

## The complaint

Mr N is unhappy that HiFX Europe Limited (trading as XE) refuses to refund the money he lost having fallen victim to a scam.

## What happened

In early-2018 Mr N fell victim to a forex trading investment scam after searching online for somewhere to put his money in order to earn a better rate of return. He provided his details in response to an advert on a social media platform and was subsequently contacted and persuaded to invest. Mr N made 17 payments (two of which were split in two due to transaction limits imposed by the receiving bank) over the course of almost a year – totalling more than £650,000 – from his XE account to two overseas accounts which appear to have been under the scammer's control.

In May 2019 XE appears to have received some intelligence from a third party about the beneficiary to whom his last two payments had been sent. This prompted it to ask Mr N for some additional information about his payments to that beneficiary. XE subsequently told Mr N it thought he had fallen victim to an investment scam and refused to process any further payments to that beneficiary.

In July 2019 Mr N raised a complaint with XE and asked it to try and recall all the payments he'd sent to the scammer. XE said it had found no errors in its handling of Mr N's payments or claim. It said he authorised the payments, it had no reason to prevent him doing so and the recipient banks had refused (or said they were unable) to return any money when it notified them about the scam.

Mr N remained unhappy and asked us to look into his complaint. I recently issued a provisional decision setting out why I didn't think Mr N's complaint should be upheld. I have reproduced, below, my provisional findings

*The relevant law and regulations – plus good industry practice and XE's own submissions – suggest XE has a duty of care to protect its customers against the risk of fraud and scams so far as reasonably possible. XE might be negligent and liable for reasonably foreseeable losses if, in breach of that duty of care, it fails to act on information which ought reasonably to alert a prudent authorised payment institution to potential fraud or financial crime by, or against, its customer.*

*Having said that, the Payment Services Regulations 2017, in conjunction with XE's terms and conditions, also indicate that XE should execute authorised payment instructions without undue delay – and there is a presumption that liability for an authorised payment rests with the payer, even if that authorisation was obtained by third-party fraud.*

*There's no dispute in this case that Mr N authorised all of the disputed transactions. And I've taken the above obligations into account when deciding if XE acted fairly and reasonably when it processed his instructions. I also note the following.*

*Given the level of sophistication employed by the fraudster, I initially had doubts about whether Mr N had actually been the victim of a scam. I say that because, while investment scams are not uncommon, some of the complaints we receive simply involve high-risk investment trading. In essence these are 'bets' on the performance of, for example, commodities, or stocks. That kind of investment, by their very nature, can result in very disappointing returns or losses. And, when simply executing an authorised payments, XE does not have to protect its customers against the risk of bad bargains or give investment advice.*

*Mr N thought he was investing with Algotechs Limited and BAX Ltd (or BeAlgo) and I think it's clear he understood he was putting his money into forex trading, which carries the inherent risks I've mentioned. I've also managed to obtain (via [www.web.archive.org](http://www.web.archive.org)) some screen shots of Algotechs' website from around the time Mr N's disputed transactions started and can see the home screen explained:*

*"The capital markets and forex trading entails significant risks and is not appropriate for all investors. The possibility of incurring substantial losses should be taken into account. It is therefore important to understand the possible consequences of investing. Investors should weigh their earning potential against the risks involved and act accordingly. Past results should not be considered a promise for a similar outcome in the future."*

*Mr N has also shared a screenshot with us of the BeAlgo customer dashboard he was given access to which shows, amongst other things, his deposits and withdrawals. At the bottom it says "Risk Warning: Forex and Algo Trading involve significant risk to your capital, and might lead to loss of part or all of invested capital." In my experience, it's unusual for investment scammers to include these types of warning. Usually they're trying to tempt individuals to invest who have little knowledge, or experience, of investments and they tend to do so by promising high returns without any risk. Including this type of risk warning might easily scare off potential victims.*

*I also note Mr N was encouraged to subscribe to a genuine investment tracking app to keep an eye on his investments as well as having access to the dashboard I've already mentioned. And it seems reasonable to think the "scammers" must have invested a considerable amount of time into maintaining the data-feed into these two applications as well as their own websites.*

