Complaint

Ms A is unhappy that HSBC UK Bank Plc didn't reimburse her after she fell victim to an investment scam.

Background

In May 2022, Ms A fell victim to an investment scam. She'd purchased a book online several months earlier because she wanted to learn more about investments. In April 2022, she received an unsolicited call from someone who claimed to represent an investment company. Ms A found the caller came across as professional and knowledgeable. They offered her an investment opportunity. She was eventually put in touch with another employee who said they would invest on her behalf.

I understand the strategy that they claimed they'd follow involved investing in cryptocurrencies. She was told that she could earn around £5,000 a month if she put her funds under their management. She was given access to an online portal which showed how her investment was performing and was encouraged by the results.

Unfortunately, the people that had contacted her were not representatives of a genuine firm, but scammers. Ms A made the following payments:

20/05/2022	£2,000.00
20/05/2022	£8,000.00
22/05/2022	£5,000.00
23/05/2022	£2,000.00
23/05/2022	£10,000.00
23/05/2022	£15,000.00
24/05/2022	£8,000.00
24/05/2022	£12,000.00

Each of these payments was made to an account in her name with a third-party business. The funds were then transferred on from that account and ultimately into the control of the fraudsters. It's not entirely clear why, but one payment of £2,000 was returned by that third party – and so Ms A's total loss to the scam was £60,000.

On 23 May, Ms A reached the £25,000 daily limit for her account. She called HSBC to ask whether it would be possible to increase that limit to £60,000. She explained that she needed to do this because she has a mortgage in her home country. There was no further discussion on that point, but the employee of the bank confirmed that they couldn't increase the transfer limit over the phone.

Once she realised that she'd fallen victim to a scam, she notified HSBC. HSBC didn't agree to reimburse her and recommended she direct her complaint to the third-party business that she'd made these transfers too. It was from that account that her loss originated, not the one held with HSBC.

Ms A wasn't happy with the response she received from HSBC and so she referred her complaint to this service. It was looked at by an Investigator who upheld it. The Investigator thought that, at the point Ms A asked HSBC to make a payment of £8,000 on 20 May, it ought to have recognised the possibility that she was at risk of financial harm due to fraud.

HSBC disagreed with the Investigator's view. It said that Ms A had a long-established payments history with the account she paid the money into. On that basis, it didn't think it could've been expected to spot the risk of a scam. It also pointed out that Ms A had transferred funds into an account in her own name with a different regulated business. She had therefore suffered no loss at the point the money left her HSBC account. It argued that Ms A should instead direct her complaint to the other business.

Because HSBC 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 a provisional decision on 26 January 2024. 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, 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.*
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> *The Investigator said that HSBC should've taken action in connection with the £8,000 payment on 20 May. However, I'm not persuaded it would've had a reasonable basis for doing so. I've seen the statements for Ms A's account for the 12-month period prior to the scam and I can see that she paid that same account over 20 times. The total value of those payments was around £60,000. In that context, I don't think an £8,000 payment to such a well-established payee would've stood out to HSBC. It could reasonably have assumed it was simply another payment to her own account like the many she'd made in the past without issue and so I don't think it did anything wrong in processing it.*
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> *It might have had more explicit grounds for concern at the point she made the £15,000 payment. At that point, not only was she sending larger sums of money than she had done in the past, but the pattern of spending had changed too. The payments of £10,000 and £15,000 were fewer than ten minutes apart. However, as I explained above, I'd expect any intervention on HSBC's part to be proportionate to the identifiable risk. All else being the same, the well-established history of payments from Ms A's account to the third party would justify treating this activity as being lower risk. In other words, the size of the payments was countered by the fact that*

they were to a longstanding payee. In my view, a written warning would have been an appropriate intervention here.

However, even if I found otherwise on that point, I can't ask HSBC to reimburse her unless I can reasonably conclude that its error was the cause of her loss. I have to take into account the law on this point. That means I need to be able to affirmatively answer the following question – would the damage or loss which Ms A has complained about have occurred "but for" the failings of the respondent? In other words, is there sufficiently strong evidence to show that it's more likely than not that, "but for" the failing on the part of HSBC, the relevant loss would not have occurred? If the loss would have occurred in any event, the conduct of HSBC is not a "but for" cause. To reach a conclusion on this point, I need to consider what would have happened if HSBC had handled things differently.

