DRN-4672045

The complaint

Mr W holds a current account with HSBC UK Bank Plc. During 2019, an investment company contacted him telling him about investment and trading opportunities which could "*make him rich*". Mr W thought the investment company sounded genuine and sent it £23,000 from his HSBC account. This didn't make him rich, much the opposite. He's told us that he lost most of the money.

Mr W now believes that the investment company was fraudulent. He thinks that HSBC should have stopped him sending it his money. As HSBC didn't do this, he wants it to refund him the money he lost and add interest.

What happened

In July 2019, the investment company contacted Mr W by email. It said that it had noticed that he had been looking at its website and wanted to talk to him about the investment opportunities it could provide. Several phone calls followed. It seems the investment company told Mr W that it would invest his money in cryptocurrencies and major companies such as one which makes electric vehicles. Mr W was attracted to the opportunity and agreed to invest. The investment company helped him to set up an account to make his investments. The account was based outside of the UK and although Mr W could see it, the investment company controlled it.

Initially, Mr W invested only relatively small amounts using funds from a credit card he held with another UK bank, which is not connected to HSBC. For a while, the investment seemed to be going well. And I understand that the investment company was in almost daily contact with Mr W, by phone or email, or both. Mr W increased his investment to around £15,000. Again, he used his credit card from the other UK bank to pay for this.

The investment company told Mr W that he would make more profit if he sent it more money, so it could "*make more trades*" on his behalf. Mr W agreed. He sent two payments from his HSBC account, using its online service for fast payments. On 9 August 2019, he sent £13,000 (the first payment) and on 12 August 2019, he sent £10,000 (the second payment).

Mr W then tried to withdraw some of his money. After he spoke to the investment company asking how to do this, the information that he could see about his account showed that its value had slumped to just over £1,000. The investment company told him it would be able to get his money back for him, but only if he sent another payment. But Mr W did not have any more money to send. The investment company then stopped calling him and he suspected he had been the victim of fraud. He didn't send any more money and HSBC has told us he reported his suspicions on 19 August 2019.
During our investigation into Mr W's complaint, HSBC has told us that it isn't convinced the investment company acted fraudulently.

I previously sent HSBC and Mr W a provisional decision on this case. In outline, in that provisional decision, I said that I thought fraud had occurred and that HSBC should bear the cost of three quarters of the money Mr W had lost, minus some deductions. But I gave both parties the chance to comment before I made a final decision.

The time I allowed for comments has now passed. Mr W accepted my provisional decision, but HSBC didn't.

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.

In response to my provisional decision, HSBC made three main points. To set these in context, I will first provide an extract of my provisional decision. I will then discuss the new points HSBC has raised.

<u>*Extract from my provisional decision*</u>

(What follows is largely a direct copy from my provisional decision. But in my reasoning, I mention three specific phone calls and HSBC has now provided information and recordings which show I quoted the wrong date for the first of these three calls. I apologise for this and have now corrected it. I have also made some other minor edits to match the context of a final, rather than a provisional, decision).

Firstly, I will consider HSBC's doubts that the investment company acted fraudulently.

Sadly, the type of fraud which Mr W has described is quite common. It is known as Authorised Push Payment (APP) fraud. To bring it about, fraudsters use sophisticated, and persuasive lies to con their victims into sending them money on false pretences. In outline, they contact potential victims, (usually, but not always, through social media) and offer goods or services, or a romantic relationship, or an investment opportunity, or something else, which they have no intention of providing. Once the fraudsters have gained their victims' trust, they persuade them to pay money into an account which the fraudsters control, and so steal the money.

When Mr W complained directly to HSBC, it accepted that he had been the victim of APP fraud, although it didn't think it was responsible for his loss. When Mr W brought his case to us, he said he had received one return payment from the investment company, which had been sent to his credit card account. However, HSBC had also received a return payment for him and after some persistent enquiries, Mr W said he had received four separate return payments. In outline, these were as follows:

- on 15 July 2019, he received £1,200 (return payment 1),
- on 15 August 2019, he received £1,238 (return payment 2),
- on 29 August 2019, he received £1,000 (return payment 3),
- on 4 September 2019, he received £1,950 (return payment 4).

(I have rounded all values to the nearest £pound. The total amount was £5,388. The first three return payments went to Mr W's credit card account with the other UK bank, and the fourth to his HSBC account).

