DRN-3767584

The complaint

Mrs N complains that HSBC UK Bank Plc have unfairly refused to refund over £51,000 she lost as part of an investment scam.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything

again here. In summary, Mrs N was approached by a scam investment broker after clicking on an advert on a well-known newspaper's website. This broker, who I will call B, convinced her to invest her money under the pretence of increasing her monthly income through crypto currency trading. Mrs N made the following payments.

Transaction number	Date	Merchant	Amount	Running Total
1	26 October 2020	RaveByflutterwave	£250	£250
2	29 October 2020	www.Bitcoin	£5,100	£5,350
3	09 November 2020	Binance	£2,000	£7,350
4	09 November 2020	www.Bitcoin	£8,000	£15,350
5	09 November 2020	www.Bitcoin	£5,000	£20,350
6	25 November 2020	Binance	£20,000	£40,350
7	26 November 2020	Binance	£11,000	£51,350

HSBC initially identified the first payment made on 9 November 2020 as suspicious (although it hasn't been able to explain why) which resulted in it sending a text message to Mrs N asking her to confirm the payment was genuine, which she did.

After the remaining transactions, Mrs N says she was told that if she increased the amount she had invested further, she would get an increased daily gain. As this number changed from what she was told midway through the scam, she investigated B further and discovered that it was potentially a scam. She attempted to withdraw her funds from her account but was unable to do so.

Our investigator upheld the complaint. She thought that HSBC should have done more when transaction 4 was attempted. This is because it was the second payment on the same day to a crypto exchange and was out of character for Mrs N's account. The investigator thought that the scam would have likely been prevented if HSBC had contacted Mrs N at the point of transaction 4 and asked probing questions about the nature of the payment. HSBC disagreed, and argued that even if the money should be paid back to Mrs N, there should be a deduction from any refund of 50%, because it feels that Mrs N contributed to her own loss. So the matter has been escalated to me to determine.

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 conclusions reached by the investigator let me explain why.

It isn't in dispute that Mrs N authorised the disputed payments she made to the various crypto-exchange platforms. It is my understanding that once she purchased crypto, the funds were subsequently transferred to another separate crypto wallet, of which I understand the scammers had access to. And it was from that crypto wallet that the scammers extracted the money (in the form of a crypto currency) from. So the payments were requested by Mrs N - to purchase crypto - using her legitimate security credentials provided by HSBC.

The starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed. However, I've considered whether HSBC should have done more to prevent Mrs N from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

In relation to the first three payments, I think overall that they were not so out of character that HSBC should have intervened. Though it is arguable that it maybe should have queried payment 2, because of the amount of money that was being transferred out of the account. But given that Mrs N had made a large transfer a few months before, I think it is somewhat understandable why HSBC did not intervene on that occasion.

I do think however, that transaction 4 should really have prompted intervention from HSBC. I say this because it was the second transaction in a day; was for a larger amount; was to an international payee; and there were several indications that she was being scammed, which HSBC ought reasonably to have been aware of.

Had HSBC contacted Mrs N about this transaction to check the funds were not being transferred as part of a scam, I think it's likely that a scam warning would have prevented Mrs N from transferring any more money to her crypto wallet.

If HSBC had contacted Mrs N and asked her further questions and for more of the basic surrounding context, I think it's likely she would have explained what she was doing and that she was making an investment after being approached by broker, where she was being told to send money to the broker via crypto-exchange platforms. She would have likely told them that the broker was making "trades" on her behalf, which is also another hallmark of this type of investment scam HSBC should have recognised these circumstances of being indicative of a scam and have acted to provide Mrs N with a warning.

Overall, I'm satisfied that a warning to Mrs N from her trusted bank would have probably led her to discover various scam warnings online. I appreciate there were no FCA warnings about the merchant on 9 November 2020, but one was added the following day. And I can see there were other websites warning people about investing with B around this time as well.

Even if Mrs N had not worked out that the broker she was talking to was fraudulent, it is likely that a warning would have at least alerted her to the common issues arising in relation to cryptocurrency scams, which in turn would have revealed the truth behind the supposed broker's representations. This would have probably stopped Mrs N in her tracks. So, but for HSBC's failure to act on clear triggers of potential fraud or financial harm, Mrs N probably wouldn't have continued to make the payments on her credit card.

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000). In this case, I do not think that Mrs N was to blame for what happened; that she did not foresee the risk of this sort of harm or any harm. She has explained that she believed that the company she was dealing with was legitimate and that it would not have been able to advertise on a well known newspapers website if it was not a legitimate company. HSBC has said that due to Mrs N's job she should have known better about possibilities of scams and that the return she was being offered was too good to be true.

I have carefully considered this but Mrs N has explained that whilst she works in the investment part of the financial services industry, her role is more administrative, rather than her being a broker or financial advisor. So I don't think she necessarily would have more knowledge than normal about what would or would not constitute as a scam.

Overall, I do not think Mrs N could have foreseen the risk that she was dealing with a scammer and the trading account she was viewing was likely to be a simulation. And as HSBC has pointed out, there were no regulatory warnings in place about the brokers at the time Mrs N started making the payments. So, in the circumstances, I do not think it would be fair to reduce compensation on the basis that Mrs N should share blame for what happened.

I've also thought about whether HSBC could have done more to recover the funds after Mrs N reported the fraud, as in some circumstances the money can be recovered via the bank raising a chargeback dispute. This is also relevant to the first three payments where I've concluded an intervention was not required.

However, in these circumstances, Mrs N used her debit card (for the first five transactions) to pay legitimate crypto exchanges, before the funds were subsequently transferred on to the scammer. So, she wouldn't be able to make a successful chargeback claim for these card payments in these circumstances, because the companies she paid had provided the services as intended. It was B that scammed Mrs N but she did not pay them directly and HSBC could only have processed chargeback claims against the parties that received the payments. Therefore, I do not think HSBC were under any obligation to raise a chargeback for Ms N either.

Putting things right

For the reasons given above, I uphold this complaint in part and direct HSBC Bank UK PLC to:

(1) Refund Mrs N payments 4,5,6 and 7
(2) Deduct any refunds that she received
(3) Pay 8% simple interest per year on these payments from the date she paid them to the date of settlement less appropriate tax.

My final decision

My final decision is I uphold this complaint in part and direct HSBC Bank UK PLC to pay the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 27 February 2023.

Charlie Newton
Ombudsman