered whether the CRM code applies to the payments Ms T made as a result of these scams.

The CRM code is a voluntary code HSBC has signed up to, which sets out a number of circumstances in which firms are required to reimburse customers who have been the victims of certain types of scam.

The CRM code took effect from 28 May 2019, so HSBC has said the payments Ms T made before this date aren't covered by the code and the payments made after this date are covered. But the code also only covers payments where a customer paid funds to another person for what they thought were legitimate purposes, but which were in fact fraudulent. And in this case, all the payments Ms T made were to a cryptocurrency wallet in her own name rather than to another person.

I recognise that Ms T only set up the cryptocurrency wallet under the direction of the scammers. But I think the way the CRM code is written means that it doesn't apply to any of the payments Ms T made as a result of these scams.

Did HSBC do enough to protect Ms T?

Ms T accepts she made the payments herself by transferring money from her HSBC account to the cryptocurrency account. So while I recognise she didn't intend for the money to ultimately go to scammers, she did authorise these payments. And so, under the Payment Service Regulations, the starting position is that she is liable for the payments and HSBC doesn't have to refund them.

However, 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 think 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 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.*

So I've also considered whether HSBC should have identified that Ms T was potentially at risk of fraud as a result of the payments she made, or otherwise done more to protect her.

The first payment Ms T made towards the first scam company was only for £2. So I wouldn't have expected HSBC to have identified this payment as unusual or out of character. But the second payment Ms T made was for £18,000. This was a large amount, a much larger amount than any other transactions made on the account in the previous months and used up almost the full balance of Ms T's account. So I think HSBC should have identified that Ms T was at risk of fraud as a result of this payment and asked her further questions about it.

It's not for our service to dictate the checks HSBC should do or the questions it should ask. But HSBC should take steps designed to protect its customers from the risk of financial harm. And, in these circumstances and due to the size of this payment, I think it would be reasonable to expect those checks to include questions about the purpose of the payment and how well the customer knew the company they were dealing with.

I've not seen anything to suggest that Ms T had been told to lie about the purpose of the payments. So if HSBC had asked about them, I think Ms T would have told it that the payments were for investments using cryptocurrency, that she had been contacted by the company after filling in a form online and that she was mostly communicating with the company via text message. As this kind of contact is unusual for a genuine company, I think HSBC should then have asked further questions about the company Ms T was dealing with and how the investments were supposed to work. And as the company was not regulated or authorised and the explanations they'd given Ms T about how the investments would work were unclear or illogical, I think these details would have made it apparent that Ms T was likely the victim of a scam.

HSBC is in a position of knowledge and authority in financial matters. So if it had warned Ms T at this point that she was likely the victim of a scam, I think this warning would've carried considerable weight with her. And I think she would have accepted she had been the victim of a scam and I don't think she would have made any further payments to this first scam company.

As there was a significant period of time between the last payment Ms T made to the first scam company and the first payment she made to the second scam company, I don't think it would be fair to say that the warning HSBC should have given her about the first scam company would have stopped her making any payments to the second scam company. So I also need to consider whether HSBC should have identified that Ms T was potentially at risk of fraud as a result of the payments to the second scam company.

The first payment Ms T made towards the second scam company was again for only £2. So I wouldn't have expected HSBC to have identified this payment as unusual or out of character. And as the next few payments she made towards the second scam company weren't for particularly large amounts and weren't made so close together that there was an obvious pattern connecting them, I also wouldn't have expected HSBC to identify that any of the next four payments were unusual either.

But the sixth payment Ms T made towards the second scam company was for £5,000, which I think is a large amount and significantly larger than the usual transactions on her account. At this point Ms T had also made six payments to the same account over the previous seven weeks, with the most recent three payments increasing in size significantly each time. So I think HSBC should have identified this payment of £5,000 as unusual and part of a suspicious pattern of payments. I think it should have identified that Ms T was at risk of fraud as a result of this payment and asked her further questions about it.

I think it would be reasonable to expect the questions HSBC asked to have included questions about the purpose of the payment and the company Ms T was dealing with. And, if asked, I think Ms T would have said she had been contacted by a company offering to help her get her money back from a previous scam and that they had encouraged her to carry out trades to help pay for this work.

