

The complaint

Mr R complains HSBC UK Bank Plc won't reimburse money he lost when he fell victim to a scam.

What happened

Mr R was interested in investing on the stock exchange and came across Plusoption alongside some other investment companies. He thought it was a safe form of investing and the reviews he read were all positive. He was to be given training and was given a tutor who showed him how to use the platform. He started with a small investment of £250, with further larger investments made. He was reassured that his bank didn't intervene in the payments, making him surer the platform was safe and treated by his bank as a reliable company.

The transactions below were all made from Mr R's current account, to Plusoption using his debit card:

Date	Amount
25 September 2017	£250
27 September 2017	£500
9 October 2017	£1,500
9 October 2017	£2,500
10 October 2017	£250
11 October 2017	£1,000
16 October 2017	£2,500
28 November 2017	£1,500
28 November 2017	£2,500
Total	£12,500

In March 2019, Mr R received a message from Plusoption notifying him the company was closing down. He attempted to contact it to withdraw his money but didn't receive any response. He has since discovered it wasn't regulated and believes the trading account was a simulation. Mr R raised a chargeback claim with HSBC. HSBC said the chargeback claim had been raised out of time.

Ultimately, one of our investigator's concluded that all the payments to Plusoption ought to

have been blocked, as by the time they were made there was a warning about the trader on the International Organization of Securities Commissions (IOSCO) alert portal, that it had been trading in a jurisdiction without a license. She concluded HSBC ought to have intervened and had it done so, she was satisfied the scam would have unravelled. She didn't find Mr R should bear any responsibility for the position he found himself in. She asked HSBC to reimburse all of the transactions to Plusoption and add 8% simple interest.

HSBC disagreed. In summary, it said:

- It doesn't appear Mr R carried out any research, which it considers to be careless.
- The payments themselves weren't unusual for the account. And there were other earlier payments to cryptocurrency providers.
- It considers the position in relation to information held on the IOSCO warning list to be retrospective regulation by this office. And in any event, it doesn't consider that Mr R would have taken notice of a warning about Plusoption not being authorised in another jurisdiction. It doesn't consider this amounted to good industry practice then or now.
- The investigator hasn't set out what law, regulatory rules, code of practice, guidance, and good industry practice they have considered and so it's difficult for it to understand where the duty to carry out due diligence by contacting Mr R arose.
- In its experience attempts to block merchants is circumvented by the merchant changing the merchant or acquirer codes.
- Mr R was investing in other cryptocurrency, and it doesn't accept that any warning it might have provided would have stopped him investing.
- It doesn't believe the investigator has properly considered contributory negligence.
- It doesn't believe 8% simple interest is appropriate rather than the account interest rate.

The matter was referred to me for review and determination. I noted the other investments Mr R had made to other trading platforms and cryptocurrency providers and asked for further information. Mr R has told us he was interested in investing on the stock exchange and investing into Etoro and Bitbay were all part of that. He further explained that he was using Plusoption to learn how to trade, with the aim being to invest further with Bitbay.

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.

Under regulations and in accordance with general banking terms and conditions, banks should execute authorised payments without undue delay. The starting position is that liability for an authorised payment rests with the payer even where they have been duped into making that payment, for example as part of an investment scam. There is no dispute here that Mr R authorised the payments.

Banks and other payment services providers 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. But they don't have to protect customers against the risk of bad bargains or give investment advice. And I'm mindful the regulator has confirmed that providing a fraud warning to a customer, doesn't amount to investment advice. The first question I need to consider is whether this trader was actually a fraudster.

The investigator has already set out the reasons for finding that Plusoption wasn't a legitimate trader. I agree with those reasons, in summary they were:

- Plusoption wasn't regulated by the UK's Gambling Commission when it ought to have been.
- A warning about Plusoption was published by IOSCO on 11 May 2017. This noted that it has been operating in another jurisdiction without being licensed to do so. The FCA also later published its own warning in May 2018, that Plusoption was operating in the UK without authorisation.
- There are reports in the public domain about Plusoption being scammers.

So I need to consider whether:

- HSBC ought to have intervened in any of the payments?
- Whether intervention would have made a difference?
- Whether Mr R was partly to blame or what happened such that it would be fair and reasonable to reduce compensation proportionately?

HSBC is aware of our general approach to its safeguarding and due-diligence duties to protect customers. As well as decisions being published on our website setting out these principles and which quote the relevant rules and regulations, HSBC itself has also had a number of decisions setting out our position.

