DRN-3339020

The complaint

Ms W is unhappy that HSBC UK Bank Plc won't refund money she lost as a result of an investment scam.

What happened

Ms W sent money to GreenFields Capital (GFC) who she believed would invest in Bitcoin for her. She's said that after knowingly making two payments, GFC took money from her account without her consent and then told her there was nothing left.

I've summarised the details of the payments made using Mrs W's debit card and received from GFC:

Date	Payment details	Amount
8 January 2018	GREENFIELDSCAPITAL UK	£500
9 January 2018	GREENFIELDSCAPITAL UK	£100 payment received
9 January 2018	GREENFIELDSCAPITAL UK	£2,501
12 January 2018	GREENFIELDSCAPITAL UK	2,498
12 January 2018	GREENFIELDSCAPITAL UK	7,000
12 January 2018	GREENFIELDSCAPITAL UK	5,000
12 January 2018	GREENFIELDSCAPITAL UK	2,499
12 January 2018	GREENFIELDSCAPITAL UK	2,000
12 January 2018	INT'L GREENFIELDS CAPITAL	10,000
12 January 2018	INT'L GREENFIELDS CAPITAL	2,449
12 January 2018	INT'L GREENFIELDS CAPITAL	9,999
12 January 2018	INT'L GREENFIELDS CAPITAL	9,998
15 January 2018	INT'L GREENFIELDS CAPITAL	2,000
15 January 2018	INT'L GREENFIELDS CAPITAL	3,000
24 January 2018	GREENFIELDSCAPITAL UK	£750 payment received
5 February 2018	GREENFIELDSCAPITAL	7,000
5 February 2018	INT'L GREENFIELDS CAPITAL	4,999
5 February 2018	INT'L GREENFIELDS CAPITAL	5,000

Following these transactions, Ms W contacted HSBC for help. She later complained about how they were dealing with her claim. In June 2018, HSBC responded and said they hadn't received the correct forms from her. Ms W continued to complain and ultimately, HSBC declined the claim and said there was nothing else they could do.

Ms W brought a complaint to our service. An ombudsman considered our power to investigate the complaint. They decided we could look into Ms W's complaint about the safeguarding of her account and HSBC's decision to refund the money. But we couldn't investigate how HSBC handled things up until it issued its final response in June 2018.

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 our investigator. I'll explain why, breaking down my key considerations.

Did HSBC fairly deal with Ms W's chargeback claim?

- I've considered whether HSBC could've helped Ms W by raising a chargeback for the debit card transactions. As per the ombudsman's decision, which I've seen no reason to depart from, I've only considered what happened after HSBC's final response in June 2018.

- To be clear, chargeback is a voluntary scheme run by VISA, who act as an arbitrator between a merchant and customer if they can't resolve a dispute themselves. It's subject to their rules, and there are limited grounds on which a chargeback can succeed.

- VISA's rules did cover investment trading – in 2017, it expanded them to cover situations where investment traders prevented cardholders from withdrawing their available balance. But it required very specific evidence, such as dated evidence that they had an available balance, and that they tried to withdraw sums equal or less than their balance.

- While Ms W said she submitted what was asked for, I've not seen that she presented the specific evidence needed under VISA's chargeback rules.

- It follows that I don't think HSBC acted unfairly when they didn't raise a chargeback claim for the transactions, because I can't see it had reasonable prospects of success.

Did Ms W authorise the payments to GFC?

- Under the Payment Services Regulations 2017 (PSRs), the starting position is that Ms W is liable for payments she authorised. Ms W accepts she made the first payments – for £500 and £2,501 – but disputes making the remaining payments.

- The PSRs explain that a transaction is authorised where Ms W consented to making the payment – and that consent must have been in the form, and in accordance with the procedure, agreed between her and HSBC. Ms W can also give someone else permission to consent to payments on her behalf.

- It's unclear whether Ms W went through the form and procedure herself for making these card payments. But I don't think that matters. Because even if she didn't, I think it's likely she gave GFC permission to consent to payments on her behalf.

- We know Ms W shared her card details with GFC, alongside any other required security information, for the initial payments to go through. And I accept it's possible that GFC could've then used this information to make further payments without her permission.

- But if that was the case, I'd have expected Ms W to have reported this to HSBC quickly – after all, a significant amount of money left her account. Instead, Ms W contacted HSBC on 6 February 2018, so over two weeks later. And the notes of the call say she only disputed the payments from 5 February 2018 – for £7,000, £4,999 and £5,000.

- This fits with the copies of emails we have between Ms W and GFC. In these, she explained £17,000 was taken from her account without authorisation.

- This suggests that Ms W allowed GFC to make the other payments. So, I consider that it's more likely than not that these payments were authorised for the purposes of the PSRs.

- I've considered the payments from 5 February 2018 separately, totalling £16,999. The circumstances aren't clear. Ms W's email with GFC suggests she refused to invest a further £17,000, so GFC said they would lend the amount to her. Using remote access to her computer, they then moved £17,000 from her savings account and her ISA, without her knowledge.

