

## **The complaint**

Mrs Y complains that HSBC UK Bank Plc won't refund the money she lost to an investment scam.

## **What happened**

Around September 2019, Mrs Y was cold called by a representative of a company I'll call 'F'. She was persuaded to invest as the representative told her a lot of people were making money from as little as £250. Mrs Y paid F £250 using her Visa debit card – linked to her HSBC current account.

Around December 2019, Mrs Y tried to withdraw her funds but was told that her request had to be authorised by F's finance team first. No funds were received and Mrs Y was told that she'd need to upgrade her account and pay more funds into it before she could access it. Mrs Y was persuaded to obtain lending from a third-party business and borrow money from friends in order to deposit more funds onto her trading account. From November 2019 to February 2020, Mrs Y paid F a total of £54,950 using her HSBC Visa debit card. Around March 2020, Mrs Y tried to withdraw her funds again but F told her she needed to pay £1,500 before they could release the funds.

Mrs Y called HSBC to explain she thought she might have fallen victim to a scam and asked whether she should pay F the money they were asking for. HSBC advised Mrs Y she shouldn't as it sounds like a scam and Mrs Y didn't pay any further funds. She asked HSBC to help her with chargeback claims to recover her money. She also mentioned she had previously fallen victim to an investment scam that she'd reported to HSBC.

After some delays, HSBC concluded it couldn't help her with chargeback claims as she didn't have the evidence required by Visa. It acknowledged it caused delays and paid Mrs Y £250. Unhappy with HSBC's response, Mrs Y referred her complaint to this office. One of our Investigators concluded first of all that F was not a scam business as it was regulated by the Cyprus Securities and Exchange Commission (CySEC) with passporting rights through the FCA at the time of Mrs Y's payments. She acknowledged the FCA had since removed F's passporting rights but explained this was after Mrs Y made all of her payments and HSBC had no obligation to protect her from a bad bargain.

Mrs Y didn't agree and she asked for an Ombudsman to review her complaint and the complaint was therefore passed to me for determination.

I wrote to HSBC and Mrs Y to explain that the Financial Conduct Authority (FCA) had called F a scam when it published a notice about removing its passporting rights in June 2020, so I was persuaded it was a scam. The notice appeared after Mrs Y made all of her payments, so I don't think HSBC could have known F were scammers when Mrs Y made her payments. But I thought the operation of Mrs Y's account had changed significantly to warrant intervention from HSBC. Mrs Y made three consecutive card payments of £5,000 on 3 February 2020. I explained all the payments to F prior to this date weren't unusual when considering the normal operation of Mrs Y's account. I felt by the third payment on 3 February 2020, HSBC should have intervened and had a conversation with Mrs Y. I think if it

had, she would have explained the purpose of the payments were to unlock her ability to withdraw funds and she was under pressure to pay. I think HSBC would have been as sufficiently concerned that Mrs Y was potentially falling victim to a scam as it was when it advised Mrs Y of this in March 2020 (when she gave a similar explanation about the purpose of her intended payment). Whilst HSBC weren't to know that F were to have their passporting rights shortly removed, I think the nature of the payments and her interactions with F would have put HSBC on alert to provide her with a meaningful warning. As Mrs Y listened to HSBC's advice in March 2020 and made no further payments to F, I think she would have followed the same advice earlier. I suggested that HSBC refunds the payments Mrs Y made after the third payment on 3 February 2020 together with compensatory interest.

HSBC agreed and said it would refund £37,000 and it would also pay 8% simple interest per year, from the dates of the respective payments, to the date of settlement.

Mrs Y didn't accept the offer. She said F and HSBC impacted her job, health and caused a significant amount of stress. She invited me to obtain further information from her about F if I wished to but believed it should be looked at again.

I tried to call Mrs Y to speak with her but she did not return my call. Our Investigator emailed Mrs Y and invited her to contact her after her call attempts were unsuccessful and she did not reply.

### **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 uphold this complaint in part and I'll explain why.

Not every complaint referred to us and categorised as an investment trading scam is in fact a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses.

Certain high-risk investment traders may have promoted these products 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).

In simpler terms, some merchants may have used sales and promotional methods that could be seen to be unfair by consumers considering the losses they've incurred – but this does not always amount to *fraud*.

When considering this for Mrs Y's case, I've paid particular attention to the official organisations that publish warnings about merchants that operate in the UK and abroad. I've searched the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"), the international body that brings together the world's securities regulators. And the FCA (as the UK regulator) also has its own warning list, which is in place to share alerts and insight about merchants that have been identified as potentially being fraudulent.

Upon checking both of these, it's my understanding that F had no adverse information reported about them at the time Mrs Y authorised her payments to them. What I have noted is that they were regulated by CySEC at the time of Mrs Y's payments with passporting rights through the FCA - which meant they could offer services to UK customers. I've noted the FCA issued a supervisory notice to F on 28 May 2020 and on 1 June 2020 removed its passporting rights concluding F (amongst others) had operated 'scams'. The FCA removed F's ability to provide services to UK customers.

However, this note was published after Mrs Y made all of her payments so I do not think HSBC could reasonably have known – based on the recipient details alone – that F was operating a scam. So I need to consider whether HSBC ought to have suspected that Mrs Y's account was being subjected to unusual or uncharacteristic activity.

*Were Mrs Y's transactions unusual or uncharacteristic?*

As our Investigator pointed out, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

Prior to Mrs Y's three payments of £5,000 to F on 3 February 2020, the highest she'd paid F in a single transaction was £4,000 on 7 January 2020 – which was also the highest amount paid to F on any single day. But I don't think this payment in isolation, was all that unusual when compared to Mrs Y's previous spend. Other payments to F were less than £1,000 and were more sporadic.

I think three payments of £5,000 on a single day to F were unusual and HSBC ought to have intervened on the third payment. I think if HSBC had intervened, Mrs Y would have disclosed that she was paying more money onto her trading account with F in order to unlock her ability to withdraw. She would have likely also explained that she was under pressure to pay and had borrowed money to do so. Whilst HSBC probably would have noted that F was regulated by CySEC with passporting rights through the FCA, I think the nature of what Mrs F was being asked to do would have concerned HSBC enough to provide a meaningful warning – not least because it did this the following month when presented with what I consider to be the same scenario. I think HSBC could have prevented further losses from this point.

I can see HSBC considered processing chargeback claims for Mrs Y but she didn't have the required evidence for it to do so. The chargeback dispute 'reason code' (13.5) required Mrs Y to provide dated evidence that she had available balances in her trading account on the same day that withdrawal requests were made – and that these requests weren't honoured. As Mrs Y didn't have this evidence, I don't think HSBC acted unfairly by choosing not to process her claims for her.

HSBC paid £250 compensation for the delays Mrs Y experienced and I think this was fair and reasonable under the circumstances. I acknowledge the distress Mrs Y suffered as a result of this scam but I think the majority of her distress was caused as a result of the actions of the cruel scammers. I think HSBC has acknowledged its mistakes and I think the compensation it awarded to Mrs Y was fair.

### **My final decision**

For the reasons set out above, I partly uphold this complaint. HSBC UK Bank plc should refund to Mrs Y all of her stolen payments from the third payment of £5,000 on 3 February 2020.

This totals **£37,000**.

HSBC should add interest to that sum (less any tax lawfully deductible) at 8% simple, per year, from the respective dates of loss to the date of refund.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Y to accept or reject my decision before 4 November 2022.

Dolores Njemanze  
**Ombudsman**