*When deciding if Mr N was scammed, I have contrasted the above with the information that's been published by a couple of, what I consider to be, trustworthy sources.*

*The Financial Conduct Authority (FCA) is the UK financial services industry's regulator. It publishes a warning list on its website to help protect consumers against investment scams. It also includes warnings on its register if it is aware of a particular financial business operating without the required authorisation. Algotechs and BeAlgo first appeared on the warning list and unauthorised firm listing on 25 April and 15 May 2019 respectively. They also were both mentioned on the International Organization of Securities Commissions' (IOSCO) investor alerts portal on 30 April and 20 May 2019 respectively. However, those publications all occurred after Mr N sent his final transfer. And they don't specifically say the companies are scammers, the FCA simply say:*

*"Almost all firms and individuals offering, promoting or selling financial services or products in the UK have to be authorised or registered by us.*

*This firm is not authorised by us and is targeting people in the UK. You will not have access to the Financial Ombudsman Service or be protected by the Financial Services*

Compensation Scheme (FSCS), so you are unlikely to get your money back if things go wrong.”

And IOSCO’s warnings give this generic description – “Regarding fraudulent or manipulative practices (insider dealing, market manipulation, misrepresentation of material information, etc.”).

Mr N has also provided posts from some forums which suggest Algotechs or BeAlgo are scammers. I don’t think this is conclusive evidence, given everything else I’ve seen, that Mr N was scammed. I’ve taken it into account but must also note that most, if not all, of the posts post-date the bulk of the transfers Mr N made.

Overall, I have some doubts that Mr N was scammed. But, even if he was, the level of sophistication the scammers employed would, I think, have made it difficult for XE to uncover or prevent Mr N falling victim to the scam had it questioned him about why he was making the transfers. In all the circumstances, I’m not currently persuaded XE ought to have done more than it did after receiving Mr N’s transfer instructions. I say this with the following in mind:

- Mr N sent all but two of his payments to UPC Consulting and Toot Capital, rather than to Algotechs or BeAlgo. A phone call seems to have taken place between Mr N and XE on the day the first payment was sent because Mr N wasn’t sure how to set up a new payee. XE’s notes don’t suggest it discussed the reason for making the payment. And I’ve seen nothing which makes me think XE ought to have been aware that Mr N thought he was sending his money to an investment company, such that it ought to have questioned him further and/or warned him about investment scams.
- XE’s notes show that, on 20 December 2018, it emailed Mr N and said “We take security very seriously and like all companies involved in making international payments, we have to carry out appropriate screening to prevent fraud and money laundering. Following a recent review of your account, we will need you to provide us with further information as follows: Please clarify the full reason for your transactions to UPC Consulting Ltd & please provide any supporting documentation such as invoices.” XE also asked why Mr N was making payments to two other business and asked if he had been using his personal account to make business-related payments. XE’s records suggest Mr N replied by phone on 4 January 2019 (after it chased him) and said he’d been trying to open a business account. On 10 January 2019 XE ascertained that Mr N was living and transacting from America, so it restricted his account as “Due to US legislation we are not authorised for our clients to trade while they are in the US.” In response Mr N said “I am leaving the USA on the 17th January. I have a number of personal and business payments that need to be made over the next couple of weeks (including a €500.000) purchase of a property in Malta. If you restrict my account this is going to cause a huge amount of inconvenience for me.” XE then permitted Mr N to transact because he was only temporarily in America.

I note all of this because there is no mention in any of the correspondence that the UPC Consulting payments related to an investment. It’s not the case that businesses should always take at face value the reasons a consumer gives for making a payment, because businesses ought to know that scammers sometimes persuade their victims to give a cover story in order to help prevent the payment from being blocked. But Mr N wasn’t given a cover story and, given everything I’ve seen, I’m not currently persuaded he would have told XE about his investment opportunity even if XE had questioned him at any other point about it. Mr N had given plausible reasons, when questioned, for making payments and was relatively insistent that he be allowed to continue using his account. .