As companies asking for payment before carrying out work is a common type of scam, I think it would then have become apparent that Ms T was likely the victim of a scam. And if HSBC had explained this to Ms T I don't think she would have made any further payments to this second scam company.

So if HSBC had taken further steps to check whether Ms T was potentially at risk of fraud, as I think it should have done, I think the scams would have become apparent and Ms T wouldn't have made the second and third payments to the first scam company or the sixth to tenth payments to the second scam company. So I think HSBC should refund those payments to Ms T.

Did Ms T's actions contribute to her loss?

While I do think HSBC failed to take sufficient steps to protect Ms T, I also need to consider her own actions and whether she should bear some responsibility for the money she lost. And having done so, I think I should make a deduction to the refund to reflect this.

I accept that these were both sophisticated scams. Both scam companies spent a significant amount of time communicating with Ms T, over the phone and via text messages, in order to build up her trust. And both scam companies gave Ms T access to fake trading platforms, where she could monitor the apparent profits she was making. I also accept Ms T isn't an experienced investor. But I still think Ms T should have had significant concerns about what she was being told.

From the copies of the communication Ms T has sent us between herself and the scam companies, it appears the returns she was told she could receive were too good to be true. She was told she could receive profits of up to ten times the amount she had invested, within a short period of time, and was told there could be no risk to her initial investment. And I think this level of returns, particularly with a guarantee that she couldn't lose her money – which isn't a feature of any legitimate investment – should have caused Ms T concern.

I also think it's reasonable to expect Ms T to have done further checks into who the companies she was dealing with were. Ms T says the first company sent her evidence it had employees and was registered. But this evidence all came from the company itself and she *doesn't seem to have done any checks of her own or confirmed any of the information she was given by the company. And she doesn't appear to have done any checks into the second company before sending money to them either.*

The explanations Ms T was given for how the trading would work also don't seem to be very clear. And Ms T has said she asked more questions as she didn't really understand, but was told they didn't have time to answer her questions – which I think should have caused her concern. The second company also asked her to pay significant amounts upfront before it would get her money back or do any work for her, which is not how legitimate businesses usually work and again I think should have caused her concern.

And the communication Ms T had with both scam companies shows she did have concerns over whether the companies were legitimate and about whether she was being scammed. But when she questioned this she doesn't seem to have been given any significant re-assurances from either business, and so I don't think it was reasonable for her to then continue and assume everything was fine.

In the circumstances, I think Ms T must bear some responsibility for her loss. And I think it would be fair to reduce the refund HSBC should make by 50%."

I said I'd consider anything further Ms T and HSBC sent in following the provisional 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.

Ms T said she'd like to accept what I set out in the provisional decision.

HSBC also said it would agree to the proposed settlement from the provisional decision, but said it had already paid a refund to Ms T so asked that the settlement amount be reduced by the amount of this refund. And as HSBC has provided evidence showing this refund of £10,627 was already paid to Ms T on 30 October 2020, I think it would be fair for the settlement set out in the provisional decision to be reduced by this amount.

As neither Ms T nor HSBC submitted any further evidence or arguments about any of the other conclusions I made in my provisional decision, I still think those conclusions are correct – and for the same reasons.

I therefore still don't think HSBC did enough to protect Ms T, and so it should refund the second and third payments she made to the first scam company and the sixth to tenth payments she made to the second scam company. And I think Ms T should bear some responsibility for the loss, so it would be fair to reduce this refund by 50%.

HSBC should then refund Ms T 50% of the second and third payments she made to the first scam company, and 50% of the sixth to tenth payments she made to the second scam company. This is a total of £19,800 but, as HSBC has already refunded £10,627, the remaining refund is £9,173. HSBC should then pay interest on that amount.

My final decision

I uphold this complaint in part, and require HSBC UK Bank Plc to:

- Refund Ms T 50% of the second and third payments she made to the first scam company, and 50% of the sixth to tenth payments she made to the second scam company, minus the refund it has already provided – for a total of £9,173

- Pay Ms T 8% simple interest on this refund, from the date the payments were made until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 19 August 2022.
Alan Millward
Ombudsman