

The complaint

Mr G complains that HSBC UK Bank Plc didn't do enough to protect him from the financial harm caused by a scam.

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.

On 15 September 2022, Mr G received a cold call from someone I'll refer to as "the scammer" who claimed to work for a company I'll refer to as "A". The scammer said he was representing a company that was looking to buy shares he held in a company I'll refer to as "W". He said Mr G had 58,000 shares and explained that as W no longer existed, Mr G couldn't buy any more shares, but he could sell them. The scammer offered to buy the shares at 1.64 per share but he explained there was a restriction on the shares and Mr G would need to pay \$0.08 per share for the restriction to be lifted, which equated to \$4,640.00.

Mr G believed what the scammer told him because he had bought shares in around 2000 and he googled A and couldn't see any adverse information about the company. After receiving several emails from A, Mr G attended his HSBC branch on 14 November 2022 and made a payment of £4,086.24 to an overseas account.

He was then contacted by someone claiming to work for a company I'll refer to as "J". He told Mr G there was also a warrant attached to the shares and that he would need to pay to remove the warrants. This was verified by the scammer and so on 17 January 2023, Mr G paid £13,667.09 to another overseas account.

After he'd made the payments, the scammer told Mr G he'd received all the money, but after that Mr G heard nothing further. He eventually realised he'd been scammed and complained to HSBC arguing it should have done more to prevent the scam.

HSBC refused to refund the money he'd lost. It said the payments were to international accounts and so they didn't fall under the Contingent Reimbursement Model ("CRM") code. It said its systems didn't flag the first payment for additional checks but Mr G had authorised the payment in branch and as part of this process he had accepted the risk of making the payment. It said the second payment was held by its fraud detection system for additional checks. He was asked about the purpose of the payment and he didn't disclose that he'd received a cold call, that A wasn't the company that held the shares or that W was dissolved. He appeared confident the payments were standard practice for share dealing and without more information it didn't have any reason to be concerned.

It also said Mr G hadn't undertaken sufficient research prior to making the payments and it's unclear why he believed someone would buy shares in a company that no longer existed. It suggested he should have sought independent financial advice and conducted thorough research into both companies before agreeing to make any payments, explaining a google

search of A showed it was a management consultancy but there was no reference to share purchases.

Mr G wasn't satisfied and so he complained to this service with the assistance of a representative. He said he authorised the payments in the belief that the sale of the shares was genuine and he received no effective warning from HSBC. He said if he'd any inclination he was being scammed he wouldn't have gone through with the payments.

His representative said that when Mr G attended the branch to make the first payment, he was asked to transfer the money via an automated system which asked for account details and whether he was happy to make the payment but he wasn't presented with any scam warnings or scam education. They argued the payment was large in comparison to the rest of the transactions on the account and he rarely used the account prior to the scam, so the payments were out of character.

They said Mr G made two large payments with no effective intervention from HSBC even though the payments were made in branch, so it had the opportunity to intervene and ask probing questions as to why he was making the payments. He said HSBC should have asked Mr G why he was making the payment, how he found out about the company, whether he'd researched the company, whether he'd checked the Financial Conduct Authority ("FCA") register, whether he'd been predicted unrealistic returns and whether he'd been pressured to make the payment.

Our investigator thought the complaint should be upheld. He didn't think the first payment was unusual because it was relatively low value and consumers sometimes make one-off large payments. But noted the second payment was blocked and that HSBC spoke to Mr G before it was approved. During the call he was asked the purpose of the transfer and he said "It's a personal transaction, I done the same transfer to [the payee] in November, and this is for an arrangement I have". He was asked for more information and he said "its share purchasing. There was restrictions attached to the shares and I am paying for the restrictions to be lifted".

The call handler asked if it was standard procedure, if it applied to all investors, whether they'd explained why he needs to make the payment, whether he'd been expecting to make the payment, whether he'd confirmed the management company was genuine, whether he'd noticed any errors with any correspondence, whether he'd been asked to use a transfer agent and whether he'd checked the payment was genuine.

Our investigator noted Mr G had answered all the questions but he didn't think the questions were sufficient and he felt HSBC had missed an opportunity to stop the scam. He accepted HSBC had asked a lot of questions but he thought the questions were basic and that it ought to have asked how the sale of the stocks came about. Critically, he felt that if Mr G had been asked more suitable and tailored questions, he would've explained he'd been cold called by a company asking to sell the shares on his behalf and in light of all the information known to banks about the increasing number of scams its likely HSBC would have identified that he was being scammed. And he thought that if it had warned him that he was being scammed, Mr G wouldn't have gone ahead with the payment. So he was satisfied HSBC should refund the second payment.

He also explained that even though Mr G was contacted out of the blue, the scammer knew his name and that he had 58,000 shares in a company. And there were no scam warnings or other adverse information online about either A or J, so he didn't think the settlement should be reduced for contributory negligence.