- *None of the warnings mentioned above link Algotechs and BeAlgo to either UPC Consulting or Toot Capital. As I've said, those are the recipient names Mr N gave when he placed the transfers. And neither of those names are, even now, mentioned on the FCA's or IOSCO's warning lists. I mention this, in particular, because Mr N say XE should have identified, from discussions on various online forums, that there was a link between these four businesses and that some or all were involved in scams. I disagree with Mr N's suggestion. I think it would be good practice for XE to take account of alerts published by relevant regulators and I included IOSCO, in addition to the FCA, in this particular case because Mr N's payments were being sent overseas. But I don't think its reasonable (or proportionate) to expect XE to trawl the internet in relation to every one of the hundreds or thousands of transactions it likely facilitates each day or week. And forums such as the ones Mr N has pointed to aren't always wholly reliable and/or factually accurate.*
- *HiFX Europe Limited has been an FCA authorised payment institution (what they prefer to refer to as, an online money transfer service) since 13 January 2018 – the XE trading name was introduced in February 2019. And I'm satisfied it was acting under this authorisation when it processed all of Mr N's disputed transactions.*
- *XE says it has screening mechanisms in place to prevent money laundering and fraud and I've already quoted from an email it sent Mr N which says as much. But no flags were raised until after Mr N placed his final transfer in March 2019. As I say, I've seen nothing on the FCA or IOSCO's website that should've prompted earlier intervention. And I'm willing to accept XE's assertion that it was not until May 2019 that it received notification from an external party that the Toot Capital account might have been involved in investment fraud. Having said this, it would be helpful if XE would provide in response to this provisional decision (and in confidence, if necessary) more detailed information about how this external notification came about (from where did it arise and what did it say exactly).*
- *I think the relationship Mr N had with XE was different to the one he would have with, for example, his current account provider. Current accounts tend to be used on an almost daily basis for the receipt of income and for everyday spending. Whereas Mr N set up his XE account in June 2017 (just 11 months before the first disputed transaction) and he tells us he used it primarily to make payments for a property he owned overseas. In my experience, this kind of usage is quite normal, mainly because payment institutions like XE offer better exchange rates than the high street banks. What this also means is that the pattern of spending is often irregular and may include larger value, international transfers. I mention this, in particular, because Mr N has pointed to various pieces of guidance and best practice in support of his complaint and to demonstrate that XE ought to have done more to verify his transfers. But I disagree – the checks and measures a business undertakes should be proportionate to the relationship that exists between it and its customer. And the way Mr N was using his account was not, I don't think, unusual for the type of account or the usage he envisaged when he opened the account, even though the amounts being transferred from April 2018 were somewhat higher than in the previous 11 months. And, despite what Mr N says, it does seem he indicated he might transfer over £1million per year. Mr N now says that was never his intention as he did not have that much money at his disposal then, nor could he have ever earned that figure (his salary at the time was £130,000). But the notes I've already referred to talks about him planning to sell a property for €500,000, which is a considerable amount in and of itself. In the circumstances, I'm prepared to accept the evidence supplied by XE about what Mr N told it when he opened the account. .*

- *It seems Mr N was prepared to put his money into forex trading despite the risks mentioned above. I also note, despite what Mr N says, the Personal Client Addendum doesn't actually guarantee that he will receive the quoted "success" fee and this document also talks about making "investment activities in the market." Mr N has also shared with us various emails he received about the investment, one of which refers him to an article about Algotechs in The European – a quarterly business magazine (available online and in hard copy), published by a UK company. The link that was provided no longer works, but Mr N seems to suggest he read it at the time and this independent review encouraged him to invest. Mr N also says that he instigated first contact with the scammer and no high-pressure sales tactics were employed, which is the opposite of what we tend to see with investment scams.*

*Overall, at the time the payments were made I'm satisfied XE did have systems in place to look out for fraud. Taking into account what XE did and the way firm's obligations have changed over time, as well as the particular circumstances of this complaint, I'm satisfied XE did enough to try to protect Mr H from financial harm, I don't think XE was obligated to do any more than this at the time the scam occurred.*

*And, in any event, given the relative sophistication of the scam, as I've mentioned above and Mr N's willingness to take the risks set out on Algotechs' website, even if XE had questioned Mr N earlier about the intended recipients and/or purpose for his payments, I'm not satisfied it would have made a difference. I think it's more likely than not he'd still have gone ahead with the 'investments'.*

*I know this will be very disappointing for Mr N but, considering XE's obligations and the specific circumstances of this case, I can't fairly tell it to refund any of his money.*

In response to my provisional decision, XE provided, in confidence, additional evidence to show when and how it became aware that the Toot Capital account might have been involved in fraud.

