DRN-4232137

The complaint

Mr O is unhappy because HSBC UK Bank plc ('HSBC') have declined to refund him in full the £25,000 which he lost as a result of a scam.

What happened

The details of the complaint are well known to both parties, so I will not go into every detail of what happened here. But, in summary, both parties accept that between November 2018 and June 2019, Mr O lost £25,000 as a result of a property investment scam.

In 2008 Mr O had invested around £10,000 in a property development company through fixed-term bonds. Unfortunately, when he tried to access his profits, he experienced difficulties with his withdrawal requests. He was asked to further invest, but he could not afford to, so he declined to do so. Unable to obtain any returns, he eventually had to write off the money he invested as lost as he did not think there was any way he could get his investment back.

In or around August 2018, Mr O got an email from a different company. The subject said it was for the attention of previous investors in the named firm he had dealt with in 2008. The email said his previous investment meant that he was eligible for a new investment scheme at a discounted price, which would mean he could make returns after his previous loss. Mr O was interested, so he contacted the company.

Over the coming months, Mr O spoke with the company over email, phone and even met two representatives of the company in person. He said when he spoke to them on the phone up to three times per week. They went through security checks like a legitimate company. They knew personal details about him including his full name, date of birth, address and mother's maiden name. They also knew details of his previous investment including the company name, how much he had sent them and the issues he had with the first investment. They asked him to provide identification documentation for know your customer and anti-money laundering checks. He said they were professional, articulate and sympathetic. They were able to calmly answer any questions he had about the new investment opportunity and gave him time to think things over when he was not sure. They provided him with paperwork and directed him to their website which he emphasised was incredibly professional and well put together. When they met him in person, the people he met seemed credible and empathetic when he talked about the passing of his wife a couple of years previously. They had detailed conversations about the investment, which would be in a development to be rented out abroad. They agreed a payment plan as the development progressed, and the terms of the agreement going forwards.

Persuaded the investment and company were legitimate, Mr O made the first two payments towards the investment in November 2018, and June 2019. The first payment was an international payment which he made in branch. He said that HSBC did not ask him any questions other than the purpose of the payment. After Mr O made the second payment, the company said they were going to install webcams so investors could keep an eye on the construction work going on. This did not happen, and then the constant contact he had with the company ended abruptly. He tried to get in touch with them over phone and email and could not get through to them. Mr O then noticed the website had been taken down. Mr O realised he had fallen victim to a scam.

After a few months, Mr O contacted HSBC to notify them about the scam – he spent several weeks dwelling on it as he carried much shame and embarrassment, and it took time to feel ready to discuss it with his bank. In the first instance HSBC said they could not refund any of the losses, but had reached out to the receiving accounts. Mr O was unhappy, so he raised a formal complaint with HSBC.

HSBC investigated Mr O's complaint and issued its final response in December 2022, partially upholding his complaint. In summary, they said that the £10,000 was not covered by the 'CRM code' as it was an international payment – but they had contacted the beneficiary banks to request that they return any funds that remain. They did refund the payment for £15,000 as they said that this was covered by the code and they accepted that they were liable to refund him for this payment. They paid a further £50 in recognition of errors made after Mr O had come to them – namely poor customer service in not considering the payment under the code in the first instance.

Unhappy with their response, Mr O came to our service. One of our investigators looked into what had happened and did not recommend that Mr O's complaint be upheld. This was because they felt that due to the sophistication of the scam, it would be unlikely that HSBC could have identified or prevented the scam even if they had asked more probing questions.

Mr O remained dissatisfied. His representatives expressed on his behalf that it did not represent a fair and reasonable outcome to this complaint. In summary, they said:

- It was unfair to not ask the bank to refund in full because Mr O had completed enough research into the investment he was making – they felt this was unfair based on our service's approach when customers do not do enough research and are offered 50% of the loss.
- Mr O did nothing wrong and fell victim to a house share investment scam, banks are well aware of their existence and branch staff would be well aware of what questions to ask. For example, if they asked if he had completed a site visit in person he would have said no which would have represented a red flag.
- Whilst Mr O met the scammers in person, this did not negate that the bank had failed here.

Our investigator explained that each case was decided on its own merits, and that our approach to other cases or types of cases was not strictly relevant here. Ultimately, the key consideration here was whether HSBC ought to have recognised Mr O was falling victim to a scam. They said that if the bank had asked more questions, they felt it was most likely that Mr O could have answered them to such a level as to satisfy HSBC that the payments were legitimate. They did not think that not viewing the site in person represented a red flag as the investment was for a property in a far away country. They did not think that there were any identifiable reasons that ought to have been noticed by the bank at the time, without the benefit of hindsight, which would have meant that HSBC ought to have recognised Mr O was falling victim to a scam, and so had no reasons to refuse Mr O's payment instructions.

As no agreement could be reached, the case 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.

I would like to start by saying that I do believe that Mr O was the victim of a cruel and callous fraud. I was saddened to hear of what he was put through. I can tell from the evidence we have that this has had a significant impact on Mr O. So, I'd like to start by offering my sympathies for what he has been put through.

