DRN-3812905

The complaint

Mr G has complained that HSBC UK Bank Plc ("HSBC") has refused to refund him money he lost as the result of a scam.

What happened

Mr G was looking to invest money and found an advertisement online for CoinFx. They claimed to be specialists in crypto trading and as this was of interest to Mr G, he completed a contact form. CoinFx contacted Mr G and he was convinced to transfer funds into MoonPay and then once there, the funds were used to buy crypto. The crypto was then transferred to CoinFx. The investments that were made appeared legitimate. Mr G was then convinced by CoinFx that investing more would maximise his potential profit.

Mr G made the following debit card payments totalling £52,806.22 to Moonpay from his HSBC account as set out below. These funds were then sent on to CoinFx

Transaction Number	Date	Merchant	Amount	Running Total
1	18/05/2021	Moonpay	£153.90	£153.9
2	24/05/2021	Moonpay	£1,615.21	£1,769.11
3	25/05/2021	Moonpay	£1,077.11	£2,846.22
4	01/06/2021	Moonpay	£5,375.57	£8,221.79
5	01/06/2021	Moonpay	£592.75	£8,814.54
6	01/06/2021	Moonpay	£5,376.19	£14,190.73
7	10/06/2021	Moonpay	£5,374.87	£19,565.60
8	11/06/2021	Moonpay	£5,885.66	£25,451.26
9	14/06/2021	Moonpay	£5,500.93	£30,952.19
10	15/06/2021	Moonpay	£391.76	£31,343.95
11	15/06/2021	Moonpay	£6,256.62	£37,600.57
12	18/06/2021	Moonpay	£4,500.62	£42,101.19
13	18/06/2021	Moonpay	£1,000.60	£43,101.79
14	18/06/2021	Moonpay	£3,000.60	£46,102.39

16	25/06/2021	Moonpay	£1,501.03	£47,603.43
17	29/06/2021	Moonpay	£4,001.12	£51,604.54
18	08/07/2021	Moonpay	£1,201.68	£52,806.22

Mr G later attempted to withdraw his funds from CoinFx but he was unable to do so. At this point Mr G realised that he had been scammed. I issued a provisional decision on 21 July 2023 saying the following:

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

The circumstances of this complaint are not in dispute and the evidence provided by both Mr G and HSBC set out what happened. What is in dispute is whether HSBC should refund any of the money Mr G lost because of the scam.

Mr G has accepted he authorised the payments he made to CoinFx, so the starting point here is that Mr G is responsible for making the payments. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

In relation to the first three payments, I think that these payments were not so unusual for HSBC to intervene given their size. I say this because Mr G had in the past made transactions of a similar size.

That said, the fourth transaction I believe should have been considered unusual. It was a larger amount and prior to the first three payments. Mr G had not transferred money to crypto exchanges prior to this. I therefore think that him making a fourth transaction in a relatively short time to a new international payee should really have prompted HSBC to intervene.

At this stage, HSBC should have stepped in and asked Mr G in depth questions to find out what the payments related to. Had HSBC stepped in at this point, I think its likely Mr G would have explained the reason he was suddenly making a number of large payments from his card within a relatively short space of time.

HSBC would likely have discovered that Mr G was allowing a third party access to his computer and that the funds sent to Moonpay were intended to be converted to crypto and forwarded to a different trading firm. This has all the hallmarks of a typical investment scam. I'm satisfied that a warning to Mr G from his trusted bank would have probably alerted him to the common issues arising in relation to cryptocurrency scams, which in turn would have revealed the truth behind the CoinFx's representations. This would have probably stopped Mr G in his tracks. So, but for HSBC's failure to act on clear triggers of potential fraud or financial harm, Mr G probably wouldn't have continued to make the additional payments.

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their actions. In this case, I do not think that Mr G was to blame for what happened and I haven't seen anything to suggest that he had foreseen the risk of this sort of harm occurring, or indeed any harm. I do not think Mr G could have foreseen the risk that the company he was dealing with was in fact scammers and the trading account he was viewing was likely to be a simulation. I also can't see there were any credible warnings in place about the CoinFx at the time Mr G started making the payments. So, in the circumstances, I do not think it would be fair to reduce compensation on the basis that Mr G should share blame for what happened.

I have considered whether HSBC could have recovered the first three payments. As these payments were made using his debit card, the only way to recover the funds would be via the chargeback process. However, as these transactions were to purchase crypto for Mr G in the first instance and Mr G did receive the crypto (before he then transferred it on), I don't think a chargeback would have been successful.

