

Complaint

Mr R is unhappy that HSBC UK Bank Plc didn't do more to help him when he was the victim of a scam. He has brought this complaint with the assistance of a representative, but for simplicity's sake I've referred to Mr R throughout.

Background

Between late 2019 and mid-2020, Mr R fell victim to an investment scam. He used his HSBC account to make multiple transfers in connection with the scam and lost a total of over £300,000. It all began in 2016 when he invested in a genuine company incorporated in Australia. It's not entirely clear whether he bought shares in that company – there's a reference in the file to an arrangement called a "profit share" and the terms of it aren't clear. In any event, he invested in that company in one way or another.

In April 2018, he received a letter from someone who offered to redeem the funds he'd paid towards this investment, subject to an early redemption fee being charged. Mr R said he didn't respond to this letter because he was suspicious about the company.

In October 2019, he received a letter from a company that claimed to have been appointed as the liquidators of the intermediary that had arranged his original investment. He looked up this company, found that it had itself been dissolved. He wrote back to the sender of this letter to inform them of this and decline any further contact.

In November 2019, he was contacted by a different company that said it had been appointed as the liquidator of the intermediary. He was asked to sign a non-disclosure agreement. From what he has told us, it appears that the intermediary had indeed gone into liquidation, but the company that claimed it had been appointed as liquidator wasn't legitimate. Mr R had instead been approached by fraudsters. Shortly afterwards, he was contacted by a representative of a Chinese bank who said they were interested in purchasing his shares in the Australian company. Mr R was happy to proceed with the sale at the price that was offered.

There then followed a chain of events in which Mr R transferred sums at the request of the fraudster with each payment justified by a new and fictitious explanation:

- He was told he needed to purchase an insurance policy related to the sale of the shares. He was satisfied with the explanations given to him by the representative of the Chinese bank and so he agreed to sign a policy document and pay £9,000.
- He was then told by the representative of the bank that the proceeds of the sale of his shares would need to be paid into an overseas account. The scammers told him that one had been opened for him with a bank in Austria. However, he needed to pay a deposit of £20,000 into that account as part of the account opening process.
- He was told that, to lawfully execute the sale of the shares, Mr R would need to be licensed as a share trader. He was told that a licence could be purchased for £10,000 which he duly transferred.

- In January 2020, he was contacted by a representative of an established commercial law firm in London. He was told this firm had a role in overseeing the liquidation of the intermediary. They told Mr R that there was a risk that the proceeds of the sale of his shares could be swallowed up by the liquidation process and paid to the intermediary's creditors, rather than to him. The law firm, however, claimed it had a way of getting around that problem. It had created an offshore account for Mr R with a well-known bank. He was told that, to be eligible for that specific offshore account, he would need to deposit £100,000. He was reassured that those funds would be returned to him once he received the proceeds of the share sale. Mr R was happy with this explanation and so he visited a branch of HSBC and authorised the payment.
- He then received a letter from someone who purported to be an employee of that bank. It said that the specific account that had been opened for Mr R required a deposit of £250,000. Mr R agreed to make up the difference so that he was compliant with what he believed were the requirements of the account. As before, he was assured that all these funds would be returned to him later.
- In March 2020, he was contacted to say that there was a problem with paying him the proceeds of the sale. The transfer had been obstructed by the tax authorities in Hong Kong. They wouldn't allow the funds to be transferred until Mr R paid a fee of 25% of the value of the transfer. He was told that this too would be refunded to him.
- Shortly afterwards, he was told that he needed to pay a "late filing fee" of £10,000 - this was the final barrier to him having his funds returned to him. He was then contacted again and told that he'd paid the £10,000 to the wrong account – this meant that the "late filing fee" had increased to £31,250. Mr R was unhappy with that. He wrote to the head office of the bank that he believed he had an offshore account with to complain. It responded to him to explain that it had not provided him with any of these services and that it was likely he'd fallen victim to a scam.

Mr R made several further payments after the events described above. It's unclear whether these payments were related to this scam. He says they weren't and doesn't expect HSBC to reimburse him. He does, however, think HSBC ought to reimburse him for the payments he made up until that point. He raised his complaint with HSBC, but it didn't agree.

