

## **The complaint**

Mr and Mrs K complain that HSBC UK Bank Plc won't refund money they lost to a binary options investment scam.

As most of the correspondence is from Mr K, I'll treat all submissions as having come from him in this decision.

## **What happened**

Around October 2017, Mr K was introduced to a merchant called Trade24 by an acquaintance. The acquaintance spoke highly of them and showed Mr K how much money they'd earned on Trade24's trading platform. Mr K was put in touch with an account manager for Trade24 and he was persuaded to invest.

Between 17 October 2017 to 23 November 2017 Mr K used his HSBC current account to make 21 Visa debit card payments totalling just over £48,000 to Trade24. On 24 November 2017, he paid Trade24 £12,000 via bank transfer.

In December 2017 Mr K wanted to withdraw some of his profits. Trade24 initially allowed him to withdraw funds but explained he could only withdraw a maximum of £5,000 per month. Mr K made further withdrawal requests in January 2018 but Trade24 provided excuses as to why they couldn't process his withdrawals. He contacted HSBC on 15 January 2018 to help him process chargeback claims.

In the meantime, Mr K received a further £5,000 back from Trade24 in February 2018. HSBC processed chargeback claims on Mr K's behalf in August 2018. Trade24's bank defended most of the claims and HSBC made further chargeback representations on Mr K's behalf. These (except for one) were also defended. In total, £26,000 was re-debited from Mr K's account and returned to Trade24's bank in December 2018.

Mr K complained to HSBC because he didn't think it did all it could to help him. HSBC issued its final response stating it didn't have any further options to assist with his chargeback claims but recognised it delayed processing chargeback claims for him and paid £200 by way of compensation.

Mr K referred his complaint to this office. One of our Investigators felt that HSBC should return all of Mr K's disputed payments on the basis that the chargeback claims should have been more robustly pursued and that HSBC could have prevented the bank transfer. He suggested that HSBC pays a further £150 in recognition of the trouble and upset this matter caused Mr K.

Mr K accepted but HSBC did not and asked for an Ombudsman to review the complaint. It said in summary:

- A dispute under Visa's misrepresentation reason code 13.5 stood no prospects of success pursuant to the rules of the chargeback scheme.
- The significant credits Mr K received from Trade24 (£10,000) isn't consistent with a scam company.

- The bank transfer wouldn't have triggered HSBC's fraud detection systems because it was not unusual based on previous account activity.

On 1 June 2022, I issued my provisional decision largely upholding this complaint. For completeness, I repeat my provisional findings (which form part of this final decision) below:

*I have considered all the evidence and arguments to decide what is fair and reasonable in all the circumstances of this complaint.*

#### *Chargeback*

*I've first considered that by the time Mr K returned his chargeback paperwork to HSBC, he had no available balances left on his trading account. He also didn't provide the specific evidence required of the Visa dispute rules which (amongst other things), included; a dated screenshot of his trading account showing a balance and that he'd tried to withdraw an amount equal to or less than the available balance on the same day. So whilst some of Mr K's chargeback claims succeeded because Trade24's bank didn't defend those claims, I'm not persuaded HSBC had any reasonable prospect of success by escalating Mr K's claims to Visa's final stage of arbitration. And that's because Mr K didn't have the required evidence for it to do so.*

#### *Fraud prevention*

*HSBC is aware of our general position on a PSP's safeguarding and due-diligence duties to protect customers from the risk of financial harm due to fraud. We have published many decisions on our website setting out these principles and quoting the relevant rules and regulations. It is unnecessary to rehearse them again here in detail.*

*It is common ground that the disputed payments were 'authorised' by Mr K for the purposes of the Payment Services Regulations 2009 ('the Regulations'), in force at the time. This is because they were made by Mr K using the legitimate security credentials provided to him by HSBC.*

*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.*
- *Updated its internal watchlist to include information from credible sources within a month of any adverse publication. Credible sources include information published on the FCA's watch list or the International Organization of Securities Commissions (IOSCO) Investor Alerts Portal.*

*I'm satisfied that Trade24 were scammers. I say this because there were several regulator warnings published about them more than one month prior to Mr K's payments. I've included that information below:*

- 9 March 2016 – the FCA published a warning about Trade24
- 27 September 2016 – Ontario Securities Commission published a warning on the IOSCO Investor Alerts Portal about Trade24.
- 19 May 2017 – Swiss Financial Market Supervisory Authority published a warning on the IOSCO Investor Alerts Portal about Trade24

*Trade24 were required to be regulated by the UK's Gambling Commission at the time of Mr K's payments and they were not, nor were they regulated anywhere else as far as I'm reasonably aware.*

*I've taken HSBC's point that Trade24 returned a total of £10,000 to Mr K but this doesn't change my conclusion that they were scammers. Having reviewed the correspondence between Trade24 and Mr K, they were trying to keep him 'on the hook' and investing for as long as possible. Token 'pay-outs' for further inducement is a common feature of investment trading scams.*

*As I'm satisfied Trade24 were scammers, it would have been reasonable for HSBC to have properly questioned Mr K before processing the first payment to satisfy itself that all was well.*

