DRN-4524051

Complaint

Mrs H is unhappy that HSBC UK Bank Plc didn't do more to protect her when she fell victim to an investment scam.

Background

In June 2022, Mrs H fell victim to an investment scam. She was researching investment opportunities and found the website of a broker. She says that its website looked generally professional. She completed an online form and was promptly called by a man who said he was an account manager working for the company. Unfortunately, that individual wasn't a genuine investment manager but a fraudster.

He explained the investment strategy that he'd adopt, which primarily involved investing in cryptocurrency and non-fungible tokens (NFTs). Mrs H made an initial payment of a relatively low value to see how things went. She was pleased with the apparent returns her money had earned and was persuaded to start making larger investments.

These payments were made to a third-party cryptocurrency platform. Mrs H was asked to transfer the money to bank account details that were controlled by the platform. She says the scammers used remote access software to take control of her computer to demonstrate how to convert fiat currency into cryptocurrency and transfer it to her "account". In practice, she was simply transferring the cryptocurrency to a blockchain address controlled by the fraudster.

Mrs H says that she was given a log-in to a trading platform where she could view data on how her investments were performing. Further down the line, Mrs H wanted to withdraw money from her account. She says she was told that there were various fees and charges associated with doing so.

In total, Mrs H transferred over £80,000 to the fraudsters. Some of these transfers were funded by a loan she took out with HSBC. She applied for the loan by saying that she wanted to spend money on home improvements.

She made the following payments:

13 June	£5,000
17 June	£4,990 £5,010
5 July	£5,000
25 July	£9,000
2 August	£9,140

4 August	£8,662
5 August	£4,500
9 August	£25,000[1]
10 August	£11,000

During the period of the scam, she spoke to HSBC twice. These calls took place on 17 June at 11:08am and 11:22am. In the first call, the employee of the bank told Mrs H he was concerned that she might be making a payment to a scammer. He said that *"previous customers have reported the bank details as fraudulent … the beneficiary is a genuine one, but the bank account details … they have been confirmed as fraudulent by previous HSBC customers. I really advise you to contact them on their official phone number or get in touch with them to provide alternative bank details."*

Mrs H responded by saying *"I'll contact my agent and come back to you."* The HSBC employee said that would be fine. She says that she did speak to the scammer briefly after this call. He told her that HSBC was unhappy with its customers putting money into cryptocurrency because it didn't want money to leave the banking system. She then called HSBC again at 11:22am. She had a more detailed conversation with an employee of the bank. She was asked several questions about the investment. She reassured them that she'd taken advice from an accountant she knew and that the account she was paying was in her own name. The concerns expressed in the first call weren't mentioned.

HSBC looked into things, but it didn't agree to reimburse her. Mrs H was unhappy with its response and so she referred her complaint to this service. It was looked at by an Investigator who upheld it in part. The Investigator thought that HSBC should've been concerned about the risk of fraudulent activity on the third payment and intervened. If it had done so, she was persuaded that its intervention would've prevented the scam from taking place and so HSBC should be liable from payment three onward.

HSBC disagreed with the Investigator's view of the complaint. It said:

- It had warned Mrs H on the 17 June call that the account she was paying had been associated with fraudulent activity. This didn't dissuade her from going ahead with the payments and so it is difficult to see how further intervention or questioning could've made the difference.

- Mrs H said that she'd sought advice from a friend who was an accountant, and this will have reassured the employee of the bank that all was above board.

- Mrs H misled HSBC about the purpose of the loan by saying it was to pay for home improvements. Any award should therefore be offset against the outstanding balance on the loan.

Mrs H also disagreed with the Investigator's view and thought she should be reimbursed in full from the first payment. She argued that the telephone warning wasn't communicated in such a way that it conveyed the real level of risk involved. She also argued that, although it seemed like she'd earned unrealistic returns, there were well publicised examples of people earning enormous returns on investments in cryptocurrencies.

[1] This payment was funded by a personal loan granted by HSBC for £25,000 on the same day.