It said that Mr R had authorised the payments and it had a legal duty to act on his instructions. Mr R was unhappy with that response and so he referred his complaint to this service. It was looked at by an Investigator who upheld it. The Investigator noted that HSBC should've been on the lookout for transactions that appeared to have a higher risk of being fraudulent. On spotting such a transaction, it was required to intervene to protect its customer from the risk of financial harm. The Investigator concluded that by the time Mr R made his fourth payment – an international payment for £20,000 – HSBC ought to have been concerned that he was at risk.

It shouldn't have processed this payment (or the subsequent ones) until it had a conversation with Mr R and asked him questions to satisfy itself that he wasn't at risk of

fraud. If it had done so, the Investigator concluded, Mr R would've been prevented from making the subsequent payments to the scammer. The Investigator also thought that Mr R had acted reasonably and couldn't fairly be considered responsible for his own losses.

HSBC disagreed with the Investigator's opinion. It said that it considered the scam to have been inherently implausible. It pointed out that the total amount Mr R transferred was twelve times the value of the shares he was selling. Overall, it argued that a reasonable person

wouldn't have believed the reasons Mr R was given for needing to make the payments.

It wasn't persuaded, even if it had identified the scam risk, that it could've prevented Mr R from going ahead with the payments. Nonetheless, it agreed to pay him compensation to the value of £150,000. Mr R didn't accept the offer. In particular, he told the Investigator that he didn't think HSBC had done enough to assist with the recovery of the money he lost to the scam.

Since HSBC disagreed with the Investigator's recommendation, the complaint was passed to me to consider.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I issued my provisional findings on this complaint on 12 May 2023. I wrote that:

It is common ground that Ms R authorised these payments, so although he did not intend the money to go to the scammers, under the relevant regulations, and the terms and conditions of her account, he is presumed liable for the loss in the first instance.

However, taking into account the law, regulators 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 that its customers were at risk of fraud (among 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.*
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make 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.*
- For branch transactions like this, those steps may include following the Banking Protocol where appropriate.*

I agree that HSBC ought to have intervened at some point during the lifetime of this scam. The payments were plainly out of character and bore all the hallmarks of a high-value investment scam. In response to the complaint, HSBC has agreed that it ought to have intervened when Mr R authorised the payment of £100,000 in branch. I would agree with that conclusion – by that point, its concerns about the risk of financial harm posed to Mr R should have crystallised.

The payment shouldn't have been processed until a conversation had taken place between Mr R and an employee of the bank so that HSBC could satisfy itself that he hadn't been targeted by a fraudster. I think it's likely Mr R would've been candid with

an employee of the bank about the reasons for the payment and I think it was sufficiently unusual that it would've been recognised as a potential scam.

HSBC could've recommended several steps that might have helped Mr R to protect himself – for example, he believed an account had been created for him with a third-party bank. A telephone call to that bank would've revealed that that was not the case. Once that information came to light, it would've been quite clear that this was a scam. If HSBC had handled that intervention appropriately, I think it's likely it would've prevented the subsequent losses too. My starting point therefore is that HSBC ought to refund the money Mr R lost from the £100,000 payment onwards.

However, I've also thought about whether Mr R can be considered partially responsible for his own losses here. In doing so, I've taken into consideration what the law says about contributory negligence, but also borne in mind that I must decide this case based on what I consider to be fair and reasonable in all the circumstances. Having done so, I'm satisfied that it's fair and reasonable for Mr R to be considered partially responsible here.

From the version of events he's shared with us, Mr R had already rebuffed two attempted scams that essentially used the same methodology. One of these was a month before this scam commenced. It's not clear to me why Mr R, having been sceptical of the approach he received in October 2019, was willing to accept so many of the claims made by the scammers so soon afterwards.

It's not entirely clear to me why the liquidation of the broker that had arranged Mr R's purchase of the shares had any relevance. Once he owned those shares, he was presumably free to sell them to any other buyer at his discretion. When the scammers told him that the proceeds of his sale might be lost as part of the liquidation of the broker, I'm surprised he didn't question why there was any connection between the two things.

