DRN-3134895

The complaint and background

Mr and Mrs M complain about their bank, HSBC UK Bank Plc. They say the bank failed to protect them from financial harm caused by a cryptocurrency scammer Xtraderfx.

As Mr M had all the dealings with HSBC UK Bank Plc, for ease of reading, I'll refer to all submissions as having come from Mr M himself.

Mr M says he clicked an online advert about investing in Bitcoin which appeared to be endorsed by a well-known celebrity and TV programme. He was subsequently telephoned by a representative of Xtraderfx after leaving his contact details on a webform. Mr M alleges they were scammers posing as genuine cryptocurrency traders, as a result of which he lost around £26,000. The payments to Xtraderfx were made using debit and credit card accounts held with HSBC. He is unhappy that HSBC refused to refund him when (in his view) it ought to have been aware Xtraderfx were scammers prior to his payments. He also doesn't think it appropriately handled his chargeback and section 75 claims.

HSBC denies responsibility for the loss. It's position, broadly, is that Mr M didn't provide the evidence required for it to process chargeback claims. It also concluded he had no section 75 rights. However, it recognised it could have provided him with better customer service and paid him £100 in recognition of this.

I've listed the transactions in dispute here:

No.	Date	Account type	Amount	Running total
1	14 November 2018	Mastercard (credit card)	£300	£300
2	19 November 2018	Mastercard (credit card)	£5,000	£5,300
3	20 November 2018	Visa (debit card)	£11,000	£16,300
4	28 November 2018	Visa (debit card)	£10,000	£26,300

Mr M believed he was trading in cryptocurrency – and that he was making very good profits based on the information shown to him on his Xtraderfx online platform. Following his third transaction, Mr M's account immediately experienced a loss of nearly £10,000. Mr M questioned why this was allowed to happen and a broker for Xtraderfx allegedly informed him that if he held a managed account, this wouldn't have happened. The broker told him if he paid an additional £10,000 into his account, he'd be provided with insurance covering £5,000 and a loan of £5,000 (essentially covering his losses). Mr M says he instructed the broker not to place any trades without his agreement. Around December 2018, Mr M's account experienced further losses so he instructed the broker to close his account and return his funds. The broker tried to persuade Mr M not to close his account and place more funds onto it. He refused and his account was subsequently closed. Mr M received no further contact from Xtraderfx, nor did he receive the return of funds he requested.

On 1 September 2021, I issued a provisional decision uphold this complaint. For completeness, I repeat my provisional findings below:

Not every complaint referred to us and categorised as a binary-options scam is in fact a scam. Some cases simply involve high-risk investment 'bets' on the performance of (e.g.) commodities, cryptocurrency or stocks that resulted in very disappointing returns or losses.

Some binary-options traders promoted these products—which were not regulated by the Financial Conduct Authority ("FCA") or its predecessor at the time—using sales methods that were arguably unethical and/or misleading. However, whilst 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).

Banks and other Payment Services Providers ("PSPs") have duties to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering (see below). But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice — and the FCA has confirmed that a fraud warning would not constitute unauthorised investment advice (see its predecessor's 2012 consultation paper on investment fraud, below). So, the first question to resolve is whether this particular retailer/trader was actually a fraudster.

I am satisfied that Xtraderfx were not carrying out legitimate cryptocurrency trades but were instead dishonestly defrauding customers, e.g. by not actually making trades/bets with the money received from clients but simply manipulating their online 'trading platform' to show purported gains in order to induce further 'investments' from victims such as Mr M. In the absence of evidence to the contrary, I have concluded this because:

