

Complaint

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

Background

In 2021, Mr I came across an advert online that promoted an opportunity to invest in cryptocurrency. He completed an online form which led to him being contacted by someone who claimed to represent an investment firm. Unfortunately, that call hadn't come from an employee of a legitimate firm, but a scammer.

He was persuaded to open an account with a third-party cryptocurrency platform. He made the following transfers from his HSBC account to his e-wallet with that third party. Those deposits were then converted into cryptocurrency which was transferred into the control of the fraudsters.

1	9 Aug 2021	£1,000
2	9 Aug 2021	£1,000
3	12 Aug 2021	£25,000
4	17 Aug 2021	£25,000
5	20 Aug 2021	£2,200
6	20 Aug 2021	£300

He was given access to an online platform where he could see the progress of his investments. However, as I understand it, the data that he saw was fabricated by the fraudsters to convince him that the opportunity had been a legitimate one and to persuade him to continue investing. He wasn't promised any specific returns, but he appeared to have earned good returns on his investments by that point. £50,000 of the money that Mr I transferred was funded by two loans worth £25,000 each that he took out with third-party lenders. I understand he told those lenders that he was borrowing the money to pay for home improvements. The proceeds of each loan were immediately moved by Mr I into his e-wallet on the cryptocurrency platform.

He realised he'd fallen victim to a scam when he was told that, in order to withdraw his profits, he would need to pay tax to the authorities in Luxembourg. He let HSBC know what had happened. It investigated, but it didn't agree to reimburse him. It said that the transfers that he'd made from his HSBC account had been to an account in his own name – i.e. the e-wallet with the cryptocurrency platform. It was only when he transferred those funds on that he suffered a financial loss. For that reason, it didn't think it could be considered responsible.

Mr I was unhappy with that response and so he referred the complaint to this service. It was looked at by an Investigator who upheld it in part. The Investigator noted that HSBC was expected to be on the lookout for payments that were unusual or out of character to the extent that they might have indicated a fraud risk. The Investigator noted that Mr I had made two payments of £25,000 and this was significantly out of keeping with the way his account had been used historically. She was satisfied that it ought to have intervened at that point and, if it had done so, that the scam would've been prevented.

HSBC didn't agree with the Investigator's view. It reiterated that Mr I was paying an account in his own name. But it added that Mr I is a qualified accountant and so understood the risks involved here more than the average customer. It also pointed out that he'd misled two other businesses when applying for the loans that funded the investment.

As HSBC disagreed with the Investigator's view, the complaint was passed to me to come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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, that isn't the end of the story. Good industry practice required that HSBC be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified.

The Investigator thought HSBC needed to take action at the point where Mr I asked it to make the first payment of £25,000. I'd agree with that conclusion. I've looked at the statements for Mr I's account and this payment was significantly larger than other recent payments. It's also significant that it immediately followed the receipt of funds from a loan which was another potential risk signifier. I don't think it should've processed that payment without first making enquiries with Mr I to satisfy itself that he wasn't at risk of financial harm due to fraud.

If it had done so, I'm persuaded that it would've prevented his losses to the scam. From his recollections, Mr I wasn't given specific instructions by the scammer to mislead the bank if questioned about the payments.

HSBC has argued that, since Mr I must have misled the lenders to successfully obtain the two loans, it can't be assumed that he wouldn't have misled HSBC too. As I understand it, Mr I told those firms that he was borrowing the money to pay for "*home improvements*." I've considered this point carefully, but I'm wary of reading too much into the fact that Mr I gave inaccurate information to those firms when applying for loans. There was minimal interaction between him and the lenders when applying. He selected that purpose from a constrained list of equally inappropriate options. On its own, I don't think I can infer from that that he would've given inaccurate responses when speaking to HSBC about the payments. On balance, I think it's more likely than not that he would've answered the bank's questions openly and honestly.

An employee of the bank could've directed him to check the website of the regulator, the Financial Conduct Authority, which had already published a warning about the firm Mr I

wanted to invest with. If that had happened, the scam would've been uncovered and Mr I would be unlikely to have gone ahead with any further payments.

I've also considered whether it would be fair and reasonable for Mr I to bear some responsibility for his own losses here. I've taken into account what the law says about contributory negligence, but kept in mind that I must resolve this complaint based on what I consider to be fair and reasonable in all the circumstances. Having done so, I don't think Mr I acted reasonably. As I understand it, he entered into this investment arrangement without any clear statement of the basis on which his funds would be managed. There were no formalities or contracts setting out how things were supposed to work. This ought to have been a cause for concern.

I can also see that Mr I took out the two loans at the suggestion of the scammer. I think he should've considered that it was highly unlikely a legitimate investment professional would encourage him to do this. I'm also mindful of the fact that Mr I works as an accountant and, while I realise that wouldn't necessarily give him expertise on the subject of investments, he ought to have had a greater appreciation of the risks he was taking here and acted more cautiously. Overall, I find that Mr I was contributorily negligent and that it would be fair and reasonable for HSBC to make a deduction of 50% from any compensation payable.

I have also taken into account that Mr I transferred the money to an account in his own name, rather than directly to the fraudster, so he remained in control of his money after he made the payments from his HSBC account. Further steps were needed before the money was lost to the fraudsters.

However, I am satisfied that it would be fair to hold HSBC responsible for his losses (subject to the deduction discussed above). As I have explained, the potential for multi-stage scams ought to have been well known to HSBC and, as a matter of good practice, it should fairly and reasonably have been on the look-out for payments presenting an additional scam risk including those involving multi-stage scams. I'm satisfied HSBC should fairly and reasonably have made further enquiries before the third payment and, if it had, it is more likely than not that the scam would have been exposed and Mr I would not have lost any more money. In those circumstances I am satisfied it is fair to hold it responsible for those losses.

Final decision

For the reasons I've set out above, I uphold this complaint. If Mr I accepts my decision, HSBC UK Bank Plc should pay him 50% of payments 3, 4, 5 and 6. It should add 8% simple interest per annum on those payments calculated to run from the date the payments were made until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 21 March 2024.

James Kimmitt
Ombudsman