

The complaint

Dr H complains that HSBC UK Bank Plc didn't do enough to protect her from the financial harm caused by an investment scam company, or to help her recover the money once she'd reported the scam to it.

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.

In May 2022, Dr H came across an article on social media about an investment opportunity with a company I'll refer to as "G", which was endorsed by a well-known celebrity. She followed the link to G's website which claimed to offer training on trading in financial markets and featured videos educating people about investing.

Dr H researched G and discovered it was registered on Companies House. She also found reviews on Trustpilot and other websites, which were mostly positive, and she thought the minimum investment of £250 was relatively risk free.

Dr H left her contact details and was contacted by someone claiming to be a broker who explained he would teach her how to trade so that she would eventually be able to do it herself. He told her to send over two forms of ID and required her to sign contracts electronically using software protected by individual passkeys. He also asked her to screenshare her phone using AnyDesk so he could show her how to invest.

He told Dr H to open an account with a cryptocurrency exchange company I'll refer to as "C" so she could make deposits and then transfer funds to G. He showed her the live trading screen and told her she could withdraw her profit after two weeks, leaving the initial investment in the account to reinvest. Between 6 June 2022 and 12 December 2022, she transferred seven payments to C totalling £95,000 from her HSBC account.

Dr H attempted to make the first payment on 3 June 2022, but the payment was flagged for checks and HSBC was unable to contact her, so the payment was reversed. She tried again on 6 June 2022 when a warning about fraud and scams was displayed, and she was asked to contact HSBC. During the call she told the call handler that she was investing in cryptocurrency and that she'd made an initial investment of £250. She mentioned the celebrity endorsement, but this wasn't picked up on by the call handler, so she was given a general warning about fraud and scam awareness and the payment was released.

In December 2022, Dr H told the broker she wanted to withdraw her profits. The broker set up a new wallet in her name and said she would need to pay capital gains tax of £25,000. On 12 December 2022, she transferred £25,000, before being told she'd need to pay the regulatory body 9.5% of her profits which was around £47,000, at which point she realised she'd been scammed, and that G was a cloned of a genuine company with the same name.

Dr H complained to HSBC, arguing that it had failed to intervene when she made the payments, despite the amounts being considerable in comparison to her normal spending

habits. HSBC refused to refund any of the money she'd lost because the funds were sent to a digital wallet in her own name.

It said the first payment on 6 June 2022 was selected for further checks and Dr H said she'd researched the investment, she'd opened the digital wallet herself and had full access to it, G was a reputable provider, and no one had coached her how to answer any of its questions. She also understood the warnings, she was happy to continue with the payment and she'd checked the investment was genuine.

It accepted it failed to suspend her online banking facility when she reported the scam, so it apologised and offered £100 for the error. It also said she didn't tell it she'd disclosed her card details to the broker, so there was no reason to cancel her debit card.

Dr H complained to this service with the assistance of a representative. She explained she had invested before but she wasn't an experienced investor, and she thought the investment was genuine as she had carried out her own research and was satisfied G was legitimate. She argued HSBC had failed to ask probing questions and if she had any inclination that this was a scam she wouldn't have gone through with the payments. She doesn't accept HSBC did enough to protect her and she believes it had multiple opportunities to prevent the scam.

Her representative said there was no mention of scams in the pop-up message Dr H received. They said HSBC should have intervened as she made seven payments to a new payee linked to cryptocurrency within the space of six months. They also said she rarely made payments over £500, so the value of the payments should have been a red flag and HSBC should have intervened when she made the first payment. They argued that if it had asked relevant questions, it would have been apparent that Dr H was the victim of an investment scam, and it would have been able to prevent her loss.

The representative said that when Dr H called the bank on 6 June 2022, she wasn't given any scam advice and or told to do more research, which made her believe the opportunity was legitimate. They argued HSBC should have asked Dr H what the payments were for and the basic surrounding context including why she was making the payment, who she was trading with, whether she'd researched the company and whether she'd been promised unrealistic returns and, had it done so it would have been apparent she was falling victim to an investment scam so it should have told her to do further checks, including processing a higher withdrawal.

HSBC further commented that a warning about potential scams would have been displayed when Dr H set up a new payee and an investments warning was displayed on 6 June 2022, giving information about scams. It also spoke to Dr H, and she confirmed she'd carried out checks and was confident with who she was dealing with.

Our investigator thought the complaint should be upheld. She explained Dr H had conducted due diligence and as G was a clone of a legitimate company, she didn't find anything concerning. During the call she had with HSBC, she disclosed that that she'd come across the opportunity via a celebrity endorsement, which is a common feature of a scam, and she was satisfied that if HSBC had questioned her about this endorsement, Dr H would likely have disclosed that she found the investment via social media and had downloaded Any Desk at the request of the broker.

She thought this information would have been enough for HSBC to identify that the investment was a scam, and it should then have provided an appropriate warning, which she was satisfied Dr H would have acted on.