a) *On 6 July 2018, an alert about Xtraderfx was published by the Financial Conduct Authority (FCA) warning that they were offering financial services in its jurisdiction without authorisation. This is a potential indicator of dishonest intentions.*
b) *On 23 June 2020, the High Court of England and Wales wound up Xtraderfx citing it was in the public's interest to do so. In considering the petition for winding up, the Insolvency Service presented evidence that Xtraderfx targeted customers in the UK and abroad advertising its services online via social media channels and used false celebrity endorsements to do so. It was noted that if clients attempted to remove funds from their trading accounts, they were advised that no withdrawals could be made until personal identification was supplied, yet this information was not requested upon them accepting client deposits. It noted in some cases, clients lost money despite paying insurance which was meant to retrospectively cover their losses. It was further noted that they failed to file statutory accounts and had no legitimate presence at their registered office. A Chief Investigator for the Insolvency Service said: '…This was nothing but a scam as (Xtraderfx) tricked their clients to use their online platform under false pretences and no customer has benefited as their investments have been lost'. In my judgement, the High Court has determined Xtraderfx were operating fraudulently and I am satisfied this was the case. I've also noted that the deceptive tactics reported by the Insolvency Service match Mr M's experience and that of common binary options investment scam victims.*

Having concluded that this was a scam rather than just a bad bargain or poor investment advice, I must now go on to consider four more issues in order to determine the outcome of the complaint:

a) *Did HSBC deal with Mr M's chargeback claim fairly?*
b) *Were any of the disputed transactions so unusual or uncharacteristic for Mr M and/or his account that HSBC fraud alerts ought reasonably to have triggered some sort of intervention?*
c) *If triggered, would HSBC's intervention have made a difference and prevented or reduced the loss?*

d) *And if so, was Mr M partly to blame for what happened such that it would be fair and reasonable to reduce compensation proportionately?*

chargeback

Chargeback is a voluntary scheme run by Visa and Mastercard (the schemes relevant to Mr M's debit and credit card transactions) whereby they will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of each scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa or Mastercard's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. HSBC) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder.

Mr M is upset because HSBC refused to attempt chargebacks through Visa (for his debit card transactions) or Mastercard (for his credit card transactions). In my judgment, it was not unreasonable of HSBC to not have attempted chargebacks with Visa or Mastercard. I'll begin with my considerations against the Visa chargeback scheme rules. I am mindful that the Visa chargeback rules did cover binary-options (or investment) trading from 14 October 2017, i.e. prior to the disputed transactions: see Visa Business News, 26 October 2017:

> *Effective 14 October 2017, issuers may use Reason Code 53 to address cases whereby a binary options (or forex) merchant has imposed obstacles to prevent cardholders from withdrawing funds. This chargeback right is limited to the amount available in the binary option account at the time funds are requested. Issuers cannot charge back more than the original transaction amount, so capital gains from binary options trades cannot be paid out via the chargeback process.*

However, Reason Code 53 (later re-coded by Visa to 13.5) required HSBC to present dated evidence that Mr M had an available balance (in the form of a screenshot or confirmation from the merchant) and that he tried to withdraw sums equal to, or less than, his available balances on the same day. Unfortunately, merchants like Xtraderfx were aware of the specific requirements of the chargeback scheme and could manipulate the available balances. I've noted this happened in Mr M's case.

Though not material to the circumstances of this case, it is worth adding for completeness that, from 1 December 2018, Visa's rules changed again to require binary-options merchants (and other "high-brand risk merchants") to be coded under Merchant Category Code ("MCC") 7995—Betting, including Lottery Tickets, Casino Gaming Chips, Off-Track Betting, and Wagers at Race Tracks. Visa Business News dated 6 September 2018 stated:

> *Visa has discovered that certain binary options, rolling spot forex trading, financial spread betting and contracts for difference merchants are being acquired in markets that do not require licensing or regulate merchant trading platforms. In addition, some of these merchants are selling into countries where local laws prohibit such transactions or require licensing by the relevant financial services authority.*

This change gave a further chargeback right available to the card issuer – reason code 12.7 (invalid data). This is where a merchant used an invalid MCC; but it has a much shorter timescale of 75 days from the transaction date for a claim to be processed. This 'reason code' would not have been applicable at the time Mr M requested a chargeback as merchants like Xtraderfx were not yet required by Visa to 're-code'.

