DRN-4438403

The complaint

Mr and Mrs P have complained HSBC UK Bank plc did nothing to intervene and stop payments Mr P was making which turned out to be an investment scam.

What happened

Mr and Mrs P hold a joint bank account with HSBC. In 2022 Mr P saw an advert on Facebook encouraging him to invest in cryptocurrency. This advert looked as if it had been endorsed by well-known TV personalities, so he felt it had the ring of truth about it. He got in touch with the number and registered with a trading company (who I'll call F).

Someone from the company encouraged him to load software onto his laptop allowing them to help him set up an account with an electronic money provider (who I'll call W). He believed he'd have control of this account and be able to withdraw what he'd paid in.

Mr P set up an account with W and over a four-week period transferred money from his and his wife's account with HSBC. He made four payments of £1,542, £6,526, £20,000 and £7,343. He transferred money from one of his savings accounts with another provider to their HSBC account to enable these payments to be made. The latter two payments of over £27,000 were made as he was told he had to synch his wallet with W with the money in his trading account that he wished to withdraw.

Mr P subsequently realised he'd been the victim of a scam as he continued to be encouraged to make more payments into his wallet with W. He didn't do this but was concerned that people from F also had access to the money in his W wallet.

Mr P took his complaint to HSBC in 2023. HSBC told him they were not required to refund him as he'd made payments to an account held in his name. Mr P brought his complaint to the ombudsman service.

Our investigator reviewed the evidence. There was nothing to show HSBC had ever been concerned enough by the payments Mr P was making to intervene. Our investigator didn't think there was anything wrong with this. Mr P had a history of using this account to transfer money into savings accounts he held with other providers (A and M). Sometimes these amounts were as high as £20,000 so he didn't believe HSBC would have been alerted by the size of the payments Mr P was making in November and December 2022.

Mr P disagreed. He's asked an ombudsman to consider this complaint.

I completed a provisional decision on 8 December 2023. I felt that HSBC had not taken action when I believe they should have. Whilst Mr P is to remain responsible for part of his loss, I asked HSBC to refund half of his losses from when I felt they should have taken action.

Mr P accepted this outcome. HSBC didn't.

They reiterated their concerns that money was being paid into an account in Mr P's name and that he'd ignored digital warnings presented to him so felt they had no financial responsibility to bear.

I now have all I need to complete my final 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.

Having done so, I've reached the same outcome as I did in my provisional outcome. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

I don't dispute Mr P was scammed and has lost a considerable amount of money from his income and savings. He has my sympathy about what he has gone through.

There's no dispute that Mr P made and authorised all of the payments. Mr P believed he was loading up his account with W enabling trading to be carried out or to facilitate the profit he'd made to be paid to him.

I'm satisfied the transactions were authorised under the Payment Services Regulations 2017

It's generally accepted that HSBC has an obligation to follow Mr P's instructions. So in the first instance Mr P is presumed liable for his loss. But that's not the end of the story.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider that HSBC should:

- have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.

- have had systems in place to look out for unusual transactions or other signs that might indicate that 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 financial institutions are generally more familiar with than the average customer.

- 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 its customers from the possibility of financial harm.

Mr P fell victim to an investment scam. These unfortunately aren't particularly unusual but are invidious in the way those carrying out the scam inveigle themselves into someone's trust.

At no stage did HSBC intervene or ask Mr P what he was doing. I consider that HSBC should have done more to identify the large, and unusual, payments Mr P was making to W. And if they'd done so, I believe this would have meant Mr P would have become aware he was the victim of a scam.

I say this because:

- I am sure initial automated warnings were given to Mr P when he set up the account with W. And knowing HSBC, this would have included some reference to investment scams. However at this time, Mr P was allowing his laptop to be controlled by those working for F. I think it's unlikely he'd have been given an opportunity to notice or perhaps act on this warning. I appreciate HSBC believe that Mr P could see the same screen as the scammers, but I remain of the opinion that it would have been easy for them to divert his attention.

- HSBC should have been alert to unusual payments Mr P was making. I'm aware he made reasonably high-value payments to savings account he held with both A and M in the preceding year. However setting up and sending money to an account with W is a different beast and should cause certain alarms to ring.

- The use of wallets held with W for investment is known as these are frequently used by fraudsters masquerading as genuine investment opportunities.

- In all cases Mr P authorised transactions after putting money into their HSBC account from savings. The full amounts of the savings were then utilised for the transfers to W. This should cause further alerts.

- Whilst HSBC may have not been alert to the two initial payments, I believe they should have intervened when Mr P made the third payment for £20,000.

I can't be sure that if HSBC had intervened, Mr P would have listened to their warnings, but I've seen nothing which would indicate that he wouldn't. It's the case that Mr P had not been given any story by the fraudsters to tell HSBC. And I think there's a high likelihood Mr P would have told HSBC he was investing with F, and F had told him he had to make payments of £27,000 to synch his wallet. By this stage the FCA had issued a scam warning about F so I believe HSBC would have stopped Mr P from making any further payments.

Putting things right

I'm going to be asking HSBC to only pay half of Mr P's losses from the time I believe they should have intervened. This amounts to £13,671.50. I say this because:

- I'm not convinced Mr P did carry out suitable research into the company he was trading with. Unfortunately celebrity endorsements are easily faked but a quick online investigation would have alerted him to certain individuals whose faces are frequently used for these scams. He also would have noted scam warnings by the FCA if further research had been carried out.

- Mr P later noted online reviews of F which alerted him to them having scammed other people. He didn't trust these reviews sufficiently and was desperate to get some of the money he'd invested back, but this meant he did continue to make payments when it may have appeared less sensible.

8% simple interest a year will also need to be added to this amount from the date of Mr P's loss.

I appreciate HSBC's stance that Mr P made transfers to an account in his name so believe he should pursue a complaint with W. I'm not satisfied that this account, albeit supposedly in his name, was definitely in Mr P's name or that he could access this account. So I'm happy that HSBC make good for part of Mr P's losses.

My final decision

For the reasons given, my final decision is to instruct HSBC UK Bank plc to:

- Refund £13,671.50 to Mr and Mrs P; and

- Add 8% simple interest a year from the date of their loss, 16 and 17 December 2022, to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 6 February 2024.

Sandra Quinn
Ombudsman