Mr N didn't accept my provisional findings and maintains that XE should refund all his money because it should have done more to prevent the scam. He said, in summary, that:

- He believed, like thousands of other people, that Algotechs and BeAlgo were genuine investment firms. He was not an experienced investor, was not willing to risk his money and believed he would get an 8% return. It was a professionally orchestrated scam and no-one who sent money to the fraudsters has managed to generate the promised income or been able to withdraw their money. The FCA never explicitly states that a certain company is a scam.
- XE did not have effective money laundering or fraud prevention measures in place and it failed to comply with the BSI PAS code which sets out the type of transactional behaviour which might indicate fraud is taking place. It called him towards the end of December 2018, by which time he'd already sent more than £516,000 to the scammers. A restriction was placed on his account simply because he was transacting while overseas. He didn't provide detailed information about his investment plans in response to XE's enquiries because he didn't realise, at that time, he was being scammed and saw no reason to disclose information that was not specifically requested.
- Our investigator thought XE ought to have made enquiries about the payments. And he suggested that a conversation did take place in which the purpose of the payments was discussed. This seems to contradict what I said in my provisional decision – that no

discussion took place. And if XE have now denied that such a conversation took place, it is lying and its testimony should be ignored.

### **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 set out in my provisional decision why I didn't think XE ought to refund any of Mr N's money and my overall opinion about that has not changed. But I would add the following.

My role has been to review Mr N's complaint independently and I'm not bound by any conclusions the investigator reached. So I don't intend on explaining why my findings differed from the investigator's.

I don't think there's anything which supports Mr N's suggestion that XE has lied or fabricated evidence. So I've made my decision after reviewing everything that has been said and provided by both Mr N and XE.

I note what Mr N says about XE's obligations, including his references to the BSI code, various pieces of FSA and/or FCA guidance and best practice. But I must point out that some of what he refers to relates to expectations for banks and building societies and, at the time his transactions occurred, were not necessarily applicable to payment institutions like XE. I have also already acknowledged that XE had a duty of care to protect its customers against the risk of fraud and scams so far as reasonably possible. But it also had to balance that with the requirement to execute authorised payment instructions without undue delay. And I also think it's relevant, as set out in my provisional decision, that the relationship between customers and payment institutions like XE are often different to the relationship between customers and their primary bank.

Mr N has explained why he didn't disclose to XE his reasons for making the payments to UPC Consulting. But XE's records suggest it did ask for this information by email in December 2018 and his failure to reply was what prompted his account to be restricted. The restriction appears to have been lifted in January 2019 after a phone call and email exchanges with Mr N. The notes relating to the call are fairly limited, but suggest Mr N merely explained he was trying to open a business account but had been making payments from his personal account in the meantime. And he subsequently said in an email that he wanted the account to be unrestricted because he was planning on making a number of personal and business payments over the next couple of weeks. I think the name "UPC Consulting" could feasibly be assumed to relate to business activities and this name alone doesn't suggest anything relating to an investment. Mr N has also said he wouldn't have seen any need to disclose his investment plans to XE because he didn't know he was being scammed then. Without that information, and given everything else I've said, I can't agree that XE ought to have taken steps to alert him to, or educate him about, possible investment scams.

There remains nothing which suggests XE had, or ought to have, concerns about the recipient of Mr N's payments at the time he made them. And I'm satisfied it contacted him promptly, in May 2019, after learning that one of the receiving accounts might have been involved in a scam.

### **My final decision**

For the reasons set out 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 Mr N to accept or reject my decision before 3 December 2021.

Ruth Hersey  
**Ombudsman**