DRN-4175052

The complaint

Mr D complains that HSBC UK Bank Plc didn't do enough to protect him from losing money to an investment scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything here. In brief summary, in June 2022, Mr D made four debit card payments from his HSBC account for what he thought was a legitimate investment. The four payments made, in order, were for £3,000, £6,498.76, £9,987.83, and £995.65. They totalled £20,482.24.

Mr D later got in touch with HSBC to report he'd been scammed. HSBC didn't reimburse Mr D his lost funds. Mr D was unhappy and referred his complaint about HSBC to us, the Financial Ombudsman Service. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a 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 uphold the complaint in part. I've reached the same outcome as our Investigator for materially the same reasons. I'll explain why.

HSBC has obligations to be alert to fraud and scams and to act in its customer's best interests. These are predicated on there having been a fraud or scam. It's not disputed in this case that Mr D was scammed.

Prevention

I accept that these were authorised transactions even though Mr D was tricked. So although he didn't intend the payments to ultimately go to scammers, Mr D is presumed liable for the loss in the first instance. However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider HSBC should fairly and reasonably:

- Have been monitoring accounts – and any payments made or 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.

My fellow ombudsmen and I have referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions published on our website.

Bearing this in mind, I need to decide whether HSBC acted fairly and reasonably in its dealings with Mr D when it processed the relevant payments.

In this case, prior to the payments in question that were successfully made, Mr D instructed HSBC to make a push payment of £4,600 to Coinbase, which flagged on HSBC's systems for fraud checks. HSBC paused this £4,600 payment, pending enquiries with Mr D. And after speaking with Mr D on the phone, HSBC wasn't sufficiently reassured, and so it didn't allow the payment through. It's with this context in mind that the subsequent payments that *were* successfully made as a result of the scam should be viewed.

I've thought carefully and I don't think it's unreasonable HSBC didn't then intervene in Mr D's first payment made as a result of the scam (the £3,000). As our Investigator said, this was a smaller payment than the one Mr D previously tried to make. HSBC, on its call with Mr D about the previous payment instruction, *had* spoken to him about fraud and scam risks, in a general sense at least. And whilst it would, of course, have been preferable for HSBC to intervene again at this stage, I'm not persuaded I can say it ought reasonably to have been *obliged* to. I must bear in mind the number of payments made by customers each day and the balance HSBC needs to strike between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments; and also HSBC's previous call with Mr D.

Having reviewed Mr D's account activity in the prior six months, I am satisfied, however, that HSBC should have intervened in Mr D's *next* payment instruction (for £6,478.76). This was for a larger and unusual and uncharacteristic amount. It was destined for another new payee – and crypto *again*, instructed only shortly after the previous payment instructions referred to above. Given HSBC had sufficient concerns *not* to allow Mr D's first attempted payment (of £4,600) through a few days earlier, I think HSBC ought to have been alert and that this payment ought to have raised its further concern. HSBC has said that loan funds had just been received into the account and it's common for a large amount of money to leave an account after receiving a loan. But I don't think this is a good argument because in my experience this is also reasonably common in scam cases, so it's not a reliable indicator someone isn't being scammed.

So I think HSBC ought to have paused this payment instruction for £6,478.76, pending enquiries with Mr D to check he wasn't at risk of financial harm from a fraud or a scam. As part of appropriate intervention, I'd reasonably expect HSBC to have asked Mr D who the payment was for, what it was for, and for the basic surrounding context, and to have then proceeded appropriately from there, with the intention to disturb or unearth a potential fraud or scam.

Mr D had only just taken a loan of £13,000 from HSBC. HSBC has said it can't reasonably supervise whether a loan is used by a customer for the purposes they specified it was for. But I don't think this is a good argument here either. As part of its systems being triggered by the £6,478.76 payment instruction, and to enable it to appropriately question Mr D, it's not unreasonable to expect HSBC to have had a least a cursory look at Mr D's recent account history and noticed the loan funds.

