DRN-3632565

The complaint

Ms O complains that HSBC UK Bank Plc didn't do enough to protect her from losing £15,400 to an investment scam.

What happened

In early 2019 Ms O was persuaded to invest £15,400 with a company I shall in this decision call J. The money was sent to J via Coinbase – Ms O sent two payments totalling £15,400 from her HSBC account to her Coinbase account, and it was then transferred onto J from there.

Ms O later realised she'd been scammed and reported this to HSBC. HSBC was unable to recover any of Ms O's lost money, and it didn't otherwise offer to reimburse her. Remaining unhappy, Ms O referred her complaint about HSBC to us. As our investigator couldn't resolve matters informally, the case has been passed to me for a decision.

I sent Ms O and HSBC my provisional decision on 11 July 2022. Ms O has told us she accepts my provisional decision. HSBC did not provide any further submissions in response.

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.

I've decided to uphold this complaint in part, for the same reasons as I explained in my provisional decision. I've explained my reasoning again below.

It's common ground that Ms O authorised the two scam payments in question here. She was tricked by the scammer(s) into instructing HSBC to make the payments. I accept these were 'authorised payments' even though Ms O was tricked. So although she didn't intend the payments to go to a scammer (or scammers), under the Payment Services Regulations and the terms and conditions of the account, Ms O is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory 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 its customers were at risk of fraud (amongst 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; 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.

My fellow ombudsmen and I have referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions published our website.

The first payment: £6,000 on 31 January 2019

I've thought about this carefully and I'm not persuaded HSBC should be held responsible for Ms O's loss of this first payment. I say this because there is a balance to be struck. Banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests. But they can't reasonably be involved in every transaction. And here, whilst the payment was for £6,000, Ms O had made a payment of this amount before from this account (in November 2018). And overall, looking at Ms O's prior account activity in general, I don't think I can reasonably say this payment instruction was sufficiently unusual or uncharacteristic for Ms O's account to say that HSBC ought to have been obliged to intervene before processing Ms O's payment instruction.

The second payment: £9,400 on 4 February 2019

I think this second payment instruction was unusual and uncharacteristic for Ms O's account – at £9,400 it was for an unusually sizeable amount, and it was within only five days of the previous payment. Ms O had, by now, requested two payments, totalling £15,400, from her HSBC account to the same new payee. I think HSBC ought reasonably to have recognised this as sufficiently unusual and uncharacteristic for the account such that, in order to meet its obligations summarised above, it reasonably ought to have spoken with Ms O on 4 February 2019 to check everything was in order before it processed the payment, to protect her from the possibility of financial harm.

During such a conversation with Ms O, I would reasonably expect HSBC to have asked Ms O who the payment was for, and for the basic surrounding context, and to have then proceeded appropriately from there, with the intention to disturb or unearth a potential fraud or scam. I have no reason to believe Ms O wouldn't have been open with HSBC. HSBC reasonably ought to, therefore, have quickly learned from its conversation with Ms O the basic background to the payment instruction – that Ms O's god-daughter had invested £200 with J, which was now showing a value of £18,000, and that Ms O had consequently decided to get involved – and the payment for £9,400 was to a Coinbase account from where it would be transferred onto J to fund her 'investment'.

Even though the conversation would have identified the payment was going to Ms O's own Coinbase account, the conversation shouldn't have stopped there on the basis that the money appeared to be going somewhere safe and within Ms O's control. This is because by January 2019 HSBC had or ought to have had a good enough understanding of how these scams work – including that the consumer often moves money to an account in their own name before moving it on again to the fraudster.

In a situation like this, I think HSBC ought to have been concerned. The returns Ms O thought her god-daughter was achieving ought to have been a big red flag, as ought to have been Ms O's lack of experience, and the nature of the 'investment' suggested by the apparent need to pay in cryptocurrency. So I think HSBC ought to have given Ms O a very stern warning indeed, given the likelihood that Ms O was about to be scammed. And notwithstanding what I've said below about contributory negligence, I do think Ms O would have listened and taken HSBC's warnings seriously. The payment at £9,400 would be a lot of money for Ms O to lose, which she'd funded by way of a loan. And I think Ms O would have stopped and realised what she was proposing to do was too risky. So I think if HSBC had done what it reasonably ought to have done, it's most likely Ms O wouldn't have proceeded with this payment.

Recovery

Given what I've said above, there's no need for to address recovery of the second payment, since I've already explained why I think Ms O ultimately most likely wouldn't have made this payment if HSBC had done what it reasonably ought to have done. For completeness, though, I have considered whether recovery of the first payment would most likely have been possible if things had happened as I think they ought to have done. However, Ms O didn't instruct HSBC to send the money to the scammers, but instead a Coinbase account. That's what HSBC did. Applying reasonable endeavours, I would therefore only expect HSBC to have contacted Coinbase to try to recover the money – not the scammers' beneficiary bank directly. And I note that when HSBC *did* contact Coinbase, it didn't receive a response. It also seems to be a common occurrence in scams like this that the beneficiary account is drained of the funds promptly on receipt, presumably to frustrate recovery. So I don't think I can reasonably say the first payment is likely to have been recoverable if HSBC had done what it reasonably ought to have done when Ms O made her second payment instruction – I think it's most likely HSBC wouldn't reasonably have been able to recover the first payment regardless.

Putting things right

For the reasons I've mentioned, I don't think Ms O would have lost her second payment of £9,400 if HSBC had done what it reasonably ought to have done. I've thought about whether Ms O should bear some responsibility for this loss by way of contributory negligence (which might justify a reduction in compensation). I don't think it's unfair to say Ms O really wasn't as careful with this payment as she reasonably ought to have been. I wouldn't have expected her, given her lack of experience, to have been well versed with scams like this, or necessarily to be aware how prevalent they have become in recent years. But I do think the returns Ms O seems to have suggested her god-daughter had achieved already were unrealistic. I'm also aware that Ms O took out a loan to make the second payment, in circumstances where I think Ms O reasonably ought to have realised things might be too good to be true. I'm satisfied in these circumstances that Ms O should take 50% blameworthiness for the loss of payment 2, to reflect her contribution to the loss of that payment.

It follows that I think HSBC should pay Ms O £4,700 (50% of the £9,400 payment). It should also pay Ms O interest on that amount from the date of the loss to the date of settlement calculated at 8% simple per year.

My final decision

For the reasons I've explained, I uphold this complaint in part and I direct HSBC UK Bank Plc to pay Ms O £4,700 plus interest from the date of loss to the date of settlement calculated at 8% simple per year. If HSBC deducts tax in relation to an interest element of the award, it should provide Ms O with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 1 September 2022.

Neil Bridge
Ombudsman