Finally I have considered the interest rate that should apply to the award. In this instance Mr G has explained that the funds he lost during this scam came from two main sources an ISA and a Savings account. Had he been prevented from sending money to the scammer I believe that he would have on balance left the funds in these accounts Mr G has confirmed this. I therefore believe that it would be reasonable to intend asking HSBC to add interest to this award at the rates of the respective accounts. From looking at the transactions it seems as if payment 4 to 8 were from the HSBC savings account so the rate of interest applied to the award should be in line with what he would have achieved had the funds remained in that account. In relation to transactions 9 to 18 these seem to be from an ISA from a separate provider. Looking at the website for this provider both when the transaction happened and currently I can see that the interest rate applicable to the instant access ISA's started at 0.4% and currently is 4.0%. Without wanting to unpick exactly when the interest rate changed at every point I propose to use an average rate of 2.2%.

Putting things right

I currently intend for HSBC UK Bank Plc, trading as HSBC Bank to do the following:

1) Refund transactions 4 to 18.

2) Pay simple interest per year on payments 4 to 8 based on what he would have earned in interest had the money remained in his HSBC savings account. This should be calculated from the date each payment was made, until the date of settlement (less any tax properly deductible).

3) Pay simple interest on payments 9 to 18 at 2.2% per year, calculated from the date each payment was made, until the date of settlement (less any tax properly deductible).

In response to my provisional decision Mr G accepted my findings. HSBC responded with a number of points which I will summarise:

- It does not believe that in an intervention call Mr G would not likely have disclosed exactly what he was planning on doing with his funds.
- Mr G would not likely have changed his mind had an intervention call occurred as he had done his own research
- Mr G was unsure that he had been scammed until after the scam had concluded therefore why would he not have continued despite a warning from HSBC

- Mr G's refund if merited should have a 50% reduction for contributary negligence the reasons HSBC gave included that he invested large amounts before receiving a return, investing large amounts in themselves carries risk so Mr G should have been aware that what he was doing could cause him financial harm and he was promised unrealistic returns.

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.

HSBC's points can be broken down to two main concerns whether an intervention by HSBC would have changed what happened and did Mr G contribute to his own losses. I would like to stress that I have consider all points raised by both parties even if I do not directly address each one individually.

In relation to whether an intervention call would have made a difference. Firstly, I would like to consider whether had such a call occurred would it have been likely that HSBC would have discovered that Mr G was being scammed.

I would like to highlight that HSBC know more than a consumer about what is and isn't likely a scam. Had HSBC intervened and asked the kind of probing questions we think it reasonable for them to have asked they likely would have discovered that Mr G was allowing someone to invest on his behalf whilst being in control of his computer. HSBC says that the use of remote access software was not mentioned in the initial complaint, but I can see that it was. Regardless of this though, even had it not been used, and I think on balance it was, merely establishing that Mr G was buying crypto to forward on to a third party to trade would have been enough for HSBC to have identified this as likely a scam. HSBC have said that Mr G may not have been forthcoming about what he was doing during a call with it. But I can't see why it thinks that Mr G would not have told HSBC what he had been doing, there are no indication that Mr G was coached on what to say during an interaction with HSBC and Mr G has been forthcoming during the entire complaint process.

Had HSBC given a specific warning that what Mr G was doing had the hallmarks of a scam I think he would have heeded it. After all HSBC are the experts in such matters and a warning from his trusted bank would have carried more weight than the research he had already done prior to the transactions in question and would likely have stopped the scam from that point. At the very least had HSBC said that the "profit" he thought he had earned was likely a simulation it would have prompted Mr G to do general research on the common features of crypto scams and this in turn would have stopped him from proceeding further.

In relation to a deduction for contributary negligence. Whilst I accept that all investing carries risk, I am satisfied that the research done prior to Mr G investing was not unreasonable. There were no credible warnings about CoinFx at the time he started investing. The returns did not seem to be guaranteed rather he seems to have been told that he could make a high rate of return if he invested quickly. Mr G would not have known that the returns that he was getting were in fact simulated and this led to him continuing to "invest" more funds. I don't find this unreasonable. Or that it merits a deduction from the refund.

Putting things right

HSBC UK Bank Plc should do the following:

1) Refund transactions 4 to 18.

2) Pay simple interest per year on payments 4 to 8 based on what he would have earned in interest had the money remained in his HSBC savings account. This should be calculated from the date each payment was made, until the date of settlement (less any tax properly deductible).

3) Pay simple interest on payments 9 to 18 at 2.2% per year, calculated from the date each payment was made, until the date of settlement (less any tax properly deductible).

My final decision

For the reasons given above, my decision is that I uphold this complaint in part and require HSBC UK Bank Plc, to put matters right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 29 September 2023.

Charlie Newton
Ombudsman