DRN-4112072

The complaint

Mr K complains that HSBC UK Bank Plc (HSBC) is refusing to refund him the amount he lost as the result of a scam.

Mr K is being represented by a third party. To keep things simple, I will refer to Mr K throughout my decision.

What happened

In late 2016 Mr K was cold called by someone he claims to be a scammer (X). X asked Mr K if he would like to invest. After Mr K told X he had no investment experience X told Mr K he would be investing in UFX, VX Markets and 23 Traders. Convinced by X Mr K decided to start investing.

Mr K made more payments as directed by X over the following two years but when he decided he wanted to withdraw his profits Mr K was told he would have to make further payments first

Mr K tried to contact X but did not receive a response. At this stage he felt he had fallen victim to a scam.

Our Investigator considered Mr K's complaint and thought it should be upheld in part. He said that while there was not enough evidence that UFX or VX markets were operating a scam, after the first payment Mr K made to 23 Traders was made a warning appeared on the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO") and HSBC should have intervened in payments made to 23 Traders from this point.

Our Investigator therefore thought HSBC should refund Mr K all the payments he made to 23 Traders after the first payment.

Mr K agreed, but HSBC did not provide a response. So, this complaint has been passed to me to decide.

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.

Not every complaint referred to us as an investment scam is in fact a scam. Some cases simply involve high-risk investments that resulted in very disappointing returns or losses. Some investment companies may have promoted products – which were not regulated by the FCA—using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

Banks and other Payment Services Providers ("PSPs") have duties to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering (see below). But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice.

UFX is a legitimate business, who are regulated by CySec, and passported via the FCA, at the time of the transactions. I don't have enough evidence to suggest UFX were operating a scam at the time Mr K was making payments to it. So, I can't ask HSBC to refund the payments Mr K sent to it.

Should HSBC have prevented the payments Mr K made?

Mr K has accepted he authorised the payments he made to VX Markets and 23 Traders, so the starting point here is that Mr K is responsible. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether HSBC should have stepped in when Mr K was attempting to make the payments, and if it had, would it have been able to prevent the scam taking place.

The payments Mr K made to VX Markets were all individually of a relatively low value and spread over several months to what appeared to be a legitimate business. So, I wouldn't have expected any of these payments to have triggered HSBC's fraud prevention systems prompting it to step in and question Mr K about them. So, I don't think HSBC missed an opportunity to prevent the payments Mr K made to VX Markets and it's therefore not responsible for refunding them.

The payments Mr K made to 23 Traders were also not individually significant in value and were spread across several months. However, on 23 January 2017, a warning about 23 Traders was placed on the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"). The Danish Financial Supervisory Authority reported that they were offering financial services in its jurisdiction without authorisation. This is not something you would expect a legitimate business to do and should cause any bank concerns.

I would expect HSBC to update its internal watchlist within 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.

Therefore, the payments that Mr K made to 23 Traders more than a month after the warning was published should have been stopped and question by HSBC. I think it's most likely that if HSBC had questioned the payments Mr K was making to 23 Traders it's likely it would have uncovered the scam and prevented them being made in the first place. HSBC is therefore responsible for the payments Mr K made to 23 Traders more than one month after the warning was placed on the IOSCO Investor Alert Portal.

Did Mr K contribute to his loss?

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 the circumstances I don't think it would be fair to say Mr K contributed to the loss. I say this because Mr K was lulled into a false sense of security by a business that went to great lengths to appear to be legitimate.

The warning on the IOSCO Investor Alert Portal would also not have been so easily available to Mr K as it was to HSBC that has previous knowledge of the portal.

Putting things right

HSBC UK Bank Plc should refund all the payments Mr K made to 23 Traders from the payment of £250 on 6 March 2017 (a total of £2,750).

HSBC UK Bank Plc should add 8% simple interest per year to the amount it pays Mr K from the time Mr K made the payments to the time HSBC UK Bank Plc provides the refund (less any lawfully deductible tax).

My final decision

I uphold this complaint and require HSBC UK Bank Plc to put things right by doing what I've said above.

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

Terry Woodham
Ombudsman