As both sides disagreed with the Investigator's view, the complaint was 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 findings on this complaint on 23 November 2023 and asked both sides to respond by 21 December 2023. I wrote:

> *In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, good industry practice required that HSBC be on the lookout for activity or payments that were unusual or out of character to the extent that they might have indicated an increased risk of fraud. On spotting such activity, I'd expect it to take reasonable steps to protect its customer from that risk.*
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> *In this instance, HSBC did identify a risk and that led to two conversations with Mrs H on 17 June. Unfortunately, I'm not persuaded that the first phone call was handled as it ought to have been. The employee of the bank suspected that Mrs H might have been in the process of falling victim to a scam and wanted to make sure she took steps to protect herself. She said that she'd contact her agent. I think the employee of the bank took that to mean that she would contact the cryptocurrency platform to ensure that she wasn't paying the wrong account. But the real risk here was that Mrs H was interacting with a bogus "broker" and the language she chose reflected the fact that she had a third-party agent managing her investments on her behalf.*
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> *In the circumstances, if there was a genuine concern about the risk of an investment fraud, redirecting Mrs H to go back and discuss the bank's concerns with the potential fraudster was the wrong thing to do. That gave the fraudster the opportunity to neutralise any doubts that might have been placed in her mind by the conversation with HSBC. This is what Mrs H says happened. The fraudsters told her that banks were uncomfortable with customers making payments to cryptocurrency platforms because they operated outside of the banking system. This gave her a misplaced confidence that she wasn't being scammed, particularly given that HSBC's concerns weren't mentioned in the second call.*
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> *Overall, I'm satisfied that HSBC was in a position to warn her about the scam risk and it didn't do so. As a result, it missed an opportunity to prevent Mrs H from falling victim to the scam.*
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> *I've also considered whether Mrs H can be considered partially responsible for her losses. The Investigator recommended that the complaint be upheld on a shared liability basis with Mrs H being refunded 50% of her losses. But that doesn't strike me as a fair way of resolving the complaint. At the point Mrs H was making her initial payments, I don't think she can be said to have been contributorily negligent. From the explanation she's given us, she was assured that there was a good chance she'd earn generous returns, but that if she didn't, the most she could lose would be 10% of her investment. I don't think she can be said to have been careless in believing the investment opportunity to be credible.*
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> *I also don't agree that the warning she received in the first phone call was stark – I'd say the tone of it was more speculative. But for the conversation she had with the*

fraudster, its content should've prompted her to be more careful. But it wasn't communicated in such a way that Mrs H acted recklessly by going ahead and making the payment. It's relevant that she had this conversation with the fraudster that assuaged any concerns she might have had, and I think that was foreseeable from HSBC's perspective.

However, I think there was a point at which Mrs H should've recognised that the returns on her investment that she believed she'd earned were simply too good to be true. I understand that it was following an investment made in late July that she was told her returns were nearly as high as £100,000. Her investment had almost quadrupled in value in six weeks. I think she ought to have been more sceptical about how realistic it was for the broker to have earned such a generous return on her money in such a short space of time and that should've prompted her to make further enquiries. For that reason, I think HSBC should be allowed to deduct 50% from compensation payable to Mrs H from 2 August onwards.

Mrs H responded to say that she accepted my provisional decision. However, HSBC didn't agree. In summary, it argued the following:

- There was only a ten-minute window for Mrs H to have had a conversation with the scammer (and likely not even that much time) and, given the explanations she went on to give in the later call, it's not likely that the scammer could've appropriately coached her during that short period of time. This suggest that she'd been coached at an earlier point and was under the spell of the scammer before HSBC spoke to her. In view of that, it's unlikely any further steps taken by HSBC would've prevented her from making those payments.

- There were multiple examples of Mrs H not being candid or open when answering questions posed by HSBC. She'd also not been honest when applying for the loan.

- It also said that any deduction for contributory negligence ought to be applied to every payment. It argued that she didn't carry out any appropriate checks before making her investment. It also said that, at a time of extremely low interest rates, the notion that an investment could deliver generous returns without any risk to 90% of her capital was not something the reasonable person should've accepted.

