DRN-3660252

The complaint

Mr T is unhappy because HSBC UK Bank Plc ('HSBC') did not reimburse the money he transferred to a fraudster.

What happened

In December 2021 Mr T saw an investment opportunity on social media and contacted the individual who posted it. She said she was a freelance trader specialising in forex trading and derivatives and would trade on his behalf in return for a 20% commission. The minimum investment amount was £600 and there would be a guaranteed profit of £4,900 within an hour. Mr T was also told about a premium fee if profits exceeded £7,000.

Once Mr T had been provided with initial details, he was passed on to an investment co-ordinator who communicated with him via WhatsApp. Mr T paid £600 via online banking. Within an hour the trader told Mr T he had made £15,368 and would need to pay a premium fee of £4,000 to release it. Mr T asked if the fee could be deducted from the profit but was told it was a separate fee and this wasn't possible, so he paid the fee to the account details provided to him. The trader told Mr T the fee hadn't been received and to call his bank but to say he was making a bill payment to avoid tax implications.

Mr T paid the £4,000 fee but was then told that as a result of the delay his profits had increased, and he needed to pay a further £3,000 premium fee but it would be the last payment. Mr T made this payment via online banking but when he didn't receive any profit and the broker blocked contact with him, he realised he was the victim of a scam. He called HSBC to report the scam the day after he made the three payments.

HSBC is a signatory of the Lending Standards Board Contingent Reimbursement Model CRM Code (the CRM Code) and has considered Mr T's claim under it. HSBC said it provided clear and effective warnings in respect of the £600 and £3,000 payments. The £4,000 payment triggered a review, but HSBC sent a text to Mr T to confirm the payment was genuine but missed the opportunity to call him. HSBC only agreed to refund 50% of this payment though, as it said Mr T failed to complete any checks to satisfy himself the investment was genuine so should share the loss.

HSBC tried to recover Mr T's funds but was unable to do so.

Our investigator so far

The investigator who considered Mr T's complaint recommended that HSBC also refund Mr T 50% of the final payment of £3,000. He said this because HSBC didn't provide an effective warning in respect of this payment. Also, this payment wouldn't have been made if HSBC had called Mr T when he made the previous payment of £4,000 as the scam would have been uncovered. But the investigator felt that liability should be shared as Mr T didn't complete any checks before making the payment, the rate of return he was offered was unrealistic, he found the investment on social media and Mr T paid three individuals with no connection to the trader or the individual who posted the investment opportunity on social media.

HSBC agreed with the investigator's view, but Mr T didn't. In summary, he said:

- It was unfair of the investigator to think the average customer could easily spot the hallmarks of a scam.
- He is not an investor.
- There are a lot of similar investment profiles on social media.
- Mr T assumed the investment was legitimate because of videos posted at the time of live forex trades.
- He is the victim of a scam and the payments made didn't represent normal account activity.

As Mr T didn't agree with the investigator's findings the complaint was passed to me to consider.

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.

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In deciding what's fair and reasonable, 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 be good industry practice at the time.

I've considered whether HSBC should have reimbursed Mr T under the provisions of the CRM Code and whether it ought to have done more to protect him from the possibility of financial harm from fraud.

There's no dispute here that Mr T was tricked into making the payments. But this isn't enough for Mr T to receive a refund of the money under the CRM Code. The Code places a level of care on Mr T too.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

• The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning

• The customer made payments without having a reasonable basis for believing that: the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate

*There are further exceptions outlined in the CRM Code that do not apply to this case.

Taking into account all of the circumstances of this case, including the characteristics of Mr T and the complexity of the scam, I think the concerns HSBC has raised about the legitimacy of the transactions Mr T made are enough to support its position that he failed to meet his requisite level of care under the CRM Code for the payments he made. I don't think he had a reasonable basis for believing the payments were for genuine services or that the person he transacted with was legitimate and will explain why. I should also say that it's the combination of these factors that lead me to believe Mr T didn't have a reasonable basis for belief and that none of them can be considered alone.

- Mr T contacted someone from a social media site after seeing the investment opportunity. Social media is not an investment platform.

