DRN-3865418

## The complaint

Mr A complains HSBC UK Bank Plc trading as first direct ('HSBC') didn't do enough to protect him when he fell victim to an investment scam and lost money.

## 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.

Mr A says he saw what purported to be an online article from a well-known news outlet regarding crypto investment opportunities. Mr A explained that he had wanted to invest in crypto for some time but hadn't known how to go about it. He followed a link attached to the article and completed an enquiry form for a company (I'll refer to as B). Mr A said he had looked for online reviews of the company and had reviewed the website. He said he was reassured that the website appeared to carry features he expected from a legitimate company – for example an "About us" section as well as a "Complaints" and "Support" Section. Mr A said he was particularly reassured because the website stated the company was regulated by the FCA.

Having reassured himself the company was genuine, Mr A provided a copy of his photo ID and proof of address as part of an application process. He was later provided with welcome documents and paid a £250 deposit to start investing. Mr A was later contacted by an individual presenting himself as an account manager with B who persuaded Mr A to download software, which allowed them access to his computer.

Between 14 and 17 September 2021, Mr A made two payments, totalling £8,000, to a crypto exchange platform. Mr A said he was given access to a trading platform and could see how his trades were performing. He said some trades weren't successful, but overall, they were producing a profit.

Mr A said he was finding it difficult to keep up with trading and wanted to withdraw his funds from his trading account. He says he was told he needed more money in his trading account to make a withdrawal. When he told the account manager he could not afford to make any further payments, Mr A said he was advised to take out a £11,000 loan to cover the funds which could then be repaid once his money was released. Scared that he would lose all his money, Mr A says he applied for a loan from a regulated loan provider and then transferred the money on to the crypto exchange.

Mr A says he saw funds leave the crypto exchange account. The scammers then asked him for more money, he says it was at this stage he realised he had been scammed and that B was not a legitimate company.

Mr A contacted HSBC and told it he'd been the victim of a scam. HSBC advised that it could not recover the money and would not be refunding Mr A as he'd authorised the transactions.

In March 2022 Mr A instructed solicitors (who I'll refer to as C) who complained to HSBC that it had failed to protect Mr A from the risk of financial harm due to fraud. C said HSBC should have identified that Mr A's transactions were unusual and out of character for his account. It said it also failed to provide him with effective warnings that could have prevented the scam from taking place.

HSBC considered the complaint but didn't uphold it. It explained that as Mr A had transferred money from his account to another account in his name (what it referred to as a "me to me" transfer) it wasn't covered under the Contingent Reimbursement Model (CRM) and so it wouldn't look to refund the money lost. It also noted that Mr A may also have recourse with the loan provider.

Mr A complained to the Financial Ombudsman Service. He said HSBC hadn't done enough to protect him. He said he wasn't aware that the scam had typical scam hallmarks – for example the use of software to access his computer. He said HSBC should have recognised the payments were out of character for his usual account usage, particularly the last transaction where he received a £11,000 loan payment and immediately transferred it to another account. He argued that it had therefore failed in its duty of care to him.

Our Investigator partially upheld the complaint. She thought Mr A's receipt of the £11,000 loan payment immediately followed by a transfer of the same amount to another account was unusual and uncharacteristic for his usual account usage. Our Investigator concluded this transaction should have triggered on HSBC's systems and prompted some intervention before the transaction was processed. She said HSBC's automated, generic warnings were not sufficient in the circumstances.

Our Investigator concluded that had HSBC taken the steps it ought to have, it's likely Mr A would have become aware of the scam and wouldn't have gone ahead with the transaction. She recommended HSBC put Mr A back in the position he'd have financially been in had he not transferred £11,000 from his account.

Mr A accepted our Investigator's opinion and recommendation. HSBC disagreed. In summary it said:

- The payments Mr A made went to an account in his own name and under his control, so the scam took place from that account, not the one held with HSBC. HSBC should therefore not be held responsible for his loss.
- The loan company that provided Mr A with the £11,000 loan should accept some responsibility.
- Mr A was, at least in part, responsible for his loss, as he failed to carry out due diligence before investing and failed to follow the advice in the warning that was presented to him before he completed the payment.

Our Investigator considered HSBC's points but remained of the view that the complaint should be upheld.

