DRN-4355015

The complaint

Mr R complains that HSBC UK Bank Plc didn't do enough to protect him from the financial harm caused by an investment scam company, or to help him recover the money once he'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.

Mr R's wife was contacted by someone who I'll refer to as "the scammer" who claimed to work for a company which was based in the US. The scammer told Mrs R that her deceased husband held shares in "Company C", where he had worked for more than 20 years and that she should sell the shares to enable the takeover of Company C by "Company L".

Mr R did what he thought was reasonable due diligence including phoning the companies he believed were involved in the opportunity. He did online research and was satisfied the companies were genuine. He was also satisfied the documentation they had received looked authentic and that all the people he spoke to appeared genuine, having checked their names on the company websites.

On 31 August 2022, 7 October 2022 and 2 November 2022, Mr R made payments to two accounts in the Philippines for £4,876.67, £38,0001 and £72,600. He understood the first payment was to secure an insurance bond to cover work done by the investment company, and the second payment was for an option to buy warrants attached to the original shares.

And he was told the third payment was a tax payment which would be refunded through an international agreement between the US and Britain, which he was assured was normal practice.

Each transfer was made by Mr R while on the phone with HSBC. But when he tried to make a fourth payment, the call handler asked probing questions and concluded that he was being scammed. HSBC refused to release the payment but Mr R maintained that he wanted to make the payment and asked it to transfer the funds to Mrs R's HSBC account, which it refused to do. It eventually agreed to transfer the funds to an account Mrs R held with Bank N, who subsequently uncovered the scam when Mrs R tried to make the payment from that account.

Mr R complained to HSBC when he realised the companies he'd been dealing with were clones of genuine companies. He said it had allowed payments to a highly suspect accounts located in the Philippines and that it should have done more to protect him.

But HSBC refused to refund any of the money. It said that as the payments were sent overseas, they weren't covered by the Contingent Reimbursement Model ("CRM") code. It also said that not all payments are held for fraud checks and as the disputed transactions were sent using Mr R's secure banking details, they were securely authorised.

Mr R wasn't satisfied and so he complained to this service. After initially rejecting the complaint, our investigator reviewed her position and recommended that the complaint should be upheld. She said HSBC should have raised concerns when Mr R made the second payment because it was unusual compared to the normal spending on the account.

She accepted that during the second call Mr R had said he was happy with the checks he'd done, but he told HSBC the payments related to an investment, and if he'd been asked more probing questions he would've said he was dealing with an American company even thought he was sending funds to accounts in the Philippines, and this would have raised concerns.

She explained that HSBC should then have asked more questions about the arrangement Mr R had with the companies he was paying and how he'd learned about the shares. He would then have explained that Mrs R had received a cold call regarding shares held by her late husband, and the scam would have been detected.

Our investigator explained that HSBC had detected the scam when Mr R tried to make the fourth payment and she was satisfied that if the same questions had been asked during the second call, it would have detected the scam sooner. She accepted Mr R would possibly have still tried to find an alternative way to make the payment, but she said HSBC shouldn't have allowed the transfer to Bank N because at that point it knew about the scam. Otherwise, it should've flagged the concerns with Bank N. So, either way the scam would have been stopped.

Because of this, she recommended that HSBC should refund the money Mr R had lost from the second payment onwards, with a reduction of 50% for contributory negligence to reflect the fact he wanted to make the fourth payment despite having been told the investment was a scam.

HSBC has asked for the complaint to be reviewed by an Ombudsman. It has explained it attempted to recall the payments when Mr R reported the matter, but the recalls were unsuccessful as the receiving accounts had been closed. It also said it was unable to consider the case under the Contingent Reimbursement Model ("CRM") code as the payments were international.

HSBC has argued that Mr R was asked the reason for the payments and he was adamant he'd checked out the investment, the payments were genuine and he wanted to proceed. It doesn't accept things would have occurred exactly as they did on 22 November 2022 because at that point he had paid across the full £115,476.58, so it would have had more concern than it would have done on 7 October 2022, when Mr R had only made one payment.

It has also argued that the scammer was present on the line on 22 November 2022 which meant it wouldn't have detected the scam on 7 October or 2 November 2022 because the scammer wouldn't have been on the phone.

It has further argued that Mr R ignored the warnings it gave on 22 November 2022 and insisted on the funds being transferred to Bank N, so a warning on 7 October 2022 wouldn't have made any difference. And that Bank N had access to documents which might not have been available on 7 October 2022 and a large sum had been paid into the account before the attempted payment, which didn't happen on the HSBC account.

HSBC has also argued that Mr R should checked the shares registrar to verify what they were told and it should have been a red flag when they were asked to make more payments for different reasons. It also argued that Mr R intimated that he had some doubts on 22 November 2022, so he should have shared those concerns before sending the funds. And he was careless in making large payments to obscure payees in the Philippines when the investment was allegedly in the USA.

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 Mr R says he's fallen victim to, in all but a limited number of circumstances. HSBC had said the CRM code didn't apply in this case because the payments were international payments, and I'm satisfied that's fair.

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

There's no dispute that this was a scam, but although Mr R didn't intend his money to go to scammers, he 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. It 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 done more to warn Mr R when he 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 Mr R from financial harm due to fraud.