As the disputed transactions occurred in 2018 (after the changes to Visa's chargeback reason codes were published), HSBC could only have successfully processed Mr M's chargeback further than it did if he had the required evidence. And by the time Mr M realised

he'd fallen victim to a scam (after his final payment), he had no available balances left. So, declining to attempt a chargeback in accordance with the Visa chargeback process in circumstances where there were no reasonable prospects of success was neither an unfair nor unreasonable exercise of HSBC's discretion.

Mastercard's 2018 chargeback rules state:

> *Chargebacks are available to the issuer for transactions in which any value is purchased for gambling, investment or similar purposes. However, issuers have no chargeback rights related to the use of these chips or value, unspent chips, or withdrawal of such value, or on any winnings, gains or losses resulting from the use of such chips or value.*

This supports HSBC's decision not to process chargeback claims related to Mr M's credit card account following his complaint that he was scammed.

Having discussed the matter of fraud and scams with Mastercard, it has explained that cardholder dispute chargeback rights are restricted regardless of whether the activity was illegal. In short, Mastercard considers the purpose of the transaction to load funds into the gambling or investment account and not what acts or omissions subsequently occur with the funds. So even though Mr M had valid claims surrounding the legitimacy of Xtraderfx, it didn't change HSBC's chargeback options – which were significantly limited by Mastercard. It follows that HSBC had no available dispute rights to have attempted a chargeback in relation to Mr M's credit card transactions either.

For the reasons set out above, I am not persuaded that HSBC acted unfairly or unreasonably in connection with the chargeback claims at the time Mr M presented his case, so I cannot uphold this complaint on that ground.

unusual or uncharacteristic activity

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 M for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. This is because they were made by Mr M using the legitimate security credentials provided to him by HSBC. These must be regarded as 'authorised payments' even though Mr M was the victim of a sophisticated scam. So, although he did not intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Mr M is presumed liable for the loss in the first instance.

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.*

I am satisfied there were enough 'triggers' in this case to have alerted a responsible regulated bank such as HSBC that Mr M's account was being subjected to unusual and uncharacteristic activity. There were reasonable grounds to suspect a fraud or scam, and therefore justify an intervention (such as phoning him in order to ask discreet questions about the nature and purpose of the payments).

First, regulated firms ought reasonably to take notice of common types of scams. As long ago as June 2012, the FCA's predecessor indicated—in its consultation paper entitled Banks' Defences Against Investment Fraud: detecting perpetrators and protecting victims—that it was good industry practice for firms to build up an updated watch-list of types of scams and potential perpetrators; and regularly to share "timely and detailed intelligence" with other banks, UK and overseas regulators, the police, etc. Whilst the regulator gave no specific timings, it is not unreasonable in my view to expect an international bank to update its watch-list and communicate internally to staff within, say, one month of an alert being posted by the FCA or International Organization of Securities Commissions (IOSCO). In my judgment, such alerts should automatically trigger alarm-bells—and lead to the payment being paused—pending further enquiries (and a possible scam warning) to the payer.

In Mr M's case, there was a warning about Xtraderfx on the FCA's published warning list and IOSCO's Investor Alerts Portal around four months prior to Mr M's initial payment. It is not unreasonable to expect a large international bank that regularly updates its internal alerts to include information about payees who had tried to carry out regulated activities without permission. I accept the warning would not have identified what type of investment was being 'sold'; and it did not necessarily follow from the nature of the warning in isolation that these were fraudsters. But given the timing of the alert relative to the first payment, I do think HSBC ought to have automatically blocked it; and it had several months to update and communicate its watch-list. The bank had constructive if not actual notice that the payee might not be a legitimate merchant – therefore, it would have been reasonable for it to have properly questioned Mr M before processing all the payments in order to satisfy itself that all was well.

Indeed, it appears that there were in fact fraud triggers that prompted HSBC to speak to and write to Mr M in relation to his debit card transactions to Xtraderfx. However, HSBC is unable to provide copies of those calls or any detailed notes of the conversations that took place. Mr M says he wasn't advised against proceeding with the transaction and I've found his testimony to be compelling and consistent throughout.

It appears HSBC was merely checking whether it was actually Mr M who was carrying out these transactions. But, as I've said above, its responsibility goes further than simply checking that a payment is authorised, and HSBC ought to have had some concerns that Mr M was falling victim to a scam.