HSBC has said that it is "*baffled as to how this is a scam (*as Mr W) *has had four returns*". I accept there is certainly logic in HSBC's argument. While fraudsters do sometimes return some money to their victims, they do so only to try to maintain their false credibility, usually by making a single small payment around the time their victim is beginning to doubt them.

So, the pattern of return payments is certainly a bit unusual for a fraud. However, the events which Mr W has described have many of the other characteristics of APP fraud, and fraudsters use many different ruses to keep their victims' trust. So, on balance, I'm satisfied that Mr W probably was a victim of fraud and I will consider his case in that light. From now on I will refer to the investment company as "*the fraudsters".*

HSBC has also pointed out that as it took persistent enquiries for Mr W to identify the four return payments, there may still be others, as yet undiscovered. I accept that its concerns are genuine. But Mr W used a firm of solicitors to bring his complaint to us, and that firm has confirmed that it has checked Mr W's account statements and has not seen any evidence of other return payments. I'm therefore satisfied that it's very unlikely there were any others.

Turning to the two payments at the heart of this complaint and the way HSBC handled them.

There is no dispute that Mr W followed HSBC's normal procedures when he sent the two payments to the fraudsters. By doing so, he authorised them, and effectively instructed HSBC to send the money on his behalf.

Banks are normally expected to act on their customers' instructions, but APP fraud is a significant concern in the finance industry. At the time this fraud took place, I would have expected HSBC to be looking out for anything noticeably unusual in the payments its customers were making. And if it saw anything suspicious about a payment, or a pattern of payments, I would have expected it to check with the customer concerned before proceeding.

HSBC did not make any checks with Mr W *before* he sent either payment. It has said that it doesn't consider them to have been unusual and that as Mr W had authorised them, it behaved correctly when it processed them. I disagree, I think both payments were unusual for Mr W.

The first payment was to a new payee, a company which was based outside of the UK. It was for far more than Mr W's usual payments. Indeed, he has told us that it was significantly higher than the total payments he had made from the account in each of the preceding three months. So, to me, the first payment seems to have been unusual.

As a standalone transaction, the second payment was very similar to the first, with similar features. And it would take Mr W's total payments to the fraudsters to over £20,000 in just three days. Again, this seems to have been unusual.

Had HSBC contacted Mr W before processing the first payment and explained the risk he was running, I think there was a reasonable likelihood that he would have cancelled that payment and not proceeded to make the second. Similarly, had it checked with him before the second payment, I think there is an equal, or greater, likelihood he would have cancelled that one.

Although HSBC has accepted that it didn't check either payment with Mr W before it processed them, it has mentioned at least three phone calls about them which took place on 14 August 2019, two days after the second payment. Mr W has also mentioned some of these calls, although the two descriptions vary. I have therefore described what each party has told us and what I think was most likely to have happened.

The first call

HSBC has told us that Mr W called for help with generating an online code for the first payment and it offered more assistance, but he declined , saying he "*had done it*". Mr W has not mentioned this call, but I have no reason to doubt that it took place in the way HSBC has described.

The second call

HSBC has said that Mr W called to ask for more reference codes for the two payments as the fraudsters had requested them. It has told us that Mr W "*contacted us …to ask for payment references for the £10,000 and the £13,000 as the scammers were needing them to provide to their bank to access the funds, which we sent to Mr W by secure message".*

I understand that after HSBC gave Mr W the references, he passed them onto the fraudsters, albeit without realising the risk he was taking.

The third call

Sometime after the second call, but on the same day, HSBC has said it rang Mr W to ask him if he had "*done his due diligence"* on the fraudsters' company. It hasn't told us much about the discussion which took place during this call, but it has said that its records show that afterwards, "*a recall request was sent to the payee' bank for them to return the funds to Mr W, and regrettably, no outcome was achieved with this*". HSBC has not said *exactly* when it made the recall request. Its notes mention it on both 14 and 19 August. However, I'm satisfied that HSBC *did* make such a request, but only *after* it had supplied reference numbers which allowed the fraudsters to take control of Mr W's money.

Listening to recordings of the first two calls, it seems to me that they both gave HSBC opportunities, which were specific to this case and not typical of most frauds, to check the purpose and background of the payments with Mr W and alert him to the risk he was taking. Both opportunities occurred *before* the fraudsters had gained control of Mr W's money. But HSBC didn't take them. Had it done so, I think it could have stopped the fraud happening.