HSBC has asked for the complaint to be reviewed by an Ombudsman. It has said that Dr H made further payments even though she said she was making a one off payment, she was given a written warning when she set up the new payee and the first payment was reversed. It has also said she didn't mention the celebrity endorsement.

It has further commented that Dr H paid a genuine company, and the payments did arrive in the cryptocurrency wallet where she could see the funds and had access to them. She then moved the funds out to another account following instructions that were given to her by a third party, after having been asked if anyone had told her to move the money or if she was promised her high returns.

HSBC has also said that during the call on 6 June 2022, Dr H said she wasn't offered high returns, which was misleading, and she also said she had opened the cryptocurrency account herself, she had access to it, and she had checked the bank details with the provider. It said she was told there were warnings on the FCA website about cryptocurrency investments and it could hold the payment so she could carry out further research and check the details on the FCA website before proceeding, which she declined. She was also given detailed fraud/scam awareness and warned that if the payment wasn't received, it may not be able to recover the funds.

It has also argued that it doesn't believe further challenges or probing questions about the celebrity endorsement would have swayed Dr H's decision to continue with the payments and that she had made some large payments out of her account, so sending high value payments to external accounts wasn't unusual.

Finally, it has said Dr H was negligent because she only looked at reviews which could have been fake, and she declined to check FCA website or carry out further checks. And the broker said he was based in Switzerland, which should have raised concerns.

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 Dr H says she's fallen victim to, in all but a limited number of circumstances, but the CRM code doesn't apply in this case because Dr H paid an account in her own name.

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

There's no dispute this was a scam, but although Dr H didn't intend her money to go to scammers, she 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 could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments were made to a genuine cryptocurrency exchange company. However, HSBC ought to fairly and reasonably 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 Dr H when she 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 her from financial harm due to fraud.

A warning message was displayed when Dr H made the first payment, which was reversed because HSBC was unable to contact her. I'm satisfied this was fair and that HSBC acted appropriately in declining the payment in the absence of further verification.

On 6 June 2022, Dr H was asked to contact the HSBC. I've listened to the call, and I'm satisfied that Dr H answered the questions honestly. HSBC has said that Dr H mislead it by stating that she was making a one off payment, but I don't consider this was dishonest as this might have been her intention at the time of the payment.

I'm also satisfied that she told the call handler about the celebrity endorsement and that they failed to explore this further. I agree with our investigator that the failure to ask further questions about the celebrity endorsement represented a missed opportunity to detect the scam because it was a major red flag which ought reasonably to have led to further questions about the investment, including how she'd learned about the investment opportunity, whether she'd been told to download remote access software to her device and whether she'd been advised to make an onwards payment from the cryptocurrency exchange.

Because G was a clone of a genuine investment company, all of Dr H's due diligence had led her to the reasonable conclusion that the investment was genuine, so it was for HSBC to take notice of what it was told and to ask more probing questions, which would have uncovered the scam. There's no evidence that Dr H was coached to lie and based on her answers to the questions she was asked, I'm satisfied she'd have answered truthfully, and the call handler would have been able to identify that she was being scammed.

I would expect the call handler to have provided a tailored scam warning and advice on additional due diligence. They should also have drawn Dr H's attention to the fact there were red flags present, including the celebrity endorsement, the fact she'd learned about the opportunity on social media, the use of remote access software and the fact she'd been advised to make onward payments to a wallet address provided to her by the broker.

There were no warnings about G on either the Financial Conduct Authority ("FCA") or International Organisation of Securities Commissions ("IOCSO") websites which would have alerted Dr H to the fact there was a scam. But I haven't seen any evidence that she was keen to take risks and I think that if she'd had any inkling this might be a scam, she would have chosen not to go ahead with the payments. Because of this, I think HSBC failed to do enough in circumstances that would have prevented Dr H's loss and so it should refund the money she lost from 6 June 2022 onwards.

Contributory negligence

I accept there's a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence but, in the circumstances, I don't think Dr H was to blame for the fact she didn't foresee the risk.

In recent years instances of individuals making large amounts of money by trading in cryptocurrency have been highly publicised to the extent that I don't think it was

unreasonable for Dr H to have believed what she was told by the broker in terms of the returns she was told were possible or not to have realised that being asked to download AnyDesk to her advice was an indicator for fraud.

Dr H was under the impression that G didn't need to be authorised by the FCA so it's not unreasonable that she didn't check the FCA website. However, it was registered with Companies House and had a registered office, so she considered she had completed reasonable due diligence, which didn't uncover anything concerning.

Consequently, whilst there may be cases where a reduction for contributory negligence is appropriate, I don't think this is one of them.

Compensation

HSBC paid DR H £100 compensation for its failings when she reported the scam to it, and I'm satisfied that's fair.

My final decision

My final decision is that HSBC UK Bank Plc should:

- refund the money Dr H lost from 6 June 2022 onwards.
- pay 8% simple interest*, per year, from the respective dates of loss to the date of settlement.

*If HSBC UK Bank Plc deducts tax in relation to the interest element of this award it should provide Dr H with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and X to accept or reject my decision before 1 January 2024.

Carolyn Bonnell
Ombudsman