

The complaint

Mr and Mrs S complain that HSBC UK Bank Plc didn't do enough to protect them from the financial harm caused by an investment scam company, or to help them recover the money once they'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.

Mr and Mrs S were victims of an investment scam. Mr S had wanted to invest some money for retirement and came across a company who I'll refer to as "G" while researching online. G had been at the top of the search results and was mentioned in an article Mr S had read.

Before speaking to one of G's brokers, Mr S checked the website and was impressed it had a live-trading graph showing the prices of different 'coins' increasing and decreasing, a live-chat function and a customer service section. Mr S had also seen positive reviews on Trustpilot, and the broker explained that any negative reviews were left by competitors. All this made G appear genuine.

The broker told Mr S he could achieve a steady stream of income by investing in cryptocurrency. He was told to download 'Anydesk' so he could be shown how the trading would work. The broker asked him to first purchase cryptocurrency through a cryptocurrency exchange company and then load the cryptocurrency onto an online wallet. On 21 June 2021, Mr S paid £359.87 to a company I'll refer to as "C" using a debit card connected to his HSBC current account. The broker called daily and Mr S could see profits on his trading account. On 12 July 2021, he was given a refund of £73.71.

The broker told Mr S that he'd need to invest more money and so on 26 October 2021, he paid a further £2,515.69 from his HSBC credit card (this payment is the subject of a separate complaint). Then, on 28 October 2021, he paid £793.80 to a cryptocurrency exchange company and a further £9,993 to a different cryptocurrency exchange, having been advised to do so when the first exchange asked for additional verification.

On 2 November 2021 Mr S paid a further £9,993, believing he was going to receive his profits, but he was told there had been a tax issue and he would need to pay £4,985 to avoid allegations of money laundering. He realised he'd been the victim of a scam when he didn't receive any money and he couldn't get in touch with the broker. He reported the scam to HSBC, but it said it was unable to support the claim as he'd authorised the transactions and the payments had gone to an account in his own name.

When Mr and Mrs S complained to HSBC it said it was unable to provide a refund because Mr S had control of the beneficiary account. It explained its fraud detection system was based on current fraud trends and not all payments would flag for further checks. It said it expected its customers to carry out their own due diligence before making this type of payment and provided advice on how Mr and Mrs S could protect themselves against fraud in the future.

Mr and Mrs S weren't satisfied and so referred their complaint about HSBC to this service. They explained that over the course of five months, Mr S had invested £26,050.95 (including the £2,519.69 credit card payment). They said HSBC didn't contact them at all throughout the scam period and had allowed transactions to go through without warning them about the risks. They explained Mr S isn't an experienced investor and was unable to tell the difference between a real trading platform and a scam platform. The scammer had used high pressure sales tactics and Mr S had believed he was dealing with a reputable firm and had a profit credited back to his account.

Our investigator felt the complaint should be upheld. He noted there was a warning about C on the International Organization of Securities Commission's ("IOSCO") website published on 22 March 2022, which was more than a month before Mr S made the first payment. He explained that, given the timing of the alert relative to the first payment, HSBC ought to have identified C from its watchlist and automatically blocked the payment. He explained HSBC should have contacted Mr and Mrs S to warn them that they were making a payment to a business about which there were warnings, and that he thought it was likely they would've reconsidered their decision to make that and all the subsequent payments.

As he was satisfied HSBC could've prevented Mr and Mrs S's loss, he recommended it should refund all five payments (not including the payment from their HSBC credit card, which as I've said is the subject of a separate case here), less the £73.72 that had been refunded, and pay 8% simple interest on the settlement from the date of the payments to the date of settlement.

HSBC has asked for the complaint to be reviewed by an Ombudsman. It has argued that there was no basis to conclude Mr and Mrs S would have decided not to go ahead with the later payments because Mr S had found the broker to be persuasive and convincing and there were no warnings about G at the time, so Mr S would likely have been persuaded that the warning had nothing to do with G and was no cause for concern. In support of this argument it pointed to the fact the broker had advised Mr S to use a different cryptocurrency exchange when the first one asked for additional verification.

HSBC has argued there was no obligation, regulatory guidance or industry practice requiring it to block payments to merchants which were the subject of an IOSCO warning and that, notwithstanding the approach this service has subsequently adopted, this was not the approach taken at the time of the payment. It has also argued that its not clear whether the IOSCO warning actually related to C as the name featured on Mr and Mrs S's statement wasn't an exact match for any of the names featured in the IOSCO warning.

HSBC has questioned whether the first payment was related to the later payments and whether the payments to the cryptocurrency exchange companies were actually lost to scammers.

It has said Mr and Mrs S contributed to their own loss, arguing that they'd gone ahead in the face of negative reviews, assurances of returns that were too good to be true and implausible reasons for the final three payments. Finally, it has said that 8% interest should only apply to £1,153.67 of the payments.

Our investigator accepted HSBC should apply the account interest to £24,971 of the redress which was funded from their savings account, and that 8% interest should only be applied to £1,153.67 which came from the joint account.

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 reached the same conclusion as our investigator. And for largely the same reasons.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr and Mrs S say they've fallen victim to, in all but a limited number of circumstances. The CRM code didn't apply to any of the payments Mr S made to cryptocurrency exchange companies because the accounts were in his own name.