As no agreement could be reached, the complaint was passed to me. On 23 November 2022 I issued a provisional decision where I said:

*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 intend on partially upholding this complaint and for largely the same reasons as our Investigator.*

*I'm sorry to hear Mr A was the victim of a sophisticated and targeted scam and has lost a considerable sum of money as a result. I understand this has had a significant impact on* *his life and finances. In the circumstances, I can appreciate why he wants to do all he can to recover the money he lost. But I can only direct HSBC to refund Mr A's losses if it can fairly and reasonably be held responsible for them.*

*It is accepted that Mr A authorised the scam payments totalling £19,000 from his HSBC account. So, although he didn't intend the money to go to the scammers, under the Payment Services Regulations 2017 and the terms and conditions of his account, Mr A is presumed liable for his loss in the first instance. And under the terms and conditions of the account, where a valid payment instruction has been received HSBC's obligation is to follow the instructions that he provides.*

*However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for a bank to take additional steps or make additional checks before processing a payment in order to help protect its customers from the possibility of financial harm from fraud. This service has referenced the relevant rules, codes of practice and good industry practice in many previous decisions published on our website.*

*While HSBC's first obligation is to follow Mr A's payment instructions, if an instruction is sufficiently unusual or uncharacteristic for the account, I'd reasonably expect it to intervene and ask more about the reasons for making the payment before processing it. I'd also expect it to provide suitable warnings about common scams to help its customers make an informed decision whether to continue with the payment. There might also be cases where it would be appropriate for a bank to refuse to follow a payment instruction if there were good grounds to believe it was being made because of a fraud or scam.*

*I should note that this duty applies whether the loss occurred from HSBC's account, or at some later point in the payment journey. So, while I understand that HSBC has suggested it is not responsible for Mr A's loss as the funds were transferred to an account in his own name, this does not absolve HSBC of its responsibility to intervene if it had grounds to believe its customer was at risk of financial harm from fraud. Mr A's losses, though not arising from the initial transfer, ought to have been within the contemplation of, and reasonably foreseeable to, HSBC. So, I'm satisfied it can be held responsible for the loss Mr A suffered.*

*Did HSBC do enough to identify the risk of financial harm from fraud?*

*Neither party seems to have disputed our Investigator's conclusions that Mr A's transaction on 21 September 2021 was uncharacteristic for his usual account usage, and HSBC should therefore have intervened at that point. For clarity, I agree.*

*While the initial scam transactions (those made between 14 and 17 September 2021) were not completely in keeping with Mr A's day-to-day account use, he had made at least one similar sized transaction in the preceding 12 months. So, I can't reasonably conclude that the first two payments were sufficiently unusual or uncharacteristic where it would be fair to say that HSBC ought to have intervened. But I agree with our Investigator that Mr A's instruction to pay £11,000 on 21 September 2021, should reasonably have stood out to HSBC as it was an unusually high value payment that was not in keeping with the usual account usage. I think the fact that the payment went to a crypto exchange, having just been received from a loan provider, should also have stood out as potentially suspicious. As such, I consider that HSBC should have contacted Mr A and satisfied itself that he was not at risk of financial harm from fraud before it processed his payment instruction.*

*Would appropriate intervention have affected Mr A's loss?*

*While HSBC has provided evidence to show that Mr A was presented with automated fraud warnings before making his initial payment on 14 September 2021, there has been no suggestion that it intervened in anyway before he made the payment on 21 September 2021. I've therefore considered what I consider appropriate intervention would have looked like and whether it's likely this would have made a difference to Mr A's decision to make the payment or not.*

*Had Mr A's payment instruction on 21 September 2021 flagged up as being unusual and uncharacteristic with HSBC – as I think it reasonably ought to have done – I'd have expected HSBC to have contacted Mr A to ask him about his intended payment before the payment instruction was processed. At that point, questions should have been asked about the nature and purpose of the payment Mr A was proposing to make.*

*There's been no suggestion that Mr A was given a cover story by the scammers, so I think it's reasonable to assume he'd have answered honestly and explained he was seeking to make a transfer as part of an investment. Given the prevalence of investment scams, particularly those involving crypto, I think it would have been prudent for HSBC to have asked Mr A meaningful, probing questions about the transaction and his intended investment.*

*For example, I think it should reasonably have asked Mr A how he was introduced to the investment, what he was investing in and what checks he'd already carried out to confirm its authenticity.*

*I think Mr A would have most likely explained he:*

- *had been enticed by an article he'd found online;*
- *had been advised to purchase crypto from a legitimate crypto exchange before transferring it to the wallet details provided to credit his trading platform;*
- *had been unable to withdraw his funds; and*
- *was told to draw down a loan to invest further sums to release existing funds.*

*I also think reasonable and proportionate questioning would likely have uncovered that Mr A had downloaded software that allowed his "broker" access to his computer.*

