

Complaint

Mr C is unhappy that HSBC UK Bank Plc hasn't reimbursed him after he fell victim to a scam. He has brought this complaint with the assistance of a professional representative, but for simplicity's sake, I've generally referred to Mr C only throughout.

Background

In January 2023, Mr C fell victim to an investment scam. He was contacted on social media by someone who offered him an investment opportunity that involved cryptocurrency. Mr C tells us that he did some online research and found positive feedback regarding the company promoting the investment. He transferred just under £100,000 in two payments from his HSBC account to his own HSBC account in Singapore.

HSBC spoke to Mr C when he tried to make the first payment. I've transcribed a relevant section of the conversation that took place below:

HSBC: The main reason for my call is regarding a £50,000 transfer you are sending to Singapore This payment had been held up for fraud checks. I will be needing to ask you questions about this payment. Please be aware that this call is recorded so if there is any information given to us which may be misleading, HSBC may not be able to recover your funds. So, I just want to confirm with you first of all, did you make this payment yourself?

Mr C: Yeah.

HSBC: And what is the purpose of the payment?

Mr C: It's just to myself, erm, it's for savings in Singapore.

HSBC: I'm sorry, you're sending this money to Singapore for what, sir?

Mr C: For... just for savings.

HSBC: And this account of yours in Singapore, is it something you've had for quite some time or is it brand new ... how long have you had this account in Singapore?

Mr C: It's ... over one year.

The call handler went on to give some examples of the types of scam Mr C should be careful of, although those examples weren't relevant to his circumstances. After the call ended, HSBC processed the payment in line with Mr C's instructions.

He realised that he must have fallen victim to a scam when he was asked to pay a tax on his profits. He complained to HSBC but it didn't agree to refund his losses. In its response to his complaint, it wrote:

"I understand [Mr C] made two international transfers related to an investment. He later established that this was a scam.

From reviewing our records, I can see that the funds were sent to [his] own account with HSBC Singapore. [He] has confirmed that he opened and has control of that account, that the funds were received in the account and that he subsequently transferred them on to a different account ... HSBC UK would not provide a refund as the funds were sent to [Mr C]'s own account.

Mr C was unhappy with the response he received from HSBC and so he referred his complaint to this service. It was looked at by an Investigator who didn't uphold it. The Investigator noted that HSBC had taken steps to protect Mr C from the scam. It had blocked his initial payment so that it could discuss it with him first.

However, the Investigator's view was that Mr C had given a misleading answer to the call handler when asked what the purpose of the transfer was. She also noted that the scammer had told him to not select 'investment' as the reason for making the payment when doing so online. He was told that this would cause delays. She thought it was likely therefore that Mr C wouldn't have disclosed the purpose of the payment.

Mr C disagreed with the Investigator's view. He said it should've been obvious to the call handler that English isn't his first language and that he was finding it difficult to understand the information that was being shared with him. He also said that HSBC simply didn't go into enough detail when asking him about the payments and took his explanation at face value.

As Mr C disagreed with the Investigator's view, the complaint has been passed to me to consider and 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.

I issued a provisional decision on this complaint on 23 February 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.

I'm satisfied that these payments were large enough that they justified a proactive intervention by the bank. However, I'm not persuaded that the bank's intervention was as effective as it should've been or was proportionate to the risks involved.

Mr C was asked briefly to explain the purpose of the transfer. He said it was to himself and for "savings" – I don't think it was enough for the call handler to take this answer at face value. He should really have been asked one or two more questions to try to identify more specifically what he was transferring the money for. If HSBC had been able to identify that Mr C had been enticed by an investment opportunity promoted on social media and based on investment in cryptocurrency, I think it would've been able to identify that it was very unlikely to be a legitimate investment and warned him appropriately.

I'm not persuaded that Mr C lied when answering the bank's questions. I think the semantic difference between the words "savings" and "investments" isn't completely clearcut, particularly to a customer who doesn't speak English as their native language. I recognise that Mr C has told us that the scammers told him to not select "investment" as a payment purpose because it would lead to greater scrutiny by the bank. I don't think that's a clear indication that he wouldn't have answered follow up queries about the nature of the payments.

