DRN-3750937

The complaint

Mrs V complains that ICICI Bank UK Plc did not do enough to protect her from the financial harm caused by an investment scam company, or to help her recover the money once she'd reported the scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mrs V was the victim of an investment scam. She came across an advert for cryptocurrency while she was looking for investment opportunities on the internet. She was contacted by somebody claiming to work for a company I'll refer to as "C". The broker said he would help her to make a significant return on her investment and was very persuasive on the phone. They had a professional-looking website and advised her to download "Anydesk", which would give remote access to her trading account. Mrs V was also told to open an account with a cryptocurrency exchange company who I'll refer to as "B".

The broker asked her to first purchase cryptocurrency through B and then load the cryptocurrency onto an online wallet in her name. She was shown fake screens on Anydesk which showed increasing profits, and was able to make a £100 withdrawal, which persuaded her that C was legitimate.

Between 24 February 2021 and 7 May 2021, Mrs V made thirteen online transfers to B totalling £139,050 from the account she held with ICICI. She asked to make a withdrawal when she needed money to fund her house sale and was told she'd first have to 'register' the funds to withdraw and then pay a withdrawal fee of £26,000.

Mrs V realised she'd been the victim of a scam when she was unable to withdraw her money, so she complained to ICICI. But it said it couldn't to obtain a refund and B had refused to assist with the recovery of any of the payments.

With the help of a representative, Mrs V complained to ICICI, arguing a lack of action and due diligence had resulted in her loss. But ICICI said it had contacted Mrs V on 21 April 2021, and, during the call, she confirmed she'd made the transactions and emailed evidence of communications she'd received from B to confirm it was genuine. It said if Mrs V had raised any concerns during the call, it would have taken steps to prevent further transactions.

ICICI said adequate warnings had been given about how to identify fraud and that when registering a beneficiary, a fraud alert makes customers aware that fraudsters may pose as legitimate organisations or companies. It also said a warning email was sent in November 2020, explaining how to spot red flags associated with investment scams.

Mrs V wasn't satisfied and so she complained to this service. She said she rarely makes large payments from her account and ICICI failed to protect her by allowing the payments to go ahead in quick succession. She explained she's scared because she has no savings and is relying on her salary. She's afraid to use online banking and has lost confidence in handling financial matters. She's also said she was vulnerable at the time the scam took place because she had recently suffered a bereavement.

Our investigator thought the complaint should be upheld. She felt ICICI should have contacted Mrs V on 1 March 2021 when she paid £10,000 to B, as this was an unusually high amount. She noted ICICI knew B was a cryptocurrency exchange and she was satisfied that, if it had asked appropriate questions, it's likely Mrs V would have told her about C's involvement. Based on this information ICICI would have given scam warnings and it's likely she would've discovered the warning about C (which was issued on 15 December 2020) from The Financial Conduct Authority ("FCA"), and decided not to make any further payments.

ICICI has asked for the complaint to be reviewed by an ombudsman. It's said it only learned of C's involvement when Mrs V complained as she didn't mention it during the April call. It's argued it was under no obligation to question Mrs V as to whether she had any intention to make any onward transactions and that B was regulated and authorised by the FCA. It's also said it's not fair or reasonable to hold it liable for Mrs V's losses in circumstances where its only involvement was to carry out her instructions.

ICICI also argued that the FCA had published a notice in December 2020 that C was providing financial services in the UK without its authorisation and that Mrs V would have spotted the notice if she had carried out any internet searches before investing. Finally, it had said Mrs V should complain to B and that it should reasonably have been aware of the information about C on the FCA's website.

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.

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. Having done so, I've reached the same conclusion as our investigator. And for largely the same reasons.

Should ICICI refund any money?

I'm satisfied all the payments were 'authorised' by Mrs V This is because they were made using the legitimate security credentials provided to her ICICI.

Mrs V believes she's entitled to a refund because, even though she authorised the payments, she was the victim of a scam and ICICI should have either done more to stop that happening or to help get the money back.

I am persuaded that at the relevant time C was operating a scam. This is because it wasn't registered with the Financial Conduct Authority ("FCA"), yet it was providing financial services in the UK, so it's likely they were operating a scam. However, where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse the them even though they authorised the payment.

From the evidence I've seen, the money went to a company in respect of which there were no warnings with either the FCA or IOSCO (a warning was added to the register in May 2022 but this post-dated the disputed transactions). Therefore the extent of what we would expect ICICI to have done to protect Mrs V is restricted to 'triggers', meaning I need to consider whether the transactions were so unusual or suspicious that ICICI ought to have intervened to warn Mrs V when she tried to make the payments. ICICI, along with other payment services providers, should be monitoring accounts and be on the lookout for unusual transactions or other signs of fraud.

The payments didn't trigger fraud warnings on ICICI's systems. I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mrs V normally ran her account and I agree with our investigator that the payment of £10,000 on 1 March 2021 should have triggered ICICI's fraud systems because it was for a large amount and this was very unusual for the normal spending on her account.

During this call I would expect it to have asked some probing questions in response to which I think it's likely Mrs V would have explained how she'd come into contact with C, the fact she'd been allowed to withdraw a small amount of money from the trading platform and that she'd been advised to transfer the cryptocurrency from B to an online wallet. I would then expect ICICI to have warned Mrs V about the risks associated with the investment and explained that allowing small withdrawals can be a tactic used by fraudsters to build confidence. I'd also expect it to discuss with her the nature of the checks she'd undertaken and to give some advice on additional due diligence.

If this had happened, I think it's likely Mrs V would have acted on advice to check up on C, and that a simple internet search would have shown there was a warning about C on the FCA website.

I haven't seen any evidence that Mrs V was keen to take risks. She didn't have a history of high-risk investing and I think that if she'd had any inkling this might be a scam, it's likely she would have chosen not to go ahead with the payments. Because of this, I think that ICICI missed an opportunity to intervene in circumstances when to do so might have prevented her loss. Consequently, I'm minded to direct ICICI to refund the money she lost from 1 March 2021 onwards.

Contributory Negligence

I've considered whether the settlement should be reduced for contributory negligence, but I don't think it does. Mrs V has explained that the scammer was very persuasive on the phone and sounded knowledgeable and competent. They also had a professional-looking website and she genuinely believed this was a real investment opportunity.

Having considered the circumstances of this scam, I'm satisfied it was sophisticated and I don't think it was unreasonable for Mrs V to have thought it was genuine. She's said she did some basic online research, and this had left her feeling confident about the investment. As did the emails and calls she received. I've seen no evidence that Mrs V was an experienced investor and so I wouldn't expect her to have known how to search for warnings on the FCA website without having been advised to do so by ICICI. Consequently, I don't think she contributed to her own loss in failing to do so.

My final decision

My final decision is that ICICI Bank UK Plc should:

- refund £137,050.
- pay 8% simple interest*, per year, from the respective dates of loss to the date of settlement.

*If ICICI Bank UK Plc deducts tax in relation to the interest element of this award it should provide Mrs V with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr V to accept or reject my decision before 17 April 2023.

Carolyn Bonnell
Ombudsman