DRN-3830068

The complaint

Mr B complains about HSBC UK Bank Plc.

He says that HSBC didn't do enough to protect him when he became the victim of a scam and would like HSBC to refund him the money he has lost as a result.

What happened

Mr B was contacted by an individual online who said they were able to help him trade cryptocurrency through a company and earn a profit. Mr B was persuaded to download software onto his computer for the individual to trade on his behalf.

Initially, Mr B was persuaded to part with a small sum of money and was told he was making a profit. Mr B was then persuaded to invest further sums. However, when Mr B told the individual he wanted to withdraw his supposed profits, he was told that he had to pay more money in order to make a withdrawal. Mr B then realised that he was being scammed.

He complained to HSBC, but it did not uphold his complaint.

Unhappy, he brought his complaint to this Service. Our Investigator looked into things and thought that Mr B's complaint should be upheld in part.

Mr B accepted the view – but I believe he thinks that our Investigator has upheld the complaint from payment two. But this is not correct. The complaint was upheld from payment four.

HSBC did not accept this. So, the complaint has been passed to me to make a final 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.

Having done so, I've decided to partially uphold Mr B's complaint, for broadly the same reasons as our Investigator. I'll explain why.

Was Mr B the victim of a scam?

I don't think that it is in dispute here that Mr B was the victim of a scam. He was contacted by someone offering investment and told to download software onto his computer – and then when it came to making a withdrawal was told that he had to pay more money in order to do so. These are not the actions of a reputable company.

Mr B made the following payments as part of the scam.

Date	Payee	Payment type	Amount
1 April 2021	B	Debit card	£2,000
8 April 2021	B	Debit card	£2,500
8 April 2021	B	Debit card	£2,500
8 April 2021	B	Debit card	£2,300
12 April 2021	B	Debit card	£4,800
14 April 2021	B	Debit card	£5,000
14 April 2021	B	Debit Card	£2,200
14 April 2021	B	Debit card	£250
26 April 2021	B	Debit card	£2,180.61
29 April 2021	B	Debit card	£507
7 May 2021	B	Debit card	£2,170
26 May 2021	B	Debit card	£100
26 May 2021	B	Debit card	£4,900
		Total	£31,407.61

Mr B has confirmed that a payment of £5,000 which was made on 7 May 2021 was returned to him by HSBC.

Did Mr B authorise the payments?

In line with the Payment Services Regulations 2017 (PSRs), Mr B isn't liable for payments he didn't authorise, unless he failed with gross negligence or intent to comply with the terms of the account or keep his personalised security details safe.

I don't think it's in dispute that Mr B authorised the payments in question here as he has told HSBC that he made the payments.

I understand Mr B had been tricked into instructing HSBC to make the payments – but while Mr B never intended the payments to go to the scammers, this doesn't change the fact he authorised them and is therefore presumed liable for the loss in the first instance.

Recovery of Mr B's payments

After Mr B made the payments, I wouldn't expect HSBC to do anything further until it was notified of the scam.

The only recourse for potential recovery of the funds for the payments made by debit card would be via the chargeback scheme. Chargeback is a process by which disputes are resolved between card issuers (here, HSBC) and the merchant (here, B).

However, a chargeback in these circumstances would unlikely have been successful. This is because B is a legitimate crypto exchange and provided the services that Mr B had requested of it – the purchase of crypto and subsequently moving that crypto onto a wallet of Mr B's choosing. What happened after that crypto was successfully moved is therefore a separate matter – and so a successful chargeback would likely never have been possible – and so I don't think that these payments were recoverable once they had been made.

Should HSBC have reasonably prevented the payments in the first place?

I can only uphold this complaint if I think that HSBC reasonably ought to have prevented some or all the payments Mr B made in the first place – therefore preventing the loss before it happened.

Mr B authorised the scam payments in question here – so as I've explained above, he is presumed liable for the loss in the first instance.

That said, as a matter of good industry practice, HSBC should have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, 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.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider HSBC should fairly and reasonably:

- Been monitoring accounts – including payments made and 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.

This leads me to consider the payments that Mr B made – and if HSBC should have intervened.

The first three payments

Although the first three payments Mr B made were larger than his usual spend, individually I do not think that they were sufficiently unusual to have triggered HSBC into taking any further action before processing Mr B's request to make the payments. While I understand that the payments were going to a crypto exchange, not all such payments are as a result of a scam, and as I've explained above there is a balance to be struck and businesses aren't able to intervene in every such transaction.

The fourth payment

By the time the fourth payment had been made, Mr B had made three large payments to a crypto exchange in a matter of minutes – and I think that HSBC should have intervened. This was a significant change in the way Mr B usually operated his account and a large sum of money had now left Mr B's account in a short space of time.

These payments should've stuck out to HSBC as being uncommon, especially given that by January 2019, HSBC should already have had a good understanding about how scams like the one Mr B fell victim to work.

With this in mind, HSBC should reasonably have contacted Mr B to establish whether the transaction posed any possibility of placing him in financial harm before processing it. But it did not do so. If HSBC had done so, I would've expected it to have questioned Mr B about the payment – including what he was trying to make the payments for and surrounding context and to proceed accordingly. The intention being to disrupt or uncover a potential fraud or scam. But it did not do so.

I've seen nothing to suggest that Mr B was coached or told to lie about the payments he was making, so I think that had HSBC contacted him to discuss the payments he would have told it what had happened and what he was doing.

Once HSBC has established what was going on, I think it should have known that Mr B was very likely being scammed – and given him a meaningful warning to this effect. And I don't think that Mr B would have ignored such a warning and continued to make the payments.

So, I think that HSBC could have prevented the loss from this point.

Should Mr B bear some responsibility for the loss?

While I do consider that HSBC should have prevented the payments from the fourth payment, I do also need to consider if Mr B should bear some responsibility for the loss by way of contributory negligence.

However, I don't think that this would be appropriate in this instance. Mr B was not a sophisticated investor and didn't have much knowledge about investing or crypto. He was also not used to using technology at the time. HSBC was the expert here – and had more knowledge on the intricacies of these types of scams.

I understand that HSBC has concerns about previous claims Mr B has made. It thinks that Mr B should have applied more caution to the payments he was making and being wary of unsolicited calls. It says that when it chose to refund Mr B for unrecognised transactions, it provided a letter directing customers to HSBC's security centre where more information is provided about fraud and scams. But this isn't the same as providing a meaningful warning to Mr B - and Mr B told HSBC that these other payments had been made without his knowledge, whereas these payments Mr B says he authorised. So, I don't think this makes a difference here.

Putting things right

HSBC should refund Mr B the payments made from payment four onwards.

I calculate this to be £24,407.61.
On top of this, HSBC should also pay Mr B 8% simple interest, from the date the payments were made, until payment is made to Mr B.

My final decision

I uphold this complaint in part, HSBC UK Bank Plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 August 2023.

Claire Pugh
Ombudsman