*If HSBC had fulfilled its duties by asking suitably probing questions, there is no reason to doubt that Mr K would have explained what he was doing. In such circumstances, whilst the bank had no duty to protect him from a bad bargain or give investment advice, it could have explained to him the very high risks of getting involved with unregulated and unlicensed binary options dealers. It could have also explained its own customer experiences with unregulated and unlicensed high-risk investment traders in that customers would often be prevented from withdrawing available balances. After all, at that time, there was information in the public domain—which a bank ought to have known even if a lay consumer ought not—about the very high risks associated with binary options trading, including many warnings of potential fraud (e.g. Action Fraud's June 2016 warning; the European Securities and Markets Authority's July 2016 warning; the Financial Conduct Authority's consultation paper of December 2016; and the Gambling Commission's December 2016 scam warning that "an unlicensed operator is likely operating illegally"; City of London Police's October 2017 report noting victims had lost 'over £59m' to binary options fraud; Visa's Business News publication of October 2017 where it expanded its chargeback scheme rules to cover binary options and investment disputes arising from merchants often unlicensed and unregulated deploying 'deceptive practices'; and so forth).*

*Mr K says that HSBC flagged some of his payments but simply sought to confirm that he had authorised the payments and didn't provide him with any warnings. HSBC hasn't provided any evidence that would suggest it gave Mr K any meaningful warnings, so I've concluded it missed an opportunity to intervene.*

*If HSBC had asked Mr K what the payment was for and the basic surrounding context, it is likely he would have fully explained that he'd been introduced to Trade24 by an acquaintance and that everything had been done over the phone and online with his 'broker'. HSBC did not need to know for certain whether Mr K was dealing with a fraudulent high risk investment trader or investing in a legitimate (albeit highly speculative) product; reasonable grounds for suspicion are enough to trigger a bank's obligations under the various regulations and principles of good practice. I consider there were such grounds here and,*

*therefore, that HSBC ought reasonably to have provided a scam warning in light of all the information then known to financial professionals about the risks associated with unregulated forex and binary options dealers.*

*If HSBC had given a warning, I believe that Mr K would have paused and looked more closely into Trade24 before proceeding. There is no evidence that he was willing to take high risks or had a history of speculative investments or gambling. It seems more probable that he would have made further enquiries into whether or not Trade24 were regulated in the UK or abroad. He could have discovered they were not and the various regulatory warnings about the risk of unregulated investment scams (see above). In other words, I am satisfied that a warning from his trusted bank would probably have exposed Trade24's smoke and mirrors, causing him not to 'invest' and preventing any losses.*

*Even if he had not worked out that this was a scam, it is likely that a warning would have alerted him to the common issues arising in relation to binary options and unregulated high risk investment dealers, which in turn would have revealed the truth behind his supposed broker's (mis)representations — i.e. that they were not really regulated UK investments but highly-risky bets more akin to a wager in which the broker must lose if he is to win. So before any of Mr K's payments were actually processed, he would probably have stopped in his tracks. But for HSBC's failure to act on clear triggers of potential fraud or financial harm, Mr K would probably have not lost any money.*

#### *Contributory negligence*

*Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).*

*In the circumstances, I do think it would be fair to reduce compensation on the basis that Mr K should share blame for what happened. I've noted that Mr K was an inexperienced investor and had not previously made investments (other than a pension scheme) before. But I've also noted that Mr K wrote to HSBC in April 2018 listing all the adverse information he'd discovered about Trade24. I think if he'd carried out some basic checks (rather than trusting the word of an acquaintance alone) he'd have likely discovered the adverse information about Trade24 prior to paying them.*

*I think it would be fair to reduce compensation by 20% on the basis that Mr K should share some blame for what happened.*

*Finally, I think HSBC paying £200 for the delays in processing his chargeback claims is fair and reasonable in the circumstances. But I'm minded to award an additional £150 because despite Mr K complaining about the bank transfer of £12,000, HSBC didn't address this or look to recover it at any stage. It's most likely all the funds would have been gone by the time Mr K got in touch with HSBC but this still would have had an impact on him, which I don't think HSBC has addressed.*

#### **Responses to my provisional decision**

HSBC replied to my provisional decision and said it accepted it on a goodwill basis only. Mr K replied to my provisional decision and queried the breakdown of the credits I'd quoted in my provisional decision as he couldn't recall all the refunds he'd had. He also queried the interest payment. I provided a breakdown of Mr K's credits from Trade24, along with the chargeback refunds. I also explained that as the payments originated from funds held in Mr K's savings account, the appropriate rate of interest was Mr K's savings account interest. Mr K replied and accepted 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 both parties to this complaint have accepted my provisional decision, I see no reason to depart from what I've said.

### **My final decision**

For the reasons set out above, I am mainly uphold this complaint. HSBC UK Bank plc should refund to Mr and Mrs K all of their stolen payments – but subject to a 20% deduction for contributory negligence.

As Mr K received £22,360.16 through successful chargeback claims and pay-out inducements from Trade24, these should be deducted from the overall settlement. This leaves a total loss balance of £38,000, so 80% of that would amount to an award of **£30,400**. The funds originated from a savings account (paid to the current account through internal transfers), so HSBC should add interest to that sum (less any tax properly deductible) at the relevant account rate(s) from the respect dates of loss to the date of refund.

HSBC should also pay an additional £150 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K and Mr K to accept or reject my decision before 15 July 2022.

Dolores Njemanze  
**Ombudsman**