I've also considered whether Mr C should bear some responsibility for his own losses. In doing so, I've taken into account what the law says about contributory negligence but kept in mind that I must decide this case based on what I consider to be fair and reasonable in all the circumstances.

I think there were several indicators that this opportunity might not be legitimate. It was promoted to him on a social media platform following unsolicited contact. I think he should've recognised that a legitimate investment firm would be unlikely to promote itself in this way. In addition, there don't appear to have been any particular formalities to this investment – there was no written contract nor any document setting out the basis on which Mr C's money would be managed.

I don't know precisely what returns Mr C was expecting at the time of investing, but he told our Investigator that he'd seen evidence of 10% profits per day. Such a return would be far too good to be true. I've also not seen any other evidence of steps the fraudsters took to persuade Mr C that they were legitimate. He says that he carried out online searches and found positive results, but there are none available anymore. The website for the investment company is no longer live and hasn't been archived anywhere so I can't see what information he'd have seen when consulting it.

Overall, I do think Mr C ought to have treated this investment opportunity with far greater scepticism and caution than he did and so I think it's fair and reasonable for HSBC to make a deduction from the compensation it needs to pay him.

I have also taken into account that Mr C transferred the money to an account in his own name, rather than directly to the fraudster, so he remained in control of the money after he made the payments from his HSBC account in the UK. 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 a deduction for contributory negligence). 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 processing the first payment. If it had, it is more likely than not that the scam would have been exposed and Mr C's losses would've been prevented. In those circumstances I am satisfied it is fair to hold it responsible for those losses.

I explained that I intended to uphold the complaint and direct HSBC to refund 50% of the money Mr C lost to the scam and add 8% simple interest per annum to those payments.

HSBC disagreed. It pointed out that Mr C had held an account with HSBC Singapore for some time and had previously made numerous payments from his account in Singapore to his account in the UK. The reason the first payment flagged was because it was the first time that he'd sent funds from the UK account to the Singapore account. Nonetheless, he was paying an account from which he'd received funds on many previous occasions. He was, effectively, transferring funds between his own accounts and the call handler he spoke with wouldn't have had any reason to think otherwise. HSBC also said that, even if it had asked Mr C further questions, he was being coached by the scammer and so it's unlikely he'd have revealed anything of concern to the bank.

I've considered HSBC's response carefully, but I'm not persuaded to depart from the conclusions I set out in my provisional decision. I accept that the fact that Mr C was paying funds into his own account would've been a source of some comfort from HSBC's perspective and it would be a factor that would suggest a lower risk of a scam, all else being equal. Having said that, as I explained in my provisional decision, HSBC ought to have been aware of the risks posed by multi-stage scams which invariably involve customers moving money through accounts in their own name.

I also think the values of the payments are a relevant risk factor. HSBC has provided evidence showing multiple payments being made from the Singapore account. The largest of these was for £15,000. In this case, the first payment Mr C made was for £50,000 and the second for £49,000. I think the intervention by the employee of the bank wasn't in proportion to the risk associated with such a large payment. The comfort HSBC could take from the fact that Mr C was paying his own account wouldn't justify such a light-touch intervention.

I've also considered the fact that Mr C was being coached by the scammer and the impact that might have had on how he responded to further questioning. I understand the scammer told him to not tell HSBC that the payment was for investment purposes. Instead, he told the call handler the payment was for "savings." As I explained in my provisional decision, I don't find that the difference between the words "savings" and "investments" is as clearcut as has been argued. Nonetheless, it's clear from the way Mr C answered those questions that he wasn't given a detailed cover story to circumvent follow up questions. Overall, I think it's more likely than not that, if the call handler had asked him some follow up questions, it would've become apparent that he was falling victim to a scam.

Final decision

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

If Mr C accepts my final decision, HSBC UK Bank Plc should:

- Refund 50% of the payments he made in connection with the scam.
- Add 8% simple interest calculated to run from the date the payments left his account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 April 2024.

James Kimmitt
Ombudsman