DRN-3345386

The complaint

Mr P complains that HSBC UK Bank Plc ("HSBC") didn't help recover the money he lost to an investment scam.

What happened

Mr P says that he was looking to learn to trade online and came across eMarketsTrade via an unsolicited email. He left his contact details on its website and was subsequently telephoned by a representative who asked him about his previous trading experience as well as how much money he wanted to make. Mr P said that he was just enquiring but would love to make £1,000 a month if he learnt to trade.

Mr P says that he was asked to start with an initial deposit of £250 which he was willing to risk. He was assigned an account manager who, he was told, would offer help and guidance in making his trading experience profitable. Mr P was given access to a trading platform where he could see his trading account balance as well as his trades. He's told us that his account manager guided him daily at the start and told him what trades to place.

Within the first week, Mr P made over £5,000. He says that although he wasn't given a chance to check anything once he made his initial deposit, he was swept along and didn't have a reason to doubt anything.

Mr P says he was trading every two or three days with the help of his account manager and his account balance grew fast. When he asked about making a withdrawal, his account manager advised him to leave the funds in his trading account for longer to build up the balance. Mr P says that he was convinced to deposit more money into his trading account. (Mr P's bank account statements show that he took out multiple loans to fund the deposits).

One day, when his available balance was around £222,000, Mr P decided to attempt a withdrawal. He received a notification that his request was pending. The following day, Mr P's account manager called him and said that they would place about 12 trades which would make him very rich. Mr P agreed to this and his account balance started dwindling as the trades were placed. He says that he was assured the dip in the balance was temporary and it would all work out in a few days once the trades had been completed. His account manager also told him that he could make a withdrawal once the account had reached £350,000.

But the account balance plummeted further, and Mr P was asked to deposit £15,000 to help recover the losses. He agreed to this as his account manager said that they would make back the money in about a week's time.

When the situation didn't improve, Mr P was asked to deposit more money. He says that his trading account was transferred to a senior manager. Around this time, the account balance had dropped to around £23,476.

The following transactions were made using Mr P's debit card:

Date (on bank statement)	Merchant	Amount
11 May 2018	EW*TRADING FINANCE	£250.00
4 June 2018	EW*TRADING FINANCE	£2,000.00
7 June 2018	EW*TRADING FINANCE	£1,710.00
13 July 2018	FXPLACE.TRADEFXPLA	£7,208.27 *(plus £198.22 non-sterling fee)*
13 July 2018	FXPLACE.TRADEFXPLA	£3,414.45 *(plus £93.89 non-sterling fee)*
16 July 2018	FXPLACE.TRADEFXPLA	£3,816.12 *(plus £104.94 non-sterling fee)*
16 July 2018	FXPLACE.TRADEFXPLA	£7,479.60 *(plus £205.68 non-sterling fee)*
3 September 2018	FXPLACE.TRADEFXPLA	£2,317.44 *(plus £63.72 non-sterling fee)*
3 September 2018	FXPLACE.TRADEFXPLA	£3,862.41 *(plus £106.21 non-sterling fee)*
3 September 2018	FXPLACE.TRADEFXPLA	£6,179.85 *(plus £169.94 non-sterling fee)*
	Total payments	£38.238.14 *(plus £942.60 non-sterling fee)*
	Total loss	**£39,180.74**

Mr P says he tried to make a withdrawal dozens of times but was unsuccessful. Eventually, he employed the services of a company to help him recover his money. It was with the assistance from this company that Mr P contacted HSBC and requested a chargeback. But HSBC declined to attempt a chargeback on the grounds that the request had been made out of time. Unhappy with this, Mr P referred his complaint to our service.

Our investigator upheld it – she thought that HSBC didn't act unfairly in declining Mr P's chargeback request, but it ought to have intervened when by the time he'd made the sixth payment as there were fraud triggers by then. And had it done so, the investigator thought that Mr P wouldn't have gone ahead