HSBC didn't detect that the payments were being made to a scam until Mr R tried to make the fourth payment on 22 November 2022. During the call that took place when he made the first payment, he was asked about the purpose of the payment and he said he was happy that the beneficiary was genuine. He wasn't asked any probing questions or given any scam advice.

When he contacted HSBC to make the second payment, he was asked if he'd paid the beneficiary before and what had prompted him to make the payment. He was also asked if he'd been told to lie and he was warned that it would be a scam if he'd been told to move the money. He was advised to check the company he was paying on Trust Pilot and warned that he wouldn't be able to recover the funds if it turned out to be fraudulent.

During the call that took place when Mr R made the third payment Mr R confirmed he was paying an existing payee and the payment was processed without any questions or scam warnings.

When Mr R contacted HSBC on 22 November 2022, the call handler asked him why he was making payments to accounts in the Philippines even though he was paying companies based in the US. He was also asked how he'd learned about the investment opportunity and how the company had got in touch with him. He answered these questions truthfully and was subsequently contacted by someone in customer care who told him he was being scammed.

During this call, Mr R was asked some very detailed and probing questions around why he was making payments to accounts in the Philippines, why he wasn't making the tax payment direct to the IRS and why he thought the tax payment would be refunded. The call handler said it was a red flag that Mrs R had been cold called and she asked him why there was no share certificate and why he was unable to contact the people he was dealing with.

During the conversation, the scammer contacted Mrs R and the call handler listened while they had a conversation in the background. The call handler made it very clear that there were red flags present and that Mr R had been scammed. She also said that HSBC wouldn't be approving the payment. A short time later Mr R contacted HSBC again and said he wanted to transfer the funds to his wife's account, which it refused to do before eventually agreeing to transfer the funds to Mrs R's account with Bank N.

Having given some very careful thought to the interactions that took place between Mr R and HSBC during the scam period, I agree with our investigator that HSBC could reasonably have detected the scam sooner. On 7 October 2022, Mr R was making a very large payment to an account in the Philippines. I'm satisfied this was suspicious and unusual and that Mr R should reasonably have been asked more probing questions about the payment. The call handler should have asked him how he learned about the investment, how he'd been contacted and why he was paying accounts in the Philippines. She should also have asked more questions around the due diligence he'd done including what evidence he had relating to the existence of the shares.

Based on the answers Mr R gave to the questions he was asked during the various calls he had with HSBC, I'm satisfied he'd have answered all the questions truthfully and that the call handler would have been able to identify that he was being scammed.

HSBC has argued that the circumstances on 7 October 2022 were different because at that time Mr R had only paid £4,876.67 to the scam and the call on 22 November 2022 was exceptional because the scammer was on the phone to Mrs R in the background. It has also made arguments around the fact that Bank N had different information when it detected the scam. I have noted these additional arguments and I have considered what information would have been available to HSBC on 7 October 2022. While I accept the situation had moved on by the time the call happened on 22 November 2022, I'm satisfied that there would have been enough red flags present on 7 October 2022 for the call handler to have established that Mr R was being scammed.

I would expect HSBC to have told Mr R he was being scammed and to have refused to make the payment. HSBC has argued that Mr R didn't follow its advice on 22 November 2022 and so a better intervention on 7 October 2022 wouldn't have made any difference to the outcome. But its clear from the recording of the call on 22 November 2022 that Mr R was very concerned that they would lose the money they'd already paid out to the scam if they were prevented from making further payments. And so if the scam had been intercepted sooner I think he would have been more likely to listen to and act on the advice he was given. And in any event, if Mr R had insisted on the funds being transferred to Bank N, I agree with our investigator that HSBC should have passed information about the scam to Bank N. So, either way I agree the scam would have been stopped.

For the reasons I've explained, I'm satisfied that HSBC should have done more when Mr R contacted it to make the second payment and had it done so he would either have chosen not to go ahead with the payments or the events would have unfolded in a similar way to the events on 22 November 2022. Either way, I'm satisfied that HSBC missed an opportunity to prevent the scam and so it should refund the money Mr R lost from the second payment onwards.

Contributory negligence

There's a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence. Mr R has explained that he and Mrs R believed they were dealing with a genuine investment opportunity because Mrs R's deceased husband had worked for the company and they genuinely believed he had held some shares.

I'm also satisfied that they did what they believed was reasonable due diligence by calling numbers they had found online and verifying that the people they thought they were speaking to actually worked at the companies they claimed to work at. Further, they also believed the explanations they were given for why they were required to make each payment.

However, I've considered the fact Mr R told HSBC that he had doubts about what he was being asked to do as well as his conduct after he was told unequivocally that he'd been scammed and I agree with our investigator that he was happy to go ahead despite some very clear warnings that he was being scammed. Because of this, I agree the settlement should be refused by 50% for contributory negligence.

Compensation

Mr R isn't entitled to any compensation.

My final decision

My final decision is that HSBC UK Bank Plc should:

- refund the money Mr R lost from the second payment onwards.
- this settlement should be reduced by 50% to reflect contributory negligence.
- 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 Mr R with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 January 2024.

Carolyn Bonnell
Ombudsman