HSBC has asked for the complaint to be reviewed by an Ombudsman. It has argued that Mr G would be considered an experienced investor and as it's clear he was confident the sale of the shares was genuine he would've proceeded with the payment in any event.

It has also argued that Mr G should share some responsibility for his loss because he went ahead with the payments despite several red flags including the fact someone was offering to purchase shares in a company that no longer existed, and therefore they held no value.

Further, he had investment experience and should have known the shares would hold no value once the company ceased to exist. And he failed to research whether or not there were genuine restrictions or warrants on the shares before making the second payment. Finally it has argued that Mr G transferred funds from his savings immediately prior to the payments, so the interest should be at the account rate.

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.

I'm satisfied Mr G 'authorised' the payments for the purposes 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 G 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. 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 Mr G 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 G from financial harm due to fraud.

Mr G made the first payment in branch using HSBC's automated system and he wasn't asked anything beyond confirmation of the payee details and whether he wanted to make the payment. I've considered the circumstances and given the value and nature of the payment I don't think HSBC missed an opportunity to intervene.

Mr G also attended the branch to make the second payment but ultimately the payment was made over the phone with HSBC's fraud detection team. I'm satisfied the call handler asked several questions and that he also gave Mr G scam warnings and advice on additional due diligence. I'm also satisfied that Mr G answered the questions honestly. However, I agree with our investigator that the call handler failed to identify there were several red flags present which matched a common fraud trend and which strongly indicated Mr G was being scammed or at the very least should have led him to ask further questions which could have uncovered the scam. Mr G told the call handler he bought some shares 20 years ago and

there was a restriction attached to the shares which he was paying to be lifted. He further explained that once he'd paid the fee, the shares would be sold. He also said he was given the beneficiary account details by the wealth management company he was dealing with.

I'm satisfied there was enough information here that the call handler ought to have identified that Mr G was possibly being scammed, but unfortunately from the questions he asked it's clear he didn't really understand what he was being told and that he was relying on the fact Mr G sounded confident that the payment was genuine. I accept the call handler did provide some scam advice and advice on how to check the company was genuine. But the warnings weren't tailored or impactful enough to protect Mr G in circumstances where I think more appropriate questions might have prevented his loss.

Had the call handler identified that Mr G was potentially being scammed, while I accept Mr G was confident that the sale of the shares was genuine, I haven't seen any evidence that he was keen to take risks and so I think he'd have listened to a tailored warning and acted on the advice he was given around how to check A and J were genuine. Because of this I agree with our investigator that HSBC should refund the payment.

Contributory negligence

I've considered whether the settlement should be reduced for contributory negligence, but I don't think it does. I accept there were red flags including the fact Mr G was cold called and that he seemingly didn't stop to think about why someone would pay for shares in a company which no longer existed. I also accept that, by virtue of the fact he did previously hold some shares, he did have some investment experience.

However, I don't think it was unreasonable that Mr G believed what he'd been told by the scammer. The scam was plausible because he did told shares in W and the scammer had information which reassured him the proposal was genuine.

There was no negative information online about either company and some simple research shows A was a clone of a genuine company. I don't think the fact Mr G didn't spot there was no reference to share purchases on the company website means he was negligent in thinking it was a genuine company. Further, HSBC has said Mr G was an experienced investor but the fact he held some shares doesn't he was experienced to the extent that he could fairly be expected to identify he was being scammed in circumstances where HSBC failed to do so.

I also accept Mr G could have taken steps to verify A and J were genuine companies and that he was given advice on how to do this during the call he had with HSBC. But in circumstances where he believed the first payment had been successfully received and the second payment had been approved by the call handler, I don't think it's unreasonable that he didn't feel this was necessary.

Overall, I think it was reasonable for Mr G to have believed that the scammer was representing a company who wanted to buy his shares and that he was required to pay for the warrants to be lifted before this could happen.

Compensation

Mr G isn't entitled to any compensation.

Recovery

I'm satisfied HSBC did attempted to recover the funds, but I don't think there was a realistic prospect of a successful recovery and as these were international payments it wouldn't be able to compel a response from the beneficiary bank.

Interest

I think that HSBC should pay 8% simple interest per annum on the settlement from the date of the payment to the date of settlement. It argues that the originating account rate would be more appropriate. I disagree. Mr G has been deprived of the use of this money and while the money was held in his savings account prior to the transfers, he may have used it in a variety of ways if it had remained available to him. I think 8% simple is a fair interest rate in those circumstances.

My final decision

For the reasons I've outlined above, my final decision is that HSBC UK Bank Plc should:

- refund the second payment.
- 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 G with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 30 April 2024.

Carolyn Bonnell
Ombudsman