- All contact with Mr T was via Whatsapp which is not what I'd expect of a legitimate trader.
- Mr T was only provided with what the scammer/s referred to as terms and conditions, which were very short and only covered the premium fee. This ought reasonably to have been a red flag to Mr T that something wasn't right.
- The investment Mr T was offered did not sound genuine and the rate of return he was offered and the timescale to receive it were too good to be true. Mr T invested £600 and was told he'd receive a profit of £4,900 within an hour. This is a rate of return of over 800% which Mr T was told was guaranteed. All investment involves an element of risk and forex trading is particularly risky, so what Mr T was offered was implausible even to a novice investor.
- Mr T says he thinks the scammer named a company they worked for but there is no reference to this in the messages he has shared. Genuine traders work for companies that need to be regulated.
- Mr T didn't complete any research in respect of the person who offered the investment and didn't check any reviews. The coordinator provided an FCA number which I'm uncertain if Mr T checked. In any event, the number is for an individual who is registered with the FCA but there is nothing to say that the person messaging Mr T was this registered person.
- Mr T paid three different individual payees, none of whom were the original social media influencer or the coordinator he was referred to. This is not what I'd expect if Mr T was investing through a genuine company and I don't consider the explanation he was given by the scammer was particularly persuasive. I think Mr T ought reasonably to have had concerns he was paying individuals rather than a company too.
- Mr T wasn't given a plausible reason for the need to pay fees to release his funds and the amount of the premium fee wasn't clearly set out initially. Genuine traders have to disclose fees and commission.
- The warnings Mr T was given by HSBC in the payment journeys should have led him to take additional steps before transferring funds.

I appreciate Mr T wasn't an experienced investor and found videos on social media of live forex trades to be persuasive. But overall, I don't consider Mr T did enough to satisfy himself he was making a genuine investment and so HSBC is entitled to rely on an exception to reimbursement under the CRM Code.

Did HSBC meet its obligations under the CRM code?

Even though I don't think Mr T had a reasonable basis for belief when he made the transfers, he may still be entitled to a refund of 50% of the money he lost if HSBC didn't meet its obligations under the CRM Code. The CRM Code says that where firms identify authorised push payment scam risks in a payment journey, they should take reasonable steps to provide effective warnings (as set out in the CRM Code) to their customers. The Code also says that the assessment of whether a firm has met a standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the scam.

I don't believe HSBC should have identified an APP scam risk when Mr T made the first payment of £600 as it wasn't a particularly unusual payment. But I think HSBC should have provided effective scam warnings when Mr T made the £4,000 and £3,000 payments. I've considered the warning HSBC provided to Mr T when he made these payments but am not persuaded it was effective. The warning contains a lot of useful information such as the fact that fraudsters can offer what appears to be a genuine investment opportunity with high returns and that a customer must independently research who they are sending money to. The warning also advises customers to check the FCA website to see if a company is genuine and authorised.

But HSBC's warning doesn't bring to life social media investment scams like this one and explain common features of them. Overall I think the warning lacks impact and isn't effective. So I believe that under the CRM Code HSBC should refund half of the £4,000 and £3,000 payments, plus interest.

Should HSBC have done more to try to prevent the scam and protect Mr T?

I'm also mindful that when Mr T 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 are at risk of fraud. So I've also considered whether the payments Mr T made were unusual or suspicious.

I've already said I don't consider the first payment of £600 to be unusual or out of character given normal payment and account activity. HSBC says it triggered the £4,000 payment for a review but sent a text message rather than calling Mr T to discuss it. So HSBC recognised a risk but didn't go far enough and for this reason HSBC refunded 50% of this payment. I consider it acted reasonably in doing so. If HSBC had spoken to Mr T about the reason for the payment and asked some basic details about it, I'm satisfied the scam would have been uncovered given the implausibility of what the scammers told him.

If the £4,000 payment had been prevented the final payment wouldn't have made, so I think HSBC should also refund half of this payment. I am not recommending a full refund for largely the same reasons as I have set out above in respect of Mr T's reasonable basis for belief.

The significance of my conclusion that HSBC could have prevented the second and third payments from being made is that interest should be paid from the date of each payment to the date of settlement.

Did HSBC do enough to recover Mr T's funds?

I've also considered HSBC's actions once it was made aware of the scam. I'm satisfied HSBC contacted the banks that received Mr T's funds on the day the scam was reported and so don't think it could have done any more.

Overall, I'm persuaded that HSBC should have done more in respect of the payments of £4,000 and £3,000 but Mr T should receive half of these payments because he didn't complete relevant checks before making them. HSBC has already refunded half of the £4,000 payment so it only needs to refund half of the final payment now.

My final decision

I require HSBC UK Bank PLC to:

- Refund a further £1,500;
- Pay interest on the above amount at the originating savings account rate from the date of payment to the date of settlement (less any tax that is lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 October 2022.

Jay Hadfield
Ombudsman