If HSBC had fulfilled its duties by asking suitably probing questions, there is no reason to doubt that he 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 that there was a regulatory warning and invited him to look more closely into this trader. 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). After all, Xtraderfx isn't new to regulated firms and we've seen several HSBC customer complaints about this particular 'dealer'. It seems likely that HSBC would've seen a number of consumer complaints prior to and following the FCA's warnings to have been familiar enough with this scammer's deceptive trading practices.

There is no evidence that HSBC provided Mr M with any meaningful warnings or gave him other reasons to doubt the legitimacy of the payments he was making. It was a missed opportunity to intervene.

causation

If HSBC had asked Mr M what the payments were for and the basic surrounding context, it is likely he would have fully explained what he was doing and that everything had been done over the phone and online with his 'broker'. HSBC did not need to know for certain whether Mr M 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 binary options.

If HSBC had given a warning, I believe that Mr M would have paused and looked more closely into Xtraderfx before proceeding. There is no evidence that he was willing to take high risks or had a history of speculative investments or gambling; he was a pensioner and described himself as having little computer skills. It seems more probable that he would have made further enquiries into whether or not Xtraderfx 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 Xtraderfx'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 Mr M'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 M 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 this case, I do not think that Mr M was to blame for what happened; that he did not foresee the risk of this sort of harm or any harm. At the time of his 'trading', Xtraderfx was subject to an FCA warning but Mr M would have needed to know

how to search for a regulator's warning. Having reviewed what information would have been available on a web search at the time of Mr M's payments, the FCA's warning did not appear with any level of prominence unless you included 'FCA' in your search. I do not place too much weight on general but arcane information in the public domain for reasons previously alluded to about the information imbalance between financial professionals and ordinary consumers.

Mr M began with a small investment, so he was cautious. Once his trades apparently started to perform, he increased his deposits. I've taken note of the 'losses' he experienced following his third transaction and this may have given him cause for concern. But I've also weighed up the assurances he received from Xtraderfx that a further deposit would enable it to recoup his losses through a 'managed account' service, insurance and a loan credit into his account – this was indeed corroborated by the Insolvency Service's findings. Mr M trusted who he believed to be experienced traders and had no cause to doubt their assurances. Unaware of the common deceptive tactics of scammers, as communicated by Visa to its acquirers and issuers in 2017, he unwittingly agreed to make a final deposit. When those funds were lost, he made no further deposits onto his platform as he realised it was a scam. I do not think he could earlier have foreseen the risk that the company he was dealing with was a scam and the trading account he was viewing was likely to be a simulation.

In the circumstances, I do not think it would be fair to reduce compensation on the basis that Mr M should share blame for what happened.

As I'm satisfied HSBC could have prevented all of the loss, I don't need to consider whether a claim under section 75 of the Consumer Credit Act 1974 ought to succeed in relation to Mr M's credit card deposit-transactions.

Responses to my provisional decision

Mr M accepted the outcome but felt there was no provision for compensation in recognition of the distress that was caused by HSBC. Mr M suffered ill health and didn't feel the bank's offer of £100 recognised the trouble and upset this matter caused, not least the time it's taken to get to this point. Mr and Mrs M say they've been denied the use of a considerable amount of money which has added to their suffering.

HSBC disagrees with my provisional decision and has made further submissions. I have carefully read and digested those submissions in full – but HSBC has helpfully summarised its key points, which, in the interest of conciseness, I now repeat:

- There is a striking lack of detail as to the background of this complaint and only limited information on key issues has been provided in support, which raises further concerns;
- The ombudsman has selectively quoted from the FSA Consultation Paper and misapplies it to this provisional decision;
- The ombudsman seeks to apply retrospective regulation by the back door – that is not the purpose of your service. If the regulator intended that we be obliged to take steps to block payments to merchants one month after they were the subject of an FCA or IOSCO warning, or indeed to automatically block transactions on a blanket basis, they would have made this clear. They did not; and
- The ombudsman's contributory negligence assessment is fundamentally flawed and unsupportable. Mr M's losses were objectively reckless and inconsistent with how a reasonable person would have behaved.