My role here is to assess HSBC's actions against what they should have done – and having done so, I don't think it would be fair and reasonable for me to hold HSBC liable for Mr O's remaining loss. So, having considered everything, I am not going to uphold Mr O's complaint. I do appreciate how disappointing this will be for Mr O, but I don't think I can fairly say that HSBC should reimburse him with the money that was unfortunately lost to the scammers. I'll explain why.

There is no dispute that the transactions were 'authorised payments', even though Mr O was the victim of a sophisticated scam. He made the payments himself and under the relevant regulations, and the terms and conditions of his account, Mr O is presumed liable for the loss in the first instance.

But I've also taken 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. As such I think 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 and out of character transactions or other signs that might indicate that 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.
- 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 hard from fraud.

So, I consider that as a matter of good practice, HSBC should have been on the lookout for unusual and out of character transactions. I think the £10,000 payment to a new payee which was an international account likely should have been recognised as uncharacteristic for Mr O's account. And where it recognised any unusual payments, the relevant law, regulations and good industry practice at the time would require HSBC to question Mr O about the transaction and the reasons for making it before they agreed to process it on his behalf. But I do not think, on balance, that further questioning would have brought the scam to light and meant HSBC should have stopped the payment. I'll explain why.

Mr O said he was not asked any questions when he made the £10,000 payment in branch other than the purpose of his payment, and as HSBC have not been able to provide any evidence to the contrary, I see no reason to doubt this. Mr O has also said he was not coached or provided with any cover story to tell HSBC by the scammers, and so would have told them the truth if further questioned. So, I have thought carefully about the kind of questions I might have expected HSBC to ask at the time, and the kind of answers Mr O would have most likely given. I do appreciate that as this didn't happen, I cannot say with total certainty – so in these circumstances I have to think about what I think *most likely* would have happened here.

Mr O had spent a long time discussing the investment and asking the company questions, so I think it would be likely that he would be able to provide a detailed explanation of the investment if asked. I think given the time invested by the scammers in speaking to Mr O, he would have been able to provide plausible and credible sounding answers. Mr O's representatives have argued that he would have told them he was cold called which would have been a red flag HSBC ought to have picked up on. But Mr O's complaint form said he was contacted over email, and he got back in touch with the company. He thought that they were linked to a previous failed investment, and the new company had all the relevant information to persuade him they were legitimate, so I do not think it as simple as his representatives have asserted when it comes to the out of the blue communication.

Mr O's representatives have also argued that this type of scam would have been well known to HSBC at the time – and whilst I do agree in theory – I think this one had some features that meant it did not appear like a regular investment scam. I say this because it did not bear all of the common hallmarks of this kind of scam as it often was perpetuated at the time. For example, the fact that Mr O met the scammers in person was not a common element of this kind of scam. The fact he had dealt with a linked company previously was not a common element of this kind of scam at the time. Nor was the duration of time and effort the scammers put into getting his funds, the lack of high pressure sales tactics from the get-go, or the payment plan that they agreed. So, I think even if HSBC had asked probing questions the scam would not have been immediately obvious to them such that I would have expected them to go against Mr O's payment instruction. Mr O's representatives have argued that the lack of a site visit would have demonstrated to HSBC that Mr O was at risk of fraud or financial harm – but I do not agree. Given the geography of where the development was said to be underway, a site visit may not have been necessary or proportionate here.

I might have expected HSBC to explain the risks with international payments and investments, but I do not think that this alone would have been enough for them to have recognised the scam or stopped the payment. I say this because I think Mr O was aware he was sending the funds to an oversees investment, and was persuaded that it was legitimate, so the kind of warnings I would have expected HSBC to give would not have likely stopped him making the payment. Mr O even had written documentation about the plan, so had they asked him to provide the documentation he would have been able to.

Ultimately, I think the scam was sophisticated and would have been hard for HSBC to recognise here, so I do not think that they ought to have stopped the payment or recognised the scam. So, it follows, that I do not think it would be fair and reasonable for HSBC to refund the transaction here.

I've also considered HSBC's attempts to recover the funds from the receiving bank here. HSBC have shown that they notified the receiving bank after Mr O told them he had fallen victim to a scam. I can see they did notify them – but they were unable to obtain and returns. Unfortunately, this is not unusual when dealing with banks outside of this territory as they work within different legal and regulatory frameworks.

In summary, whilst I think HSBC ought to have gone further in questioning Mr O when he was in branch, I do not think it would have made a difference if they had. Unfortunately, they are not able to identify every scam – and this is more difficult when payments are going abroad. I would expect them to look out for the hallmarks of a scam and recognise these red flags, but I am not persuaded these red flags existed in this case. I would have also expected them to advise their customers about the type of checks they can do themselves, and the risks involved in sending money abroad – and I do not think if they had done this, the outcome would have been any different. So, whilst I do not doubt Mr O did nothing wrong here and was the victim of cruel scammers, it is ultimately the scammers themselves who are at fault here, and I do not find that it would be fair and reasonable to ask HSBC to refund Mr O's remaining losses here.

My final decision

I do not uphold this complaint.
Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 22 April 2024.

Katherine Jones
Ombudsman