*All of this should have been clear indicators of the real possibility that Mr A was likely falling victim to an investment scam.*

*I think had HSBC provided Mr A with clear scam warnings and encouraged him to carry out more thorough checks such as checking the regulator's website he would have done so, and he'd have discovered that B didn't have the authorisation its website suggested it had. While this alone wouldn't have confirmed that it was a scam, I think had Mr A been made aware his proposed investment bore the hallmarks of a scam and that his money would be at risk if he completed the payment, I think it's most likely he would have decided the risk was too high to accept – so he wouldn't have proceeded, and his future losses would have been prevented.*

*I appreciate that HSBC has pointed to the fact that Mr A failed to follow the advice or warning that was presented in its automated pop up when making the first transaction, and so it could be argued he wouldn't have followed the advice had HSBC intervened. But I think an interaction with his bank would have been far more effective than a pop-up box that he may not have fully engaged with – and for the reasons above had HSBC spoken to Mr A before processing the payment I think he wouldn't have proceeded with the payment. And even if I were wrong, I think the information he would've shared when questioned could have been enough on its own to prompt HSBC to refuse the payment* *instruction, which would have prevented Mr A's loss.*

*Should Mr A bear some responsibility for his loss?*

*I have thought carefully about whether Mr A should bear some responsibility for his loss by way of contributory negligence (which might justify a reduction in compensation). And overall, I don't think he should.*

*HSBC considers Mr A failed to carry out due diligence before investing. It argues that as Mr A works within the finance sector, he should have understood investments. It said that given Mr A took confidence from the fact B's website made multiple references to the FCA, he should have checked the register himself. It also considers his online research should have uncovered negative reviews that highlighted B was likely a scam.*

*I've carefully considered HSBC's position, but I don't think Mr A's actions, or inactions, fell far below the standard expected of a reasonable person. While Mr A works in the financial industry there's nothing to suggest he had any specific knowledge or skill in relation to investments, nor should he be expected to have any greater understanding of scams or their associated risks. As such, I don't think I can reasonably hold him partially responsible for his loss.*

*Unfortunately, Mr A fell victim to a highly sophisticated and well-orchestrated scam. As with many scams of this type, B employed an array of tactics to persuade prospective investors that the company was legitimate. Overall, I think a reasonable person could similarly have been persuaded to invest in what, on the face of it, appeared to be a good investment opportunity.*

*Ultimately, HSBC was best placed to warn Mr A of the risks associated with his proposed payment, but it failed to do so.*

*What should HSBC do to resolve the complaint?*

*Overall, I think HSBC should have intervened before processing Mr A's payment of £11,000. Had it done so, I think it's more likely than not Mr A would have decided not to go ahead with the payment and his losses from that point could have been prevented.*

*Mr A has provided evidence to show that, having initially kept up with repayments, he decided to repay the £11,000 loan early with funds taken from his mortgage. I'm satisfied the available evidence supports that Mr A took out the £11,000 loan purely to finance his investment. Had HSBC intervened - as I think it should have - I think it's more likely than not Mr A would have repaid the loan immediately (or within the cancellation period) and in doing so would have avoided all interest and charges connected to the loan. Given that Mr A has attempted to mitigate his losses by repaying his loan early and avoiding higher interest rates associated with the loan, I think it would be reasonable for HSBC to cover all interest and charges Mr A has incurred as a direct consequence of repaying this loan.*

*To put things right I am currently minded to tell HSBC to refund the payment of £11,000, plus any interest or charges Mr A has incurred directly as a result of HSBC failing to intervene before processing the payment. This does not include any wider costs Mr A incurred such as arranging the mortgage. These are costs Mr A was always going to incur so are not included in this redress. It's only the interest and charges associated with the loan.*

Mr A accepted my provisional decision. HSBC asked for evidence of the interest and charges Mr A incurred when repaying the loan. Having received this, it confirmed that it did not disagree with the recommended redress.

## 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, and as neither party has provided any further evidence or raised any further points for my consideration, I see no reason to reach a different conclusion.

So, this final decision confirms the findings set out in my provisional decision.

## Putting things right

HSBC should now refund the payment of £11,000, plus any interest or charges Mr A has incurred directly as a result of HSBC failing to intervene before processing the payment.

## My final decision

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

- Refund £11,000 plus
- All interest and charges Mr A has incurred directly in relation to repaying the £11,000 loan from the date HSBC ought to have intervened to date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 January 2023.

Lisa De Noronha
**Ombudsman**