

The complaint

Miss M complains HSBC UK Bank Plc didn't do enough to protect her from the financial harm caused by an investment scam company, or to help her recover the money once she'd reported the scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Miss M was approached on social media by someone claiming to be a broker working for an investment company I'll refer to as "S". Before going ahead with the investment, Miss M viewed the broker's social media profile, which contained photographs of other investors showing off sports cars and expensive jewellery which they'd bought with their profits. She also obtained a copy of the broker's driving licence and conducted a search on the Financial Conduct Authority ("FCA") website, which showed the broker wasn't currently working. When she queried this, the broker told her he'd taken on a more senior role and the register had yet to be updated.

The broker instructed her to open an account with S and to purchase cryptocurrency before loading it onto an online wallet. She set up the account by following comprehensive step by step instructions which the broker sent via WhatsApp.

Miss M made three payments on 29 December 2021, 31 December 2021, and 4 January 2022 for £600, £1,900, and £1,433 via online transfer from her HSBC account. She realised she'd been the victim of a scam when she didn't receive the returns promised to her by the broker. She contacted HSBC but it refused to refund the money she'd lost because the funds were transferred to an account in her own name.

Miss M wasn't satisfied and so she complained to this service with the assistance of a representative. Her representative explained she had no prior investment experience and hadn't invested in cryptocurrency before. They said HSBC should have identified the transactions as potentially fraudulent as they were larger than previous transactions and were therefore out of character for the normal spending on the account. They said Miss M had full control of the trading account, no one else had access to her login details and she had done extensive checks before going ahead with the investment.

Our investigator didn't think the complaint should be upheld. She accepted Miss M had been the victim of fraud, but she didn't think HSBC could reasonably have been expected to prevent her loss as there was no account history with which to compare the payments and the payments weren't suspicious. She said the payments weren't large and they weren't made in quick succession, so she didn't think HSBC missed an opportunity to intervene. She also noted Miss M didn't interact with HSBC when she made the payments, so it didn't miss an opportunity to identify they were being made in relation to a scam. And there was no possibility of recovery of funds because they were paid into Miss M's account and moved on.

Miss M has asked for her complaint to be reviewed by an Ombudsman. Her representative has said our investigator failed to consider the liability of HSBC under the CRM code and they've argued that payments made to a cryptocurrency account should have been identified as high risk.

They have also said that as the account was recently opened, HSBC ought to have taken more care to establish Miss M's spending patterns and habits. They disagree the transactions weren't suspicious, arguing they equated to almost the entire balance in the account, and the fact they were transferred to a cryptocurrency trading platform was enough to warrant an intervention as cryptocurrency is widely known as being high-risk due to its lack of regulation.

They have said HSBC should have contacted Miss M to find out whether she regularly used cryptocurrency exchange platforms and that she ought to have been treated as vulnerable as English isn't her first language.

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.

Having done so, I've reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Miss M has been the victim of a cruel scam. I know she feels strongly about this complaint, and this will come as a disappointment to her, so I'll explain why.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Miss M says she's fallen victim to, in all but a limited number of circumstances. HSBC said CRM code didn't apply in this case because the payments were made to an account in Miss M's own name, and I'm satisfied that's fair.

I'm also satisfied Miss M 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although she didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Miss M is presumed liable for the loss in the first instance. Not every complaint referred to us and categorised as an investment scam is in fact a scam.

Some cases simply involve high-risk unregulated investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, while customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

I've carefully considered the circumstances, and I am persuaded the broker was operating as part of a scam. But, although Miss M didn't intend her money to go to scammers, she did authorise the disputed payments. HSBC is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I've thought about whether HSBC could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments were made to a genuine cryptocurrency exchange company. However, HSBC had an obligation to be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Miss M when she tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect HSBC to intervene with a view to protecting Miss M from financial harm due to fraud.

The payments didn't flag as suspicious on HSBC's systems. I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Miss M normally ran her account, and I don't think they were. The account was opened shortly before Miss M made the first payment, so there was no account history to compare them with. But the payments were to a legitimate cryptocurrency exchange company, they weren't for large amounts, and they weren't made in quick succession. So, I don't think they were suspicious, and I don't think HSBC missed an opportunity to intervene.

Overall, I'm satisfied HSBC took the correct steps prior to the funds being released – as well as the steps they took after being notified of the potential fraud. I'm sorry to hear Miss M has lost money and the effect this has had on her. But for the reasons I've explained, I don't think HSBC is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 8 November 2023.

Carolyn Bonnell
Ombudsman