- Finally, it argued that it was unreasonable to have proposed an additional award of 8% simple interest. HSBC contends that any interest awarded should be at the rate applied to the originating account.

I've considered these additional arguments below.

First, HSBC is unpersuaded that, even if it had handled things differently, it would've been able to prevent Mrs H from going ahead with the payments. I accept that the interval between the two calls Mrs H had with HSBC was short and that it's not realistic that the scammer could've told her how to respond to the possible questions she'd face when she called HSBC back.

However, I don't think it was necessary for such a detailed conversation to have taken place. All the scammer needed to do was say something to prevent Mrs H from treating HSBC's intervention with the appropriate level of seriousness. I don't think it's unrealistic to speculate that the scammer could've achieved that in a five-minute phone conversation.

While clearly some of the answers she gave to questions were not true, the questions she was asked were closed. It wouldn't have taken a great deal of coaching by the scammer or creativity on Mrs H's part to respond to them satisfactorily, particularly given that she appeared to have been misled into believing that this was a mere box ticking exercise.

Second, HSBC has argued that a contributory negligence deduction should be applied to all payments, rather than just the later ones. I accept that Mrs H could have been more careful than she was and taken greater steps to protect herself. But I'm not persuaded that her actions fell below the standard one would expect of the reasonable person.

The information that's been shared with us doesn't (in my view) indicate that there were clear and unambiguous red flags that ought to have put her on notice of the risk that this investment wasn't a genuine one. To reiterate a point that I made in the provisional decision, she was given a generic assurance of generous returns, rather than being promised a specific return that was obviously unachievable. I also don't agree that, all other things being equal, being assured that 90% of your investment wasn't at risk would be a red flag to the reasonable person either. For this to be recognisable as an indicator of fraud risk, I'd expect it to be paired with at least one other risk factor, such as an unrealistic return. In general terms, the greater the return that a customer has been promised, the greater scepticism they should apply to being given assurances about the low or non-existent levels of risk.

In this case, Mrs H wasn't made a specific promise about an unrealistic return and so this was essentially perceived as a low-risk gamble. While Mrs H fell victim to this scam at the end of a long period of historically low interest rates, she actually began to invest as this period was coming to an end. The Bank of England's base rate had increased by one percentage point in the six months prior to the scam. It also took place against a backdrop of increasing concern about high rates of inflation. In the preceding twelve months, inflation was significantly higher than the Bank of England's target rate of 2%. As a result, it was widely reported that interest rates were on an upward trajectory, and this would eventually be reflected in the rates offered to retail customers through savings and investments. Against that factual background, I don't agree that she was careless in believing that it was possible to earn a generous return.

Finally, I also think HSBC should pay 8% simple interest per annum on these payments. Mrs H has been deprived of the use of this money for over eighteen months and, whilst I understand that some of it was held in her savings account prior to the transfers, she may have used it in a variety of ways if it had remained available to her. I think 8% simple is a fair interest rate in those circumstances.

Final decision

For the reasons I've set out above, I uphold this complaint.

If Mrs H accepts my decision, HSBC UK Bank Plc should compensate her as follows:

- Refund in full the payments made on 17 June, 5 July and 25 July.
- Refund 50% of the payments made on 2 August, 4 August, 5 August and 10 August.
- Add 8% simple interest per annum to each of these refunds calculated to run from the date the payments were made until the date any refund is paid.
- The £25,000 payment made on 9 August was funded by a loan granted by HSBC. HSBC should refund 50% of this payment but use it to reduce the balance of the loan.

- If necessary, it should rework the loan account to reflect the lower balance so that the interest charged on future payments is 50% less than specified on the original agreement.

- Refund 50% of the interest paid on the loan to date.

- The loan will remain in force and Mrs H will remain liable for repayments. She will be free to settle the loan early using the rest of her refund if she chooses to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 9 February 2024.

James Kimmitt
Ombudsman