In my opinion, HSBC's *best* argument is, instead, if it had intervened appropriately Mr D wouldn't have told the truth, and ultimately it wouldn't have been able to prevent him going ahead anyway. I understand where it's coming from here – having listened to the prior intervention (on 10 June 2022), Mr D wasn't upfront with HSBC about the reasons for that previous payment instruction. *However*, HSBC ultimately didn't allow that previous payment through, such was its level of concern. And I can't really see what ought to have been materially different here, on this £6,478.76 payment, if Mr D hadn't engaged with HSBC's intervention nor otherwise have reassured it he wasn't being scammed. And actually, given the general context including the loan as the parties are aware of and as explained by our Investigator, I think a more forceful intervention was warranted this time. I don't think Mr D sounded confident or comfortable in the previous call. I think HSBC ought to have had enough concern by now and been able to probe and question Mr D sufficiently at this point such that he opened up about things. At which point, given the manner in which Mr D had been introduced to the 'investment' opportunity, I'd expect HSBC to have 'broken the spell', such that Mr D would've appreciated the risk of proceeding with the 'investment' was too high to accept (and I note that when Mr D did later have concerns, a friend of his was able to unearth things).

So I think if HSBC had done what I'd reasonably expect it to have done, given its obligations, it's more likely than not that Mr D ultimately wouldn't have proceeded with the £6,478.76 payment, nor the subsequent payments of £9,987.83 and £995.65.

The loss of these three payments, which I think HSBC ought to have been able to prevent, amounts to £17,482.24. I've thought about whether Mr D should bear some responsibility for this loss by way of contributory negligence (which might justify a reduction in compensation). I don't think it's unfair to say Mr D really wasn't as careful with these payments as he reasonably ought to have been. I wouldn't have expected him to be well versed with scams like this, or necessarily to be aware how prevalent they have become in recent years. But I do think he ought to have been much more cautious during and after his first call with HSBC, when it spoke to him about fraud and scams and wouldn't allow the initial £4,600 payment through. I'm satisfied in circumstances like this there should be a 50% reduction to the compensation payable to reflect Mr D's contribution to the loss of these payments. I appreciate HSBC has argued for a greater reduction than this. And I've thought about this carefully. Ultimately, though, HSBC ought to have been on high alert, given its initial intervention with Mr D, by the time of his £6,478.76 payment request. And whilst Mr D reasonably ought to have been much more careful, HSBC also, in my opinion, made significant mistakes in its failure to prevent the payments, so I'm satisfied it's fair for the parties to share responsibility for the loss of the last three payments equally.

<u>Recovery</u>

For the sake of completeness, I've considered whether HSBC unreasonably hindered recovery of the payments after they were made. However, because they were debit card payments, the only potential avenue for recovery of the payments would have been via the chargeback scheme. Mr D made the payments from his HSBC debit card to crypto accounts held in his own name (from where he transferred the money onto the scammers). This means the merchants here, for chargeback purposes, would be crypto exchanges Mr D paid (and not the scammers). It's my understanding that the crypto exchanges legitimately provided the services intended (which was the exchanging of fiat currency into crypto). The subsequent transfer of the cryptocurrency onto the scammers would not give rise to a valid chargeback claim through HSBC. So I don't think these payments were recoverable through HSBC once they had been made.

Putting things right

For the reasons I've explained, I'm satisfied HSBC should pay Mr D 50% of £17,482.24, which is £8,741.12.

To compensate Mr D for having been deprived of this money, our Investigator also recommended that HSBC pay Mr D interest on this amount calculated at 8% simple per year, which I note neither party contested. And I'm satisfied this is fair. So HSBC should also pay Mr D interest on the £8,741.12 calculated at 8% simple per year from the date of loss to the date of settlement.

My final decision

For the reasons I've explained, I uphold this complaint in part and I direct HSBC UK Bank Plc to pay Mr D:

- £8,741.12; plus
- interest on this amount calculated at 8% simple per year from the date of the loss to the date of settlement. If HSBC deducts tax from this interest, it should provide Mr D with a tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 August 2023.

Neil Bridge
Ombudsman