I'm satisfied Mr S 'authorised' the payments for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of the bank account, Mr and Mrs S are presumed liable for the loss in the first instance.

I've carefully considered the circumstances, and I am persuaded the broker was operating as part of a scam. This is because there is a warning about G on the Financial Conduct Authority ("FCA") register dated 14 July 2021 and Mr S was directed by G to pay C, about which there was an IOSCO warning, something I wouldn't expect from a genuine investment company. But, although Mr S didn't intend the money to go to scammers, he did authorise the disputed payments. HSBC is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I've thought about whether HSBC should have done more to prevent the scam from occurring altogether. HSBC had an obligation to be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Mr S when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect HSBC to intervene with a view to protecting Mr S from financial harm due to fraud.

The first payment didn't flag as suspicious on HSBC's systems but even though it wasn't for a large amount, it was to a company in respect of which there had been an IOSCO warning in place for more than a month, so HSBC should have identified that and blocked the payment. Regulated firms ought reasonably to take notice of common types of scams. As long ago as June 2012, the FCA's predecessor indicated – in its consultation paper entitled *Banks' Defences Against Investment Fraud: detecting perpetrators and protecting victims* – that it was good industry practice for firms to build up an updated watchlist of types of scams and potential perpetrators; and regularly to share "*timely and detailed intelligence*" with other banks, UK and overseas regulators, the police, etc. Whilst the regulator gave no specific timings, it's not unreasonable to expect HSBC to update its watchlist and communicate internally to staff within, say, one month of an alert being posted by the FCA or IOSCO. In my judgment, such alerts should automatically trigger alarm-bells and lead to the payment being paused pending further enquiries (and a possible scam warning) to the payer.

HSBC has argued that it's not clear whether the IOSCO warning actually related to C, as the name featured on Mr and Mrs S's statement wasn't an exact match for any of the names featured in the IOSCO warning. I accept the company name is shown differently on the

statement, but I think it's clear the extra element is part of the web address and not the company name, and I think HSBC's systems should reasonably have detected this and searched for both the name as shown on the statement and the name without part of the web address.

It has also questioned whether all the payments were part of the same scam. The first payment took place on 21 June 2021 and yet the second payment (from Mr S's credit card account) wasn't until 26 October 2021 and they were to different merchants, so it's reasonable for HSBC to question whether they were both linked to the same scam.

Mr S has produced a message he received from G which confirmed he had money on his trading account in July 2021. The message doesn't specify how much Mr S had invested at that point, but I'm satisfied its evidence of Mr S having already paid money to G and, on balance, I think it was probably the payment he made to C in June 2021. There is a further email from G dated in October 2021 in which Mr S mentions a refund of £750 and refers to himself as £3313.49 'out of pocket'. As this is the sum of the second and third payments (£2519.69 and £793.80) it seems likely the refund Mr S believed he was entitled to was related to a previous investment, which, I'm satisfied, was probably the payment he made to C in June 2021. So, I'm satisfied the payment of £359.87 that Mr S paid to C on 21 June 2021 was related to G. And as I've seen emails between Mr S and G discussing the later payments, I'm satisfied all the payments were part of the same scam.

Critically, because of the IOSCO warning, I'm persuaded HSBC should have contacted Mr S to tell him he was making a payment to a company in respect of which there was an IOSCO warning. I would also expect it to ask some probing questions in response to which I think it's likely Mr S would have told it about the involvement of a third-party and that it was the third-party who advised him to pay C. I would then expect HSBC to have warned Mr S about the risks associated with this type of investment and discussed with him the nature of the checks he'd undertaken.

I think that, on balance, a call from HSBC would probably have made a difference to Mr S's decision to go ahead with that payment and the subsequent payments. This is because, even though there were no warnings about G at the time he made the first payment and Mr S clearly trusted the broker, I haven't seen any evidence he would have been prepared to go ahead in the face of clear advice from HSBC that the fact this was a high risk investment and G had advised him to pay a company in respect of which there was an IOSCO warning meant it could be operating a scam, and I think he most likely would have changed his mind about the investment and decided the risk of proceeding was too high to accept.

Because of this, I think that HSBC missed an opportunity to intervene in circumstances when to do so might have prevented Mr and Mrs S's loss.

I've considered whether the settlement should be reduced for contributory negligence, but I don't think it should. Mr S has explained that the scammer was very professional, and G had a professional-looking website and so he believed this was a genuine investment opportunity. Having considered the circumstances of this scam, I'm satisfied it was sophisticated and I don't think it was unreasonable for Mr S to have thought it was genuine.

He did some basic online research, and this had left him feeling confident about the investment. Consequently, whilst there may be cases where a reduction for contributory negligence is appropriate, I don't think this is one of them.

Overall, I'm satisfied HSBC missed an opportunity to intervene to prevent Mr and Mrs S's loss and so it should refund the money they lost, with interest.

My final decision

My final decision is that HSBC should:

- refund £26,124.67.
- pay 8% simple interest*, per year, on £1,153.67 and account interest on £24,971 from the respective dates of loss to the date of settlement.

*If HSBC deducts tax in relation to the interest element of this award it should provide Mr and Mrs S with the appropriate tax deduction certificate.

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

Carolyn Bonnell
Ombudsman