We are required, and as provided for in the DISP Rules, to take into account rules and guidance, relevant codes of practice and what I consider to be good industry practice, as well as the law, when reaching a decision. And we're tasked with reaching a fair and reasonable outcome in all of the circumstances of the complaint. In doing so, we're satisfied our approach isn't inconsistent with the law.

All of Mr R's payments that are in dispute went directly to Plusoption. The first payment was sent in September 2017. By that time, there had been a warning on the IOSCO investor alert's portal, that Plusoption had been operating in a jurisdiction without being licensed, for four months. I accept, as mentioned by the investigator, that it doesn't necessarily follow that these were fraudsters. But nevertheless, I'm satisfied it's not unreasonable to expect an international bank to update watchlist to include businesses – payees – that have carried out regulated activities without being licensed. After all, a legitimate business carrying out regulated activities would usually submit itself to regulation. But this warning actually went further. The jurisdiction that posted the alert not only said Plusoption was operating without being licensed but that it could also be involved in a scam. I consider that to be highly pertinent to the updating of any watch list.

HSBC has said that blocking payments is ineffective as merchants circumvent this by changing the merchant/acquirer code. But HSBC hasn't provided any evidence that is what happened here - that it had a watchlist that Plusoption had circumvented in the way described. And the approach for the watchlist is based on the name of the merchant rather than any merchant code. The name here appeared on Mr R's statements in the same way as the warning. I therefore don't find this argument persuasive.

As the payments from September 2017 were four months after the warning was published, I'm satisfied HSBC had sufficient opportunity to update its watchlist, and so I think it should have automatically blocked the first payment to Plusoption. Had it done so, and asked appropriate probing questions, I think the scam would have come to light. Had HSBC brought to light that Plusoption had been operating without a license and suggested that Mr R carry out more research, I'm satisfied he would have paused and taken that action. And he could have been advised to check if it was regulated with the Gambling Commission, as it ought to have been. I have taken into account that Mr R was already investing on platforms and into cryptocurrency, but I'm not persuaded that means he would have ignored a warning

from his trusted bank. Those investments were all part of his decision to invest in the stock exchange – which payments to Plusoption were part of. I'm satisfied that finding out it had been operating without a license in another jurisdiction, and without being regulated by the Gambling Commission in the UK, is enough to have stopped Mr R in his tracks, therefore preventing any of those losses, amounting to £12,500.

HSBC has argued this approach amounts to retrospective regulation. I disagree. The paper referred to by the investigator, published in 2012, set out that the then regulator said it was good industry practice for businesses to have updated watch lists of potential perpetrators and types of scam. So having a watch list of this type has been considered good industry practice for many years now – and that's something I'm required to take account of in reaching my decision. Furthermore, the IOSCO portal was suggested as a source of information in relation to putting together a watch list, so it was clearly the intention that international information was also supposed to contribute to that. I'm satisfied that updating a watch list within one month of a published warning is reasonable – in the event, here the payments were made four months later, plenty of time for any watch list to be updated.

I have thought carefully about whether Mr R is partly to blame for what happened. And having done so, I'm not persuaded he is. As I have mentioned above, I accept Mr R was investing into other high-risk areas. But it doesn't follow that he was necessarily aware, or ought to have been aware, that he might have been investing into a scam. And although a bank might be knowledgeable about checking for regulation etc, I don't believe the same could be said for a layperson. Overall, I'm not persuaded Mr R should share the blame for what happened and so I won't be reducing any compensation accordingly.

HSBC has argued that Mr R's account remain in credit throughout the period payments were made. So he didn't borrow to fund them, and they didn't cause him to incur interest and charges. It says there is no explanation as to why 8% interest is awarded rather than the account rate; Courts are routinely recognising the sustained period of low interest and awarding interest on judgments at rates below 8%.

I do understand the point the bank is making. The 8% interest isn't there to replace interest Mr R might have earned had the money stayed in his account, but for the loss of use of his money. It has been our approach for many years to add 8% simple interest on loss in these types of situation and I see no reason to depart from that here.

My final decision

For the reasons given, I uphold this complaint. I require HSBC UK Bank to pay Mr R:

- £12,500, being the amount of loss suffered as a result of the payments to Plusoption; and
- Add 8% simple interest per year to that sum from the date of the payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 18 April 2022.

Claire Hopkins
Ombudsman