DRN-4315950

Complaint

Mr C is unhappy that HSBC UK Bank Plc didn't reimburse him after he fell victim to an investment scam.

Background

In 2021, Mr C decided to invest his money in cryptocurrency. A trusted friend told him that he'd earned generous returns by using the services of a particular broker and recommended Mr C do the same. Unfortunately, it subsequently transpired that the broker wasn't a legitimate business, but a scam. In total, he made eighteen payments in connection with this scam. The total value of the funds he transferred was over £100,000.

Mr C tells us he carried out extensive online research about the company that he was planning to invest with. He found a significant number of positive reviews. He also says that he checked the website of the regulator, the Financial Conduct Authority (FCA), but didn't find anything on there to concern him. There was a later warning posted on that website regarding this broker, but it hadn't been published at the time Mr C decided to go ahead with his investment plans.

On 9 July, he decided to test the waters by making a payment of just under £3,500 using his debit card. He then observed how the group made use of his funds. He was given access to a platform which showed the performance of the investment. This indicated that he was earning a healthy return, as promised. By 26 July, he was persuaded that the investment opportunity was a legitimate one and so he made two transfers via faster payments of £10,000.

On 5 Aug, a warning was posted on the website of the FCA saying that the business Mr C believed he was investing with was offering services to UK customers without authorisation. It explained that anyone investing money with this company would not benefit from certain consumer protections – for example, their deposits wouldn't be protected by the Financial Services Compensation Scheme and it wouldn't be possible to bring a complaint about the company to the Financial Ombudsman Service. It stopped short, however, of saying that there was evidence that this company was defrauding its customers.

On 16 August 2021, HSBC blocked an attempted payment by Mr C of £3,000. This would've been his seventh payment in relation to the scam and would've taken his total spending up to around £40,000. HSBC wanted to ensure that Mr C wasn't at risk of financial harm due to fraud and so it wanted to ask him a few questions before it would consider allowing the payment to be made. He was asked what the reason for the payment was. Mr C responded "it's a payment for services."
He was asked to confirm that he'd read the fraud warning given at the time he made the payment online and to confirm that he was paying for services from a "known source." The call handler went on to give Mr C a brief exposition of some typical scam risks, in particular describing how a so-called "safe account" scam would operate. Overall, Mr C confirmed he was happy to proceed with the payment.

In practice, the payment wasn't processed. As far as I can see, HSBC wasn't happy with the answers Mr C gave to its questions but failed to communicate this to him. He called the following day (17 August) and spoke to a different call handler. After a brief discussion, he was told the payment would be made.

Mr C had a further conversation with HSBC on 19 August about a different payment. He was (not unreasonably) frustrated to have had to call up a second time to authorise the payment and bemoaned that he'd spent over 45 minutes waiting. This call handler asked him several basic questions to rule out commonly occurring fraud risks. Mr C told the call handler "I've sent money to them before and the money's arrived and everything's been fine." This payment was duly processed. Over the next few days, Mr C continued to transfer money into his investment.

On 6 September, HSBC called Mr C to discuss one of the payments he'd made on 6 August. It had received a communication from the receiving bank (i.e. the bank that operated the account controlled by the fraudster) which suggested that the person Mr C had been dealing with was a likely fraudster. The call went as follows:

> *B: We've received a report from [the receiving bank] saying that their customer …. the person you've sent the money to is unfortunately running an investment scam*
> *Mr C: What are they called, sorry?*
>
> *B: You've made that payment to [name of scam company] and that payment was made by yourself on 6 August.*
>
> *Mr C: Right, okay.*
>
> *B: So essentially that's the reason why I'm calling ... to find out what that payment was for and how you came about making it …*
>
> *Mr C: [inaudible] … but it wasn't fraudulent because the money's gone through and it's been received.*
>
> *B: No, no, absolutely, yes, but they're saying that their customer is running an investment scam, so was this an investment payment?*
>
> *Mr C: It was, yeah, but it's not a scam – I know who they are.*
>
> *B: I'll just read out the email that [the receiving bank] have sent us.*
>
> *Mr C: Ok, it's not great reception – but go on…*
>
> *B: Ok, the email says "one of our customers has been reported as the beneficiary of scam funds – investment fraud. One of your customers, [Mr C], has sent £5,000 to our account" … They essentially want to know what this payment was for.*
>
> *[…]*
>
> *That individual has been accused of running an investment scam, an investment fraud and obviously one of the payments has come from yourself.*
>
> *Mr C: Ok*
>
> *B: So, you said you know this individual?*
>
> *Mr C: It's an investment but I couldn't send it a certain way one day, so I sent it via*

this link … but the money's been received by the people I've sent it to.

B: Yeah, that's clearly … that's clear. It's just whether you're going to receive what you paid for, that's essentially the crux of it.

Mr C: Yeah, I need to look into it then, don't I?

B: There's actually also three other payments we wanted to find out about as well that were around that time …

[call handler describes three other payments to cryptocurrency platforms]

Mr C: Yeah, they're in my wallet, I know where they are.

