DRN-4517089

The complaint

Mr D and Mrs D complain that HSBC UK Bank Plc refuses to refund the money they lost to multiple investment scams.

As Mrs D had the dealings with the scammers, for ease of reading, I'll refer to her alone in this decision.

What happened

Background

The detailed background is well known by both parties, so I'll only summarise key events here.

Mrs D was interested in investing in cryptocurrency. Around April 2022, she came across a 'friend's' social media post showing her investment success with a company I'll call 'C'. As Mrs D was in the process of selling her business, she replied that she was interested. Mrs D doesn't recall how she and the 'friend' became acquainted on social media but when they discussed the investment with C, she was extremely personable and friendly. The friend also provided Mrs D with access to a group chat so that any questions she had would be answered. This gave Mrs D the impression that C would act in her best interests.

Mrs D was guided by C's representative to open a cryptocurrency exchange account with a company I'll call 'S'. Mrs D funded her initial investment with a payment via another one of her banking providers ('Bank B') and after seeing some profits, she decided to invest more via her HSBC debit card – linked to her current account. From 11 April 2022 to 18 April 2022 Mrs D invested approximately £5,902 from her HSBC account along with further funds from her Bank B account. Mrs D was successfully able to withdraw £2,060 to her Bank B account and so she invested a further £10,000 via her HSBC account. Following this payment, Mrs D's investment started to decline, she contacted C's representative however her trading account access was blocked. Mrs D realised that she'd fallen victim to a scam.

Around June 2022, Mrs D was contacted by an individual claiming to have been scammed by C. This individual introduced Mrs D to a scam group chat with others sharing how they could regain their losses. Mrs D began investing with a different company I'll call 'F'. She initially invested funds via her Bank B account. F's account manager pressured Mrs D to invest further funds and so Mrs D paid £16,000 from her HSBC account to fund her investment with F. After some back and forth with F's account manager wanting Mrs D to invest further funds and Mrs D wanting to withdraw – she came to the realisation that she'd been scammed again.

Mrs D contacted HSBC in July 2022 to try to recover her money but it said it couldn't assist. Around August 2022 Mrs D was contacted on social media by an individual claiming to be a victim of F. He claimed he'd gotten his money back using a private investigator. Mrs D contacted the private investigator via email and was added to a social media group chat with others that had lost money to F. The private investigator advised Mrs D that he located the scammer, he also explained she'd have to open a 'numbered account' in the first instance.

Mrs D carried out some checks and decided to pay £3,500 to open her account. Before paying this money, Mrs D sent a tester payment to her cryptocurrency exchange account with S to ensure she could withdraw it.

Mrs D was told by the private investigator that she needed to pay tax to access her investment, so she sent two final payments of £25,000 on 22 August 2022 and £17,500 on 27 September 2022. Following Mrs D's final payment, she lost contact with the private investigator and realised she'd fallen victim to another scam.

Mrs D contacted a third party to assist her with claiming her money back from HSBC and Bank B. In total, Mrs D disputes 10 payments totalling £82,103 that she sent via faster payment from her HSBC account to her S account from 9 April 2022 to 27 September 2022. She deducted the amounts she was able to withdraw of £26,124.41 which leaves a total loss balance of £55,978.59, which she believes HSBC are liable for.

HSBC issued its final response stating that Mrs D sent payments to her own cryptocurrency exchange account and so she should approach them for further assistance. Unhappy with HSBC's response, Mrs D referred her complaint to this service.

One of our Investigators didn't think HSBC were responsible for Mrs D's loss. He felt the payment of £16,000 on 22 June 2022 ought to have prompted an intervention from HSBC based on her previous account history. However, he didn't think an intervention would have made a difference based on evidence of an early intervention made by HSBC not dissuading her from investing. He also considered that a later intervention by Bank B – which led to police involvement didn't dissuade her either.

Mrs D didn't agree and asked for an Ombudsman to consider the complaint. She said in summary:

- She was only looking at transactions up to Bank B's involvement which led to police involvement, not after, which she accepts were her responsibility.
- She doesn't recall HSBC's early intervention and warning.
- She doesn't agree she could have found that the private investigator was a fraudster as there was no adverse information about him.
- Paying £5,000 to open a numbered account seemed reasonable and she checked the bank was reputable.
- At the point she paid £42,000 tax to access a £70,000 investment, she was shown she had access to an account (which she didn't know was fraudulent) which contained €718,500 – so the payment she made sounded reasonable.
- Had she been in the UK when the scam with the private investigator was occurring, she would have been in a better position to do a lot more investigating but couldn't as access to her internet abroad was limited.
- When she was scammed by F, she was going to pay another £16,000 into the account but she spoke to someone in the UK who had a look into the company and told her not to. Had she been able to contact that person again (if she were in the UK at the time) things would have been different.