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.

I have reconsidered all the evidence and arguments in light of HSBC's and Mr M's response in order to decide what is fair and reasonable in all the circumstances of this complaint. Having done so, I remain of the view that this complaint should largely be upheld – for the reasons that follow.

The background of this complaint is well known to both parties. HSBC submitted a chronology of events along with evidence explaining the background, as reported to it by Mr M. Therefore, there was no need for me to repeat them all again in detail in my decision. HSBC understood the nature of the complaint enough to issue a final response to Mr M, so I don't find HSBC's point in respect of the background lacking detail to be material to the findings and it has not clarified what information it feels it has not already seen.

HSBC suggests I've misapplied the FSA's 2012 Consultation Paper - Banks' Defences Against Investment Fraud: detecting perpetrators and protecting victims ('the 2012 paper') in my provisional decision. I'm aware that the contents of the 2012 paper did not specifically reference binary options or cryptocurrency scams. However, I don't think the intention of the 2012 paper was to limit the types of investment fraud firms ought to focus on. Not least because the 2012 paper noted firms use of Industry Intelligence at chapter 10. And specifically at paragraph 10.9, which shared examples of good practice:

- *A bank participates in cross-industry forums on fraud and boiler rooms and makes active use of intelligence gained from these initiatives in, for example, its transaction monitoring and screening efforts.*
- *A bank takes measures to identify new fraud typologies. It joins up internal intelligence, external intelligence, its own risk assessment and measures to address this risk*

Binary options and cryptocurrency scams are types of investment fraud and I'm satisfied the spirit of the 2012 paper was intended to provide examples of good and poor practice for firms in tackling investment fraud more generally. This is evident by the FCA's inclusion of the contents of the 2012 paper in its 2015 and 2018 Financial Crime Guides, along with its FCTR 14.1.2 in December 2018. I think this demonstrates that it has considered the contents of the 2012 paper to remain relevant over the years.

I was mindful of the High Court judgment referred to by HSBC—*Philipp v Barclays Bank plc* [2021] EWHC 10 (Comm)—even though I did not cite it. In that case, the judge took a different view about the so-called *Quincecare* duty on a bank. But I'm not suggesting the *Quincecare* duty applies to this case. And notwithstanding what the judge said, we have a duty to resolve complaints based on what we think is fair and reasonable in all the circumstances of the case, taking into account not just the law, but also regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. Indeed, DISP Rule 3.6.1 of the *Financial Conduct Authority Handbook* states that, "*The Ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.*" This wide remit is further clarified in DISP Rule 3.6.4:

> In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:
>
> a) relevant:

i. law and regulations;
ii. regulators' rules, guidance and standards;
iii. codes of practice; and

b) (where appropriate) what he considers to have been good industry practice at the relevant time.

In other words, whilst we do take account of caselaw such as *Philipp*, we are not bound by it if, in all the circumstances and in the ombudsman's opinion, it would result in unfair or unreasonable outcomes.

HSBC say that although it can apply blocks to certain merchants, these can be circumvented by those merchants changing merchant/acquirer codes. It has not expressed how this applies to Mr M's case. I've noted the payments as listed on his statements were sent to 'Xtraderfx', so I make no further comment here.

HSBC refers to paragraph 2.11 of the FSA Consultation Paper which it argues; *'confirmed that there should be **strong grounds** for suspicions for payments to be delayed, still less for the more extreme circumstances of preventing a series of payments. This threshold would not have been satisfied by the existence of an FCA or IOSCO warning.'*

At paragraph 10.4 of the 2012 paper, the FSA noted there are a number of 'sources available for building up a watch list for investment fraud'. Among other things, it included 'lists published on the FSA website of UK and overseas unauthorised businesses'. And *'lists published by other organisations e.g. the International Organisation of Securities Commissions' Investor Alert list, which it noted covered 'a number of different jurisdictions'.*

If the regulator is satisfied that its own warning lists, along with IOSCO's warnings lists are sources available for building up a watch list for investment fraud, I think this satisfies the threshold for strong grounds for suspicions enabling HSBC to delay payments to payees published on said lists. If HSBC has the capabilities of delaying payments to particular merchants, I'm not sure why it wouldn't be in a position to do so from the first payment. In the context of Mr M's case, I'm satisfied that HSBC ought to have blocked payments to Xtraderfx based on credible warnings published by the FCA and IOSCO, along with its own customer complaints about this merchant.

