DRN-3873948

Financial Ombudsman Service

The complaint

Mrs A complains that HSBC UK Bank Plc won't refund money she lost to a scam.

What happened

Mrs A fell victim to an investment scam. She believed that a third party was helping her to successfully trade cryptocurrency. Under instructions from the fraudster and allowing them control of her computer through remote access software, she made payments from her HSBC current account to a genuine cryptocurrency provider (that I'll call C) and used that money to purchase cryptocurrency. Mrs A says the fraudster then sent her cryptocurrency from C to wallets that they controlled. Mrs A made ten bank transfers to C and one card payment.

Mrs A could access a trading platform which appeared to show the success of her investment. As time went on, she was persuaded to invest increasingly large sums. She took out a loan with a third party to fund some of the final payments.

When she asked to withdraw money from the platform, she was met with delays. Eventually she realised she'd been scammed and reported the matter to HSBC. It said that it wasn't responsible for her loss.

Mrs A referred the matter to our service and one of our Investigator's upheld the complaint in part. They thought that HSBC should have found the eighth bank transfer Mrs A made to C to be suspicious, as it was significantly higher than the payments that had gone before. They thought that had HSBC questioned that payment, it would have come to light that Mrs A was falling victim to a scam and the loss would have been prevented. But they thought that Mrs A should have done more due diligence before investing and should have found the fraudster's claim that she could make £250,000, in a relatively short space of time, to be too good to be true. So, they recommended that HSBC refund 50% of the final three payments – totalling £10,000, as well as pay 8% simple interest on that amount.

Mrs A accepted our Investigator's recommendation. HSBC did not. In summary, it argued:

- At the point of the suggested intervention, Mrs A had made seven previous payments, over a number of months, to C. It was reasonable for it to treat the payee as a known and trusted recipient at that point.
- Mrs A had received impactful and prominent warnings about investment scams both a few days before, and while making, the first payment to C.
  Had Mrs A followed the advice in that warning she would have seen that the Financial Conduct Authority has issued warnings about the dangers of investing in cryptocurrency and she would have been unable to establish that the fraudulent investment company was authorised to offer financial services.
- Given that those warnings were ignored, it's reasonable to think that she would have ignored any other warning that the bank would have given.
- The returns were too good to be true.

- Mrs A was also taken in by persuasive scammers and was likely to have trusted them over advice given by the bank.

As no agreement could be reached, the case was passed to me for 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.

The starting point under the relevant regulations is that Mrs A is responsible for payments she's authorised herself. But taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time these payments were made, I think HSBC ought, fairly and reasonably, to have been on the lookout for out of character and unusual transactions and other indications that its customer might be at risk of financial harm from fraud.

I've thought carefully about the transactions in dispute here. I can see that they did take place over a number of months – beginning in July 2021 and ending in November 2021. I understand HSBC's argument that, by October 2021 (when the eighth bank transfer took place) C was already an established payee. But I'd expect HSBC to be aware that investment scams often take place over several months. The eighth bank transfer was the second payment to take place in two weeks and represented a significant increase in value from the previous payment. I think a concerning pattern had emerged by this point – Mrs A's payments to C had increased significantly and the £5,000 payment was much higher in value than any other genuine payment that took place prior to the first payment in dispute. So, fairly and reasonably, I think HSBC should have intervened and discussed this payment with Mrs A prior to it debiting her account.

Had it done so, I think it's more likely than not that the scam would have come to light and the loss would have been prevented.

I don't think the fact Mrs A made the first payment in dispute despite being presented with a written warning demonstrates that she would have ignored a tailored, verbal warning. The warning she saw while making the first payment doesn't specifically describe any of the features of cryptocurrency scams. While it may have directed Mrs A to the Financial Conduct Authority ("FCA") website to check the company is 'genuine and authorised', I'm not sure Mrs A would have necessarily understood the significance of this. But even if she had checked the FCA website she would have only seen that the fraudulent investment company didn't appear to be authorised. Given the unregulated nature of cryptocurrency, it would have been very easy for a fraudster to explain this away.

In contrast, a conversation about the eighth bank transfer would have likely brought to light some features of the scam which ought to have been deeply concerning to HSBC - the existence of a third-party broker, the use of software to take control of Mrs A's computer, the involvement of a trading platform and the unrealistic returns. Those are all hallmarks of this type of scam and I'd expect HSBC to have been well aware of them. I don't know whether Mrs A would have revealed some or all of this information to HSBC, but I haven't seen compelling evidence to suggest she wouldn't have done. I've examined her, fairly extensive, written conversations with the fraudsters (though I haven't been able to hear the telephone conversations she had) and I've seen nothing to suggest that she was asked to, or agreed to, lie to the bank and disguise the true purpose of the payments.

That means, I think that, on balance, had HSBC intervened on the eighth bank transfer, it's more likely than not that the scam would have come to light and the loss from that point on would have been prevented.

I've also thought about Mrs A's role in what happened. I don't wish to hold her to too high a standard, but I think she ought to have acted more cautiously by the eighth bank transfer. Not only had she carried out little due diligence into the investment company and seemed to believe she could have achieved very high returns, but it also appears that prior to the eighth bank transfer she'd asked to withdraw money but had been unable to. I think this should have caused her significant concern.

Finally I've considered HSBC's attempts to recover Mrs A's money but, as the funds were sent to a cryptocurrency account held in Mrs A's name, recovery would not have been possible.

Overall, I'm sorry that Mrs A has been the victim of a cruel scam. I think HSBC should have prevented some of Mrs A's loss (from and including the eighth bank transfer), but that Mrs A should share liability for those payments. So, HSBC should pay Mrs A £10,000 as well as 8% simple interest on that amount from the date of each payment to the date of settlement.

My final decision

I uphold in part this complaint about HSBC UK Bank Plc and instruct it to pay Mrs A:

- 50% of bank transfers eight, nine and ten – totalling £10,000.
- 8% simple interest per annum on that amount from the date of each payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 26 October 2023.

Rich Drury
Ombudsman