In many ways, the question of *due diligence,* which HSBC raised during the third call, *could* have amounted to a reasonable check on the payments. Mr W has commented on this directly. He's told us that in his view HSBC only "*intervened after the scam had occurred" and "stepped in too late".*

I agree with Mr W's view that HSBC intervened too late. However, I also think that the first two phone calls gave him the opportunity to discuss the payments, and his contact with the fraudsters, more fully with HSBC than he did. During the second call, Mr W said that at the start of his dealings with the fraudsters he had been "*dubious"* about them. He doesn't seem to have taken the chance to discuss these doubts with HSBC. Had he done so, I think HSBC would have responded by helping him to identify the fraud and to have stopped it happening. I therefore think Mr W and HSBC share responsibility for the loss.

On balance, as HSBC missed at least three opportunities to intervene (the unusual nature of the payments themselves, the first call and the second call), and undoubtedly has a greater knowledge of the way fraudsters work than Mr W, I think it should take responsibility for 75% of the loss, and Mr W take responsibility for the rest.

HSBC's comments

The three points HSBC made in response to my provisional decision were as follows.

- Firstly, it has questioned why I said that the two descriptions of the three phone calls varied and has supplied further copies of the relevant call recordings.
- Secondly, it has repeated that it doubts that fraud actually took place. It has told us it still thinks "*it's' questionable if this was fraud or a bad investment".*
- Thirdly, it has said that it thinks that "a *fairer split (*of the cost of the loss) *would be 50/50 with a deduction* (for the last three payment returns Mr W received)".

Taking each of these in turn:

The three phone calls,

Previously, I had been uncertain how to reconcile the different dates, recordings and descriptions each party had provided about various phone calls. (As well as those from which I have quoted, there were at least two others during the relevant time period). I am grateful for HSBC's clarifications and further call recordings, but they don't change my view of the content of the calls themselves. I do, however, acknowledge that during the third call HSBC certainly raised the distinct possibility of fraud with Mr W.

The question about fraud or a bad investment

I accept the sincerity of HSBC's comments, but it has not said anything new to support its position. So, I remain satisfied that Mr W probably was a victim of fraud.

A fair split of the costs

Again, I accept the sincerity of HSBC's comments. It has not been explicit as to why it believes a 50/50 split would be fairer than 75/25. But its reasons seem to be based on some of the discussion during the third call.

The third call lasted just under ten minutes and included a conversation about the possibility of fraud. HSBC has highlighted that during this conversation it advised Mr W not to send one of the codes it had given him earlier to the fraudsters. It believes that Mr W went on to do this and that if he hadn't, it may have been able to recover his money for him. However, it also said his money had *"already debited"* and it couldn't guarantee recovery.

I am not certain if Mr W did subsequently send the code to the fraudsters, but even if he did, the critical point is that by that time HSBC had missed stronger opportunities to stop the fraud. These occurred when it received the payment requests themselves and during the first two calls. To its credit, it has partly acknowledged this. It has told us that "…*calls 1 and 2 gave* (it) *the opportunity to discuss the payments and had* (it) *done so before providing (the code), (it) could have stopped the fraud happening".*

So, taking the full sequence of events into account, I still think it's fair for HSBC to put things right for Mr W by refunding him three quarters of the money he lost, minus the relevant deductions.

Putting things right

To put things right for Mr W, HSBC should:

- refund him 75% of both payments (£17,250).
- add 8% per year simple interest to the refund, from the date of the payments until the

date it makes the refund.

For simplicity, as the two payments were only a couple of days apart, HSBC may take 12 August 2019 as the payment date for both.

In cases where money has been lost to a fraud due to a bank's shortcomings, but some money has been recovered, we normally allow the bank to deduct the amount of money recovered from any refund. Broadly, I think it's fair to do the same in this case for the last three return payments. However, as Mr W received the first return payment *before* he had sent any money from his HSBC account, this return had no connection with HSBC. So, I don't think it would be reasonable for HSBC to deduct this return. Once HSBC has completed the above calculation, it may therefore deduct the value of return payments 2, 3 and 4 (a total of £4,188) from the money it sends to Mr W.

My final decision

For the reasons I have set out above, I am upholding Mr W's complaint against HSBC UK Bank Plc. If Mr W accepts my decision, HSBC should put things right by paying him the compensation I have already described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 April 2024.
Steve Townsley
Ombudsman