I'm surprised that Mr R didn't find it unusual that a large commercial law firm which claimed to be acting on behalf of the liquidators would take steps to help him protect his assets from the intermediary's creditors. This would essentially mean that the solicitor would be acting against the interests of their client. Mr R ought to have found this strange and acted with far greater caution.

Finally, Mr R signed an insurance contact that apparently related to the sale of his investment, but its relevance is not at all clear. The document was entitled "Fully Comprehensive Pecuniary Insurance Policy Agreement" and wouldn't be straightforward for the layperson to interpret. The scammers look to have attempted to repurpose some language from a deed used for the sale of shares. The language used is arcane and impenetrable. There is nothing in the document that relates to any risk that was being insured. While I wouldn't have necessarily expected Mr R to have recognised that this document was essentially meaningless, I'm surprised that he didn't seek independent advice when asked to transfer £9,000 and sign a document that he couldn't have understood.

There were other things that ought to have concerned him too. He doesn't appear to have been given any explanation as to why the proceeds of the sale needed to be paid into an offshore bank account, rather than any other bank account that he controlled. He also accepted at face value the claim that, to sell his shares, he needed to be a licensed share dealer and paid £10,000 without asking any further questions.

Overall, I'm satisfied that Mr R was contributorily negligent here and that it wouldn't fair and reasonable for HSBC to be expected to reimburse him in full. I can see that it has agreed to pay him £150,000 to partially compensate him for his losses. From everything I've seen, I think that's a fair offer.

Other issues

Mr R has said that HSBC should've done more to recover his losses from the receiving accounts. The proceeds of scams tend to be moved out of the receiving accounts very promptly and, since this scam took place over a period of months, the chances of any money remaining would've been very low.

In any case, I can see that HSBC did contact the banks to which these payments were made after he reported that he'd fallen victim to a scam. It's up to those individual banks to determine whether they're legally obliged to return Mr R's funds (if they remained in those accounts), subject to whatever they required to do to comply with the local law. Unfortunately, I'm not persuaded HSBC has done anything wrong in respect of its efforts to recover Mr R's money here.

Mr R's representatives responded on his behalf. They disagreed with my provisional findings and argued that I'd held Mr R to an unreasonably high standard. They reiterated that HSBC ought to have recognised the fraud risk at the time and intervened in an effort to protect Mr R from financial harm. If it had done so, they argue that it's highly likely the scam would've been prevented.

They've also argued that Mr R acted reasonably and had a reasonable basis for believing the scam was genuine. They highlighted some of the checks that he conducted. They also said that documentation he signed for the Chinese bank contained the FSCS logo and an FCA registration number. They argued that Mr R built a relationship with the scammers who answered all questions he had in a knowledgeable and professional manner. This helped to persuade him this was a legitimate arrangement.

Broadly speaking, I agree with its observation that HSBC ought to have intervened and that, if it had done so, it's more likely than not that the scam would've been prevented. I've also considered its comments on whether Mr R acted reasonably. However, I'm afraid I'm not persuaded to depart from the findings I made on that point.

I accept that he conducted some basic checks that verified things he'd been told by the scammers. However, too many of the things he was asked to do simply didn't make sense. He appears to have taken at face value implausible explanations for the payments he needed to make.

I note that his representatives have said that he was taken in by the fact that he'd built up a trusting relationship with the scammers. But the version of events that's been shared with me suggests that, on several occasions, the scammers posed as representatives of different organisations – such as the law firm and a different bank. It's not clear to me why the rapport he'd built up with his initial contact would've affected these later interactions.

Overall, I remain of the view that Mr R was contributorily negligent here and that it's fair and reasonable for HSBC to not reimburse him in full.

Final decision

For the reasons I've set out above, I find that HSBC UK Bank Plc has made a fair offer of compensation.

If Mr R accepts this final decision, HSBC UK Bank Plc should pay him that sum.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 25 July 2023.

James Kimmitt
Ombudsman