On 28 November 2023, I issued a provisional decision not upholding Mr D and Mrs D's complaint. For completeness, I repeat my provisional findings below:

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

Having done so, I don't intend to uphold this complaint for much of the same reasons as that of our investigator but I do think there were additional points HSBC could have intervened. Albeit I don't think these further interventions would have likely made a difference. Before I explain why, I want to make it clear that I believe Mrs D is the victim in what I consider to be cruel multi-layered scams. But being the victim of a scam, doesn't automatically entitle Mrs D to a refund.

Banks and other Payment Services Providers ("PSPs") have duties to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering (see below). But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice — and the FCA has confirmed that a fraud warning would not constitute unauthorised investment advice.

There's no dispute from either party that Mrs D was the victim of multiple scams. The evidence before me also indicates that Mrs D was the victim of a multi-layered investment scam. Having concluded that these were scams rather than just 'bad bargains' I must now go on to consider three more issues in order to determine the outcome of the complaint:

1. *Were any of the payments Mrs D made out of character and unusual and should HSBC have intervened before processing them?*
2. *If so, would HSBC's intervention have made a difference and prevented or reduced the loss?*
3. *And if so, should Mrs D bear some responsibility for the loss such that it would be fair and reasonable to reduce compensation proportionately.*

<u>Were any of the payments out of character and unusual and should HSBC have intervened before processing them?</u>

It is common ground that the disputed payments were 'authorised' by Mrs D for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. This is because they were made by Mrs D using the legitimate security credentials provided to her by HSBC. These must be regarded as 'authorised payments' even though Mrs D was the victim of a scam. So, although she did not intend the money to go to scammers, under the Regulations, and under the terms and conditions of her account, Mrs D is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory 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 anti-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 its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and*
- *In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

I've noted that when Mrs D set up her cryptocurrency exchange account with S as a new payee, HSBC say Mrs D would have seen a warning around investment fraud. I've seen a *copy of the warning and I don't think it covered the scenario that Mrs D found herself in, particularly as it was introduced to her by someone she believed to be a friend. Bank B also say it provided Mrs D with a warning early on into the scam over the telephone. I've not been provided with this call, so I can't say with any certainty how meaningful the warning was. I therefore don't think that HSBC provided a meaningful warning in the way it describes but I also don't think Mrs D's initial payments to S were all that unusual to have warranted an intervention by HSBC.*

I don't think HSBC could have reasonably known that Mrs D was investing with C, this is because all the payments out of her account were sent to S – a legitimate company. And HSBC would have reasonably been aware that she was paying an account in her name with a legitimate company.

I've also seen that Mrs D commonly made ad-hoc payments of £1,500 to £2,500 to accounts in her name. She also sent a £10,000 payment to an account in her name in December 2021. Because of this, I don't think any of the payments prior to 22 June 2022 ought to have warranted an intervention by HSBC. This is because the payments were broadly in keeping with Mrs D's normal account activity and weren't all that unusual or uncharacteristic when compared to Mrs D's usual spend.

I agree with our investigator that the payment of £16,000 of 22 June 2022 was unusual when compared to Mrs D's normal account spend. I can't see that she's sent payments of this magnitude when considering her normal account activity from April 2021.

I am satisfied HSBC ought fairly and reasonably to have intervened by calling Mrs D to ask some questions about the nature and purpose of the payment I've highlighted before agreeing to process it.

Would HSBC's intervention have made a difference and prevented Mrs D's loss?

If HSBC had fulfilled its duties by asking suitably probing questions, there is no reason to doubt that Mrs D would have explained what she was doing and that the purpose of the payment was to invest. I've seen that in conversations with HSBC and with Bank B that Mrs D was honest about her decision to invest these funds. She'd also been honest in subsequent conversations with both banks about being scammed, so I think she'd have likely explained she'd lost money via a scam and was investing with F to try to recover her funds.

In such circumstances, whilst HSBC had no duty to protect her from a bad bargain or give investment advice, it should have asked Mrs D some further questions to ascertain whether she was likely to be at risk of financial harm from fraud (in light of the previous scam). I've thought carefully about the sorts of questions HSBC should've asked, bearing in mind the features of investment scams at that time – particularly crypto scams.

I think HSBC could likely have asked how Mrs D came across the investment, whether a third party was assisting her, whether she'd been able to withdraw any funds and whether she'd carried out any research. At the time of Mrs D's payment, investment scams carried common features. For example, these included rates of return which were too good to be true, receiving the opportunity to invest via an unsolicited offer and/or cold call (this could be contact via social media) and fraudsters applying pressure to their victims to invest quickly.