I can't know with certainty what Ms A would've done if HSBC had called her to discuss the payments. However, I've considered the call in which she asked HSBC to increase her transfer limit. She told the call handler at the bank that she needed to make the payments because she had a mortgage on a property in her home country. I agree that this was misleading. I'm also unpersuaded by the argument that she only made this claim because it was her long-term intention to repay that mortgage using the proceeds of this investment. The mortgage wasn't the real reason she was making the request and so the information she volunteered to the call handler wasn't accurate.

In view of that, I think it's hard to argue that Ms A would've responded to any questioning by the bank openly and honestly. As I noted above, I can't know with certainty what she'd have done if she'd been called by the bank in connection with any of the other payments. But the limited evidence that I do have suggests that she'd have been willing to mislead the bank. Furthermore, the fact that the payment and this call were close in time suggests that she'd likely have relied on the same explanation that she later gave the bank when asking to increase the transfer limits. Where there is a particularly high fraud risk, I might expect a bank to not take a customer's initial answers to fraud enquiries at face value. However, given the well-established payment history, I'm satisfied that wasn't the case here.

I don't say any of this to downplay or diminish the fact that Ms A has fallen victim to a cruel and cynical scam. I have a great deal of sympathy for her and the position she's found herself in. However, my role is limited to looking at the actions and inactions of the bank and, while I accept that HSBC ought to have taken some steps in response to the change in payment activity, I'm not persuaded that its failure to do so was the cause of Ms A's losses in this case.

HSBC didn't respond to the provisional decision. Ms A responded to say

- While Ms A had an established history of making payments to that payee, it was exceptionally out of character for her to transfer £60,000 in one month. The risk of fraud should've been clear to HSBC.
- It should've seemed unusual to the bank that she would have a spike in payment activity if the payments were connected to a mortgage. It should expect her payments towards a mortgage to be stable and consistent.

- Ms A told HSBC that she needed a higher transfer limit because she was paying off a mortgage in her home country. She argued this wasn't misleading because she was paying both towards the fraudulent investment and the mortgage from the same account and so needed a higher payment limit for both.

- If an employee of the bank had an in-depth conversation with Ms A, it would’ve got to the bottom of what her plans with the money were and could’ve warned her appropriately about the fraud risk.

- She also said that she was intending to repay the mortgage on that property in full in just a few weeks and so needed a higher daily transfer limit to allow her to do so.

I’ve reconsidered the case in the light of Ms A’s submissions and I’m afraid I’m not persuaded to depart from the outcome I reached in my provisional findings.

I want to clarify my position on whether HSBC ought to have intervened in connection with these payments. I agree with Ms A that there was a significant change in the pattern of spending, and that HSBC should’ve taken some action in response to that. However, there’s a wide range of potential actions a bank might take on spotting such a risk – from blocking all payments from the customer’s account to merely giving the customer a general warning about the risks posed by scams. I’d expect any steps taken by HSBC to be proportionate to the observable scam risk. While there was a significant increase in the frequency and value of the payments, the fact that they were being made to an established payee would’ve made them reasonably appear lower risk from HSBC’s perspective. Even if there were a human intervention by an employee of the bank, I think it could’ve justifiably been quite light touch.

I’m not persuaded by the argument that HSBC should’ve been concerned that payments that were notionally being made in connection with a mortgage increased significantly. Although many mortgages are serviced by regular payments of a consistent value, it’s not unusual for a customer to make overpayments to a mortgage or to pay off a mortgage in full with funds sourced from elsewhere.

I’ve attached some significance to the fact that Ms A gave a misleading answer to a question asked by an employee of the bank. I can understand that she may have answered in this way for the sake of convenience because it might have been the simplest way to resolve the practical problem of having hit the transfer limit for her account. And I understand the argument that she now makes that her investment plans were closely connected to the mortgage that she wanted to pay off as quickly as possible.

But if HSBC had called her about any of these payments, I think it’s likely that this would’ve been her starting point in responding to its questions. For HSBC to have worked out exactly what was going on would’ve required a much more detailed conversation than would’ve been justified given the apparent risk. I recognise that I say this with the benefit of hindsight and that, if HSBC had been more interventionist here, there’s a good chance it would’ve prevented her from making any further payments to the scam, but that doesn’t mean it made an error in not doing so.

Final decision

For the reasons I’ve explained above, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask X to accept or reject my decision before 28 March 2024.

James Kimmitt
Ombudsman