B: So those three are in your wallet, is that correct?

Mr C: Yes

B: Ok, so what about the £5,000 that [the receiving bank] have told us about?

Mr C: I've got to look into that further, I've got absolutely no idea.

B: If you do find out that it's a scam then call us on [number] – do not make any further payments. Any sort of investments that you are doing, obviously, do your due diligence. Avoid making bank transfers to people you don't know. Stick to more secure methods of payment, such as a credit card because that gives you more consumer rights.

Mr C: I don't want to use a credit card because of the fees, but I understand where you're coming from.

[Mr C clarifies which payment the call is in relation to]

B: [The receiving bank] have said that sort code and account number is running an investment scam and one of the payments into that account has obviously come from yourself."

Mr C told the call handler he would look into it. I don't know what steps he took in the aftermath of this phone call, but I can see that he went on to make four further payments to the scammer. The total value of those transfers was £23,000.

Once Mr C realised it was a scam, he contacted HSBC via a third-party representative. He complained that these transactions were out of character and the bank should've intervened. If it had done so appropriately, the fraud would've been prevented. It also said that HSBC failed to respond properly when it was informed by the receiving bank that Mr C was paying money to a scammer.

HSBC looked into things but didn't agree to reimburse him. It sent its final response to Mr C's representatives and said:

To confirm, not all payments are held for fraud checks and as [Mr C's] payments were sent using his secure banking details, the payments were securely authorised by him.

Furthermore, payments sent to other accounts are by a customer's own *arrangements and at their own risk. Several checks were made into [Mr C's] payments and some payments were reversed when our Fraud Department could not receive confirmation the payments he was making were genuine. However, when a customer confirms payments are genuine and instructs them to be released, we're obliged to do so. Therefore, I cannot agree first direct have failed in our obligations to check these payments with [Mr C].*

Moving to your comments regarding the information we received from [the receiving bank]. Following receipt of the information about his payment of £5,000 on 06-Aug-2021 we contacted [Mr C] on 06-Sep-2021. While you claim we had failed to act, having reviewed this conversation, I confirm [he] was informed that [the receiving bank] told us the beneficiaries of the account [he] had sent his money to were running an investment scam.

[He] didn't feel he was being scammed and told us he knew the people he was paying. We asked [him] for more details about the reason for the payment. However, [he] didn't oblige and explained he would look into matters.

Mr C wasn't happy with this response and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in part. She noted that HSBC had an obligation to be on the lookout for unusual or out of character transactions that might have indicated that there was an enhanced risk of fraud. On spotting an aberrant payment request, it shouldn't process that payment before speaking to the customer to satisfy itself that they weren't at risk of financial harm due to fraud.

The Investigator concluded that HSBC ought to have intervened by the fourth payment. If it had done so, she was persuaded that the scam would've been stopped from that point onwards. However, she also considered the call on 6 September in which HSBC informed Mr C that concerns had been shared with it about a potential investment scam. She thought that Mr C ought to have been concerned by the information that had been shared with him. However, she thought HSBC shouldn't have allowed Mr C to make further payments once it knew that he'd fallen victim to a scam. Overall, she thought it would be fair for HSBC to reimburse 50% of Mr C's losses from that point onwards.

She also looked at whether HSBC should've raised a chargeback for those scam payments that were made by card. She didn't think it needed to do so because it wouldn't have had any reasonable prospect of success.

HSBC disagreed with the Investigator's opinion. It argued that:

… despite clearly being told not to send any further Payments on 6 September 2021, [Mr C] went away, ignored that advice and re-started the Payments a week later. That therefore offers a very strong indication of how [he] would have reacted had we warned him at the time of the fourth Payment. If [he] was unwilling to follow our advice and cease the Payments in September 2021 following a very strong warning, it is very likely that he wouldn't have as a result of what would have been a far more generic warning prior to 6 September 2021.

I asked the Investigator to clarify why Mr C continued to make payments after that call. His representatives responded to say that Mr C couldn't recall the precise details (which is understandable given how much time has since passed). However, he said that he wasn't told at any point that this was an investment scam nor asked any questions other than whether it was him authorising the payments.

His representatives also pointed out that during this call, the employee of the bank didn't ask

Mr C any probing questions about the payment. It also pointed out that by the time this conversation happened, a warning had been published on the FCA website. If the employee of the bank had searched for the name of the payee, it would've seen beyond doubt that that this was an investment scam and could've warned him in stronger terms than it did.
Since both sides disagreed with the Investigator's view, the complaint has been 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 decision on this complaint on 14 July 2023. I wrote:

> *The starting point here is that Mr C authorised these payments. Under the relevant regulations, he is therefore considered liable for them at first instance. However, HSBC had a well-established duty to be on the lookout for account activity or transactions that were unusual or out of character to the extent that they might indicate that he was at risk of financial harm due to fraud.*
>
> *I agree with the Investigator's conclusion that concerns about out of character activity on Mr C's account ought to have prompted action by 26 July 2021. On that day, Mr C made two transfers of £10,000. This wasn't in keeping with the way his account had typically been used and was large enough that it ought to have been a concern to HSBC. It shouldn't have taken this payment instruction at face value. It should instead have spoken to Mr C to satisfy itself that he hadn't been targeted by a scammer.*
>
> *However, I have to consider whether this failing was the cause of Mr C's losses. It's difficult to look at the way Mr C responded when told by an employee of the bank that he'd transferred money to someone perpetrating an investment scam and not draw inferences about how he would have responded had he been called on 26 July.*
>
> *Mr C's representatives have made some well-founded criticisms of the way that call was handled. But the relevant information was conveyed to Mr C without any ambiguity. He was told that the owner of the account he paid had been credibly accused of running an investment scam. Mr C was initially resistant to the idea because he knew that his funds had been successfully transferred to their intended destination. But the call handler clarified this misunderstanding by telling him that the concern was "whether you're going to receive what you paid for."*
>
> *Mr C told the call handler that he would look into it. I don't know what steps he did take in response to this call. He did make further payments, but as far as I can see, that wasn't based on false reassurances from the fraudsters. I take the point Mr C's representatives have made about the fact that HSBC could've consulted the FCA website and told him about the warning that was published in August. However, that warning didn't categorically say that the payee was a fraudster, simply that it was operating without authorisation. The warning on the FCA website was worded in less stringent terms than the information he was given during the phone call. It's difficult to see why being referred to that warning would've altered Mr C's actions if the phone call wasn't enough to do so.*
>
> *Overall, I think HSBC ought to have intervened on 26 July, but I don't think that failing was the cause of Mr C's losses here. On the balance of probabilities, I'm not persuaded that any reasonable intervention would've prevented Mr C from continuing*

to make payments.

Payment 6

The majority of the payments Mr C made in connection with this scam were made to his own account on a third-party cryptocurrency platform. However, on 6 August, he made a payment of £5,00 directly to the account controlled by the fraudster.

As a result, that payment is covered by the Lending Standards Board's Contingent Reimbursement Model (CRM) code. Under that code, the starting point is that HSBC is expected to reimburse Mr C's losses. There are several potential exceptions to reimbursement. However, from the information I've seen, Mr C had a reasonable basis for believing he was paying into a genuine investment and so I'm not persuaded that any of these are applicable.

HSBC said it had nothing further to add. Mr C's representatives disagreed with my provisional findings. In summary, they argued that:

- The call between Mr C and the bank was so flawed that it didn't reach the standard required to actually notify Mr C that fraud was taking place.
- The bank didn't ask any questions of Mr C to establish whether this was a scam.
- The bank was on notice that fraud was occurring and yet processed further payments from Mr C anyway.

I've considered these further representations carefully. Having done so, I'm not persuaded to depart from the conclusions I set out in my provisional decision.

I think the observations Mr C's representatives have made about the shortcomings of the call are generally fair ones. However, I don't think it automatically follows that those shortcomings were the cause of Mr C's losses. For example, Mr C's representatives have argued that, by delegating responsibility to Mr C to find out whether this investment was a legitimate one, the bank pushed him back into the hands of the fraudsters. However, that isn't consistent with the testimony I've seen from Mr C. If he had contacted the company he believed he was investing with and been given misleading reassurances, the outcome of this complaint might be different. Instead, Mr C's testimony suggests he took no action in response to the call at all.

Fundamentally, the HSBC call handler conveyed the risks to Mr C with sufficient clarity and his responses indicated that he understood what he'd been told. As I understand it, Mr C took no further precautions once this information had been shared with him. I think it's a difficult argument to make that if HSBC had done more (for example, recommending he consult the FCA website or that he attempt to withdraw money from the platform) that it would've been enough to change his subsequent actions given how serious the information he'd been told was and how he responded to it.

I've also considered the argument that HSBC was essentially on notice that Mr C was falling victim to an investment scam and that it therefore had an obligation to stop him from making further payments. However, the call handler did query the earlier payments Mr C had made to a cryptocurrency platform. He reassured them that cryptocurrency was in his wallet, and he still had control of it.

It's also significant that Mr C's previous payments in connection with the scam were to three separate payees. When he started sending payments again after the phone call, it was to a new payee to which he hadn't sent funds before. I don't think the connection between the later payments and the payment it queried with him would've been so obvious that I'd have expected HSBC to take the approach of blocking payments outright.

I don't say any of this to downplay or diminish the fact that Mr C is the victim of a cruel and cynical crime. I know that he will be hugely disappointed by my decision. However, I'm unpersuaded that any shortcoming on the part of HSBC was the cause of Mr C's loss here. And if it had responded in a suitable and proportionate way, I don't find that the evidence shows Mr C would've acted differently.

Final decision

For the reasons I've set out above, I uphold this complaint in part. If Mr C accepts my decision, HSBC UK Bank Plc should refund him the £5,000 covered by the CRM Code. It should add 8% simple interest to this sum calculated to run from when his claim was declined until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 November 2023.

James Kimmitt
Ombudsman