Against this backdrop I'd have expected HSBC to ascertain whether there were any signs that this was an investment scam (as described above). Had it done so in June 2022 (when Mrs D invested a payment of £16,000 with the intention of paying those funds to F), I think Mrs D would have explained that one of her friend's suggested via social media that this was *a good investment opportunity to recover funds she'd previously lost to a scam. I think HSBC would have likely been concerned that Mrs D was likely the victim of another scam and ought to have explained the various risks of crypto trading and that C could have difficulties withdrawing her profits and may lose them entirely.*

But I cannot ignore that Mrs D was given a meaningful warning by Bank B in September 2022 and she was specifically told she'd fallen victim to a scam. Bank B also called the police who advised Mrs D that she was the victim of a scam but this didn't stop her from sending further payments to the scammer. I do take Mrs D's point that by the time this warning was given, she'd already invested significant sums and was trying her best to recover her losses. But I also have to consider that at the point I think a warning should have been given to Mrs D by HSBC, she acknowledges she'd been scammed in relation to her investment with C. But she proceeded to invest with F, despite it being offered to her in very similar circumstances as the C investment was offered (via social media). And Mrs D says she was advised by 'someone in the UK' not to invest with F, she says she didn't but then she also paid substantial further funds to an individual purporting to be a private investigator that contacted her in a very similar manner as C and F.

Overall, I don't think a lack of intervention made a difference to Mrs D's loss and ultimately she was able to withdraw these funds (and more) the following day.

On 7 July 2022, Mrs D called HSBC to assist her with recovering her losses up until that point. Having listened to the call, Mrs D is clear that all of the payments she made to S to fund her various investments were all scams. Mrs D didn't seem unsure about this. And whilst HSBC explained it couldn't assist her in recovering her payments, she was aware that all the payments she'd made up until this point were made as the result of a scam. However, HSBC said during the call that even though it couldn't help her, it would keep a record of Mrs D's report. And so, when she sent a further substantial payment of £25,000 to S on 22 August 2022, I think HSBC ought to have intervened and spoken with Mrs D.

Had this conversation taken place, HSBC were already on notice that Mrs D had fallen victim to investment scams via payments to S. And so, I think it would have likely concluded that this further payment was being made as the result of another scam. But for much of the same reasons, I don't think a further intervention and warning would have made a difference. Mrs D explains that someone told her that F was a scam and she listened to this individual but it's unclear why she says she couldn't speak with them again to take further advice. I've taken account of the fact that Mrs D says she was abroad at the time and would have had time to reflect whilst her account was frozen until she returned. But I agree with our investigator that I don't think this would have deterred Mrs D from investing. I think Mrs D was so bought into this multi-layered scam and had already lost a substantial sum of money that she was willing to believe that someone could help her.

I think by the point Mrs D met the private investigator, she'd already lost substantial sums to scams and was doing all she could to recover her losses. Mrs D was already aware that she'd lost substantial sums to scams, so I don't think HSBC bringing to her attention that she was likely losing more money to scams would have dissuaded her from investing further funds. I can't ignore that Bank B did provide meaningful warnings to Mrs D in September 2022 – these included police involvement which didn't stop Mrs D from sending further payments to the private investigator. So, I don't think it's likely that an intervention from HSBC at the point of her payment of £25,000 in August 2022 would have dissuaded her from investing. Even if it would have given her the opportunity to pause and think about her decision, I think she would have paid anyway. Not least because several months after her final disputed payment, she sent a further payment to the scam. I recognise it was low value but nevertheless, after Mrs D complained that the bank didn't do enough to prevent her loss from these scams, she still sent money to the scammer.

In other words, I am satisfied those earlier warnings from HSBC probably would have made no difference to Mrs D. Any failings by HSBC were not the dominant, effective cause of her losses; they were just part of the background history or occasion that led up to them.

In light of my conclusions above on whether a warning would have made a difference, it is unnecessary for me to go on to consider whether Mrs D herself was partly to blame for what happened (contributory negligence). Indeed, I have already concluded that she was responsible for her own investment decisions, and that such choices were the proximate cause of her losses.

But I want to be clear that I understand Mrs D fell victim to a very sophisticated scam. She is not to blame for this; the cruel scammers are to blame.

Recovery

I've thought about whether HSBC did what it ought to have done to recover Mrs D's payments.

Mrs D transferred funds to an account in her name and control with S. From there, she purchased crypto and moved it onto a wallet address of her choosing (albeit upon the scammers instructions). So I can't say that HSBC could have likely recovered her losses – even if it acted promptly when she reported the scam in July 2022. HSBC's only option to recover Mrs D's payments would have been to recover them from S but by the time she reported the scam, she'd already moved her money from S to the scammers. And even if she hadn't, she'd have had access to the funds in her S account as they were in her control. So, I don't think there was any reasonable prospect of success had HSBC tried to recover Mrs D's losses.

Responses to my provisional decision

HSBC responded to my provisional decision and confirmed it had nothing to add.

Mrs D didn't respond to my provisional decision.

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.

As neither party had anything further to add, I see no reason to depart from my provisional decision (which forms part of this final decision).

My final decision

My final decision is, despite my natural sympathies for Mrs D's loss, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 12 January 2024.

Dolores Njemanze
Ombudsman