DRN-3590016

Complaint

Mr A is unhappy that HSBC UK Bank Plc won't reimburse him the money he lost to an investment scam.

Background

In 2019, Mr A was researching potential investment opportunities. As a result of his enquiries, he was contacted by an individual who offered him the chance to invest his money. Unfortunately, this individual wasn't the representative of a legitimate firm, but a scammer.

The scammer had adopted a similar name to that of a legitimate firm to make the investment opportunity seem more believable. For the same reason, Mr A was asked to go through a series of anti-money laundering and verification checks, including demonstrating the origin of the funds and providing valid identification documents. He was provided with fake documentation, including an explanation of the bond he was investing in and a certificate to show that he'd invested.

The details of the investment offering weren't entirely clear – they were described as bonds. However, he was told that his investment had been made in new technologies, specifically the novel use of drone technology. He was sent a series of articles from financial news sites that indicated that this was a growth industry.

He made three transfers in total from his HSBC account in the belief that he was investing his money. The total value of these transfers was just over £62,000. When one of these bonds was due to mature, Mr A attempted to contact the individuals he'd spoken to initially. It wasn't possible to do so. He realised that he must've fallen victim to a scam and so he promptly notified HSBC.

HSBC didn't agree to refund his losses. Mr A was unhappy with that and so he referred his complaint to this service. It was looked at by an Investigator who upheld it. The Investigator noted that HSBC was expected to be on the lookout for transactions that were out of character or where there was the indication that the risk of fraud might be elevated.

She thought that the first payment Mr A made to the scammer for £12,000 was a sufficient deviation from his normal account activity that HSBC ought to have questioned that payment before allowing it to be processed. If it had done so, she thought it was likely that the scam would've been prevented.

HSBC disagreed with the Investigator's opinion. It didn't think that the payment was out of character and cited two other large payments made around the same time as the scam. It also pointed out that one of the payments made by Mr A was made into an account that is now subject to an Account Freezing Order. As a result, HSBC is unable return those funds to him.

Because HSBC disagreed with the Investigator's opinion, 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.

It's common ground here that Mr A authorised the payments in dispute. He was tricked by the fraudsters into making the payments in the belief that he was participating in a genuine investment opportunity. I accept that these were authorised payments even though Mr A was the victim of a fraud. And although he didn't intend the money to go to fraudsters, he is presumed liable for the loss in the first instance.

However, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider HSBC should fairly and reasonably:

- Have been monitoring accounts, and any payments made or received, to counter various risks, including money laundering, countering the financing of terrorism and preventing fraud and scams.

- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk (among other things). This is particularly so given the increase in sophisticated fraud and scams, which banks are generally more familiar with than the average customer.

- In some circumstances, irrespective of payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make the payment altogether.

I'm satisfied that these payments were unusual and out of character. The first payment was for £12,000 and it was significantly larger than any of Mr A's recent payments. While there were other entries in his statements that were of a comparable value (for example, a cheque for just under £8,000) none of these were account transfers. I'm also mindful of the fact that this first payment was made to a new payee.

I don't think HSBC should've processed this first payment without first making some basic enquiries with Mr A so as to satisfy itself that he wasn't at risk of financial harm due to fraud. If Mr A had been encouraged to carry out further checks (for example, the website of the regulator, the Financial Conduct Authority), I think it's likely he would've uncovered that the group he believed he was investing with wasn't authorised. Its website claimed that it was a trading name of a different business. That other business had an historic listing on the FCA register but hadn't been authorised to carry out any regulated activities from 2018 onwards.

Furthermore, the returns that Mr A believed he would've received from these bonds were significantly out of line with typical investment returns, particularly since he'd also been told that the investments were low risk. I think it's likely an employee of the bank would've recognised that this was an indicator of an increased risk of fraud. If Mr A had been put on notice about the risk of proceeding, I think it's highly likely that he'd have opted against going ahead with the payments.

I've considered whether Mr A can be considered partially responsible for his losses here. In doing so, I've considered what the law says about contributory negligence but also borne in mind the fact that I must reach a decision based on what I consider to be fair and reasonable. And having done so, I'm satisfied that he shouldn't be considered partially responsible.

The contact from the scammer wasn't unsolicited. He'd only been contacted because he had genuinely been online researching potential investment opportunities. The scammer was able to take Mr A through a convincing series of checks, something which he'd have expected a legitimate business to do. The communications from the scammers were generally professional and credible. They had created a fictitious investment strategy, but they were able to give apparently sensible explanations for why they recommended Mr A pursue it and they supported their arguments with articles taken from well-known financial news sites. The website that the scammers created has since been taken down, but a cache of its index page is still available online and this shows that they'd created an online presence which had an air of authenticity and so I'm satisfied that it wasn't careless of Mr A to have treated it as being legitimate.

Overall, I'm satisfied there was no contributory negligence on Mr A's part and that he was simply the unwitting and blameless victim of a manipulative fraudster.

Final decision

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

If Mr A accepts my decision, HSBC UK Bank Plc should pay him:

- The money he lost to the scam.
- Interest on that sum calculated using the monthly average rate for a fixed-rate bond as published by the Bank of England for the month of June 2019. This calculation should be based on the entire sum he lost to the scam and calculated to run up to the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 December 2022.

James Kimmitt
Ombudsman