HSBC takes issue with my comments on regulatory alerts published by the FCA and/or IOSCO and suggests I seek 'to apply retrospective regulation by the back door'. There is no retrospective application of obligations here. A regulated firm has always been obliged, if only as a matter of good practice, to take account of alerts published by the regulators — for the reasons set out in the 2012 paper that I previously cited. It is neither onerous nor unfair for an international bank to maintain a watchlist of potentially fraudulent or illegally-operating payees; nor to pause any payments directed to such persons rather than simply execute the instructions of lay clients with less knowledge and expertise. It is true I concluded that a one-month grace period from publication might be fair and reasonable in all the circumstances — but that merely operates in favour of firms to give them time to update their systems. Within the spectrum of reasonable conclusions, I could equally have concluded that, in this day and age, electronic alerts should be acted upon more quickly. I am satisfied that it is fair and reasonable for a large corporate body to update its fraud alerts and watchlists within a month of a regulator publishing an alert. HSBC has given no good reason why this is not the case. I still think it would be unreasonable to expect a firm to act *immediately* on an alert because that would not take account of the commercial realities and logistics faced by bodies corporate.

HSBC highlight that Mr M paid over £25,000 in 14 days without checking the legitimacy of the merchant and so should bear some responsibility for his losses. I did think very carefully

about whether Mr M contributed to his losses. But I was satisfied that Mr M was the victim of a very sophisticated scam. He started with smaller payments and was encouraged to deposit more money after seeing returns. I think HSBC had better insight into this type of fraud, for example; through its own customer complaints and information provided to it by Visa to understand the level of sophistication involved with these types of scams. Notably, simulated trading platforms and merchants preventing cardholders from withdrawing their available balances. I do appreciate there was a warning about Xtraderfx in the public domain at the time of Mr M's investment but I don't think he saw this and I also don't think he could have reasonably known the operation of this type of scam unless prompted by for instance, his trusted bank. I think the onus was on HSBC to inform Mr M of the risk that he would likely lose all of his money if he made payments to Xtraderfx. And that responsibility fell upon HSBC from the initial payment based on what it ought to have known about Xtraderfx.

On the question of interest, 8% simple which HSBC called a punitive rate. It is not a punitive rate as alleged, but simply represents a notional average cost of consumer borrowing to cover someone being without their money as a result of wrongdoing for which we are holding a firm liable; it does not represent actual loss of interest, which may now be zero on a current account or less than 1% on a savings account. Many consumers have to pay much higher interest in order to borrow, e.g. via credit cards or short-term loans.

I do appreciate Mr M's concerns that HSBC caused delays in returning his funds and that this matter has caused him considerable distress and inconvenience, particularly being deprived of his funds for so long. I also recognise that HSBC paid Mr M £100 compensation but this was in recognition of some customer service failings – including quoting an incorrect date on a letter. I think the substantive cause of Mr M's distress and inconvenience was Xtraderfx. I think HSBC does hold blame for not doing what I think it ought to have done but I'm satisfied the settlement proposed puts this right, including the recognition for the time Mr M has been deprived of his funds and the difficulties this has caused him. I don't intend to penalise HSBC for the actions of Xtraderfx by awarding additional compensation for the significant distress caused by them rather than HSBC.

My final decision

For the reasons set out above, I have decided to uphold this complaint. I therefore require HSBC Bank UK Plc to refund all of Mr and Mrs M's stolen payments (totalling £26,300). This was a current account, so HSBC should add interest to that sum (less any tax properly deductible) at our usual rate of 8% simple per year from the respective dates of loss.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 12 January 2022.

Dolores Njemanze
Ombudsman