DRN-4278822

The complaint

Mr P complains that HSBC UK Bank Plc ("HSBC") won't refund money he lost when he fell victim to a cryptocurrency investment scam.

Mr P is represented by solicitors in this complaint.

What happened

Mr P's representative says that in October 2021, an individual who Mr P was friends with on social media reached out to him and they started communicating frequently. They discussed various things about their lives and the individual told Mr P that they were experienced in cryptocurrency trading and making a lot of money. Mr P was encouraged to trade as well.

Mr P looked at the website of the trading company, which I'll call "F", and found everything to appear genuine and professional. With the help of the individual, he set up an account and, on 22 October, he paid an initial deposit in US Dollars which came to around £188. Looking at Mr P's bank statements, the remaining 21 transactions in relation to this 'opportunity' happened on 9 and 10 February 2022. In total, Mr P sent just under £7,000 using his HSBC debit card.

HSBC says it first became aware that Mr P thought he'd been scammed in early 2023, when his representative made a complaint on his behalf. The bank didn't uphold Mr P's complaint and said the funds were willingly sent to a cryptocurrency exchange and then transferred on to a third party; Mr P thought he was loading the cryptocurrency on to his trading account but unbeknownst to him he had sent it to the scammer.

Our investigator didn't uphold the complaint. They thought that given the frequency of transactions on 9 February, HSBC ought to have provided a warning about cryptocurrency investment scams to Mr P. But they concluded that it was unlikely a warning would have stopped Mr P in his tracks, given there was no adverse information about F in the public domain. And because Mr P was, in his representative's words, mesmerised by what the scammer was telling him.

Mr P's representative says there was an obvious pattern of fraud here and believes that HSBC would have been able to prevent the scam if it had displayed skill and due care.

What I've decided – and why

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

Under regulations and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even where they are duped into making that payment. There's no dispute that Mr P made the payments using his security credentials, and so they are authorised.

But in accordance with the law, regulations and good industry practice, a bank should be on the look-out for and protect its customers against the risk of fraud and scams so far as is reasonably possible. If it fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it *might* be liable for losses incurred by its customer as a result.

I don't consider the initial disputed transaction, which took place in October 2021, ought to have appeared as unusual or suspicious to HSBC. The payment amount was in keeping with Mr P's usual spending. The next transactions (several of them) happened on 9 February 2022. The first transaction that day was for £1,000, and the remaining were for £300 each.

I can also see that a couple of transactions were declined by HSBC, although the bank has said that none of the transactions were picked up by its fraud detection system. As these transactions happened after the point at which I think HSBC ought to have made enquiries, I don't think it matters why they were declined. Prior to the declined transactions, Mr P had sent four transactions within a matter of four minutes. HSBC ought to have noticed multiple payments in quick succession to a cryptocurrency exchange. I consider it missed an opportunity to intervene.

But that is not the end of the matter. Causation is a critical determinative factor. It isn't enough that HSBC failed to intervene and discuss the transactions with Mr P. I also need to be satisfied that an intervention would have affected his decision to go ahead. The investigator initially said that they would have expected HSBC to have provided a written warning specifically about cryptocurrency scams. In response to Mr P's representative's argument that the bank ought to have done more and phoned him, the investigator still wasn't persuaded that that would have made a difference.

I've thought about this carefully and agree that HSBC ought to have contacted Mr P and made enquiries about the nature of the transactions. I can't say for certain how Mr P would have responded. In such situations, I must decide on the balance of probabilities, i.e., what I consider more likely than not to have happened, taking into account the information that is available. I can see his representative has said that Mr P took out a loan with the bank to fund the trading account for ongoing investments. I'm not entirely convinced that Mr P would have been honest about the purpose of the loan at the time he applied for it, given in my experience a high street bank doesn't lend money to its customer for investing or trading. This casts some doubt on how forthcoming Mr P would have been about the real reason for making the disputed transactions had HSBC questioned him like I think it should have.

Even if I'm wrong about that, and Mr P would have explained how he came to know about the investment opportunity with F, I'm still not persuaded that this would have led to a different outcome. We've been told that Mr P and the scammer continued talking daily and Mr P continuously logged into and monitored his account. His representative says that Mr P was extremely happy with the consistent profit he had been making, which seemed to be at a reasonable rate. And that the scammer went into great detail about market conditions with him and their knowledge of such complex topics added to their credibility. By the representative's own admission, Mr P was mesmerised by the scammer and had placed faith in them.

Given that I think the intervention ought to have happened in February 2022 – nearly four months since Mr P had started communicating with the scammer – it seems clear to me that Mr P's trust had been gained and he was under the spell of the scammer by the point I think the bank should have intervened. Under the circumstances, had HSBC warned him about common features of cryptocurrency scams, any concerns Mr P might have had would have likely been alleviated by the scammer since they were still in regular contact. Even if Mr P had gone away to do further research independently, there were no regulator warnings about F at the time. And, having carried out a backdated search on the internet, I haven't been able to find any adverse information about it either.

So, I'm not persuaded that an intervention by HSBC at that point or the subsequent transactions that day (and next) would have made a difference to Mr P's decision-making.

In summary, I know that Mr P will be disappointed with this outcome. Not least because the matter has been ongoing for some time. I fully acknowledge that there's a lot of money involved here. Despite my natural sympathy for the situation in which he finds himself, for the reasons given, it wouldn't be fair of me to hold HSBC responsible for his loss.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 29 March 2024.

Gagandeep Singh
Ombudsman