- I think it's likely Ms W still knew GFC had her card details and were using them to make payments to her trading account. So I'm satisfied there remained a representation that GFC had permission to consent to payments on Ms W's behalf.

- I realise Ms W might have been tricked into thinking the money wasn't, in fact, her own. But, for the purposes of the PSRs, consent doesn't depend on the payment being fully explained to Ms W. So it doesn't make a difference that she didn't know the true source of the funds.

- It follows that, while I accept Ms W was the victim of a sophisticated scam, I'm persuaded that under the PSRs, the card payments to GFC must be considered as authorised payments.

<u>Were the transactions out of character or unusual, or were there other signs that might indicate Ms W was at risk of financial harm?</u>

- While Ms W is presumed liable for authorised payments in the first instance, it remains that HSBC have a duty to protect their customers from financial harm and be on the lookout for unusual or suspicious transactions.

- I agree with our investigator that when the second payment was attempted for £7,000, HSBC ought to have been concerned. I'll explain why.

    - HSBC submit that by this time, GFC wasn't a new payee. But Ms W had only started to make payments in the last few days. I don't think that's enough to say that GFC was an established known payee.

    - I've considered that Ms W made some similar sized payments in the past. These were either one-off payments or spaced out across several months. In contrast, the cumulative spend across multiple payments to GFC would've been £11,496 in a matter of days – a marked difference to Ms W's recent spending.

    - Ms W had just made a payment to GFC that day. Given that she could've made a payment in one go, this looked unusual.

- Given this cause for concern, I think HSBC should have intervened and asked questions to check not only that Ms W was making the payments, but what the investment was for and how it came about. If they had, I'm persuaded Ms W would've answered their questions truthfully. And that reasonably probing questions would've revealed that she'd found the company through social media, and they'd persuaded her to invest. And to do that, she had shared sensitive information and they'd used remote access software, as well as saying she shouldn't withdraw her money.

- While HSBC might not have known for certain whether GFC were legitimate, in light of this information, I'd have expected them to provide a scam warning. HSBC dispute this would've dissuaded Ms W from investing further. I disagree. She was an inexperienced investor who admits that she didn't carry out checks initially. So if HSBC planted the seed of doubt, I'm satisfied this would've prompted her to carry out her own research. And even with a rudimentary online search, Ms W could've seen they weren't regulated and they'd several reviews online from people who had been scammed by GFC.

- HSBC point out that Ms W accepted GFC's advice that she should let her investments grow and not withdraw funds – so it's more likely she'd have been persuaded by GFC's promises over their warning. But even if GFC were persuasive, HSBC were her trusted bank for years. Whereas she'd been in touch with GFC for days. And while Ms W may have been naïve in her investment approach, there's nothing to suggest she was willing to take extensive risks with her money. This was, after all, her savings to prop up her state pension.

- Taking this all into account, I'm persuaded she would've taken heed of the warning and ultimately stopped investing further. So this was a missed opportunity for HSBC to intervene and I'm satisfied that led to Ms W's further losses.

<u>Contributory negligence</u>

- Notwithstanding the above, I do think Ms W was partly to blame for what happened. When she invested, there was information available online about GFC – plus general information about the risks of trading with CFDs. But Ms W didn't carry out her own checks.

- Our investigator recommended a 15% deduction for Ms W's contributory negligence. This isn't an exact science, but I agree that's a fair reflection of how she was partly to blame.

- HSBC submit at least 50%. They said it should've alarmed Ms W that she couldn't freely make withdrawals. But I can see how the withdrawals that were allowed, alongside the promise that she'd make more if she left her 'investment', gave Ms W confidence. Particularly as she was then shown how her 'investment' had grown.

- HSBC also pointed out that Ms W allowed remote access to her computer and logged onto her online banking. I'm mindful that people reach out to these sorts of companies because they don't know how to invest themselves. So I can see how using remote access, under the guise it would help, didn't seem particularly risky.

- Finally, HSBC have referred to the extent of the investments and how the payments were spaced out – giving her more time to think. I've considered that most of the payments happened within days. And for those that happened later, it seems Ms W was lured into investing on the basis that it wasn't her own money.

- As to the extent, while I consider these to be authorised, it's not clear Ms W fully grasped what GFC were doing on her behalf. And it seems GFC were using pushy, persuasive tactics to get her to keep going – by reassuring her that her capital was safe and they were, in effect, her new bank account. And then using their terms to say she'd only get her money if she reached a certain trading volume. So while I do accept Ms W bears some responsibility, given the circumstances of the scam, I'm not persuaded that a higher deduction is justified.

Putting things right

For the reasons I've explained, HSBC should refund Ms W's losses from the second payment to GFC on 12 January 2018. It should deduct 15% from this amount to reflect Ms W's contributory negligence.

It seems the money originated from Ms W's savings account. So HSBC should add interest at that account rate (less any tax lawfully deductible) from the date of loss to the date the settlement is paid.

My final decision

For the reasons I've explained, I uphold Ms W's complaint. HSBC UK Bank Plc must put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 28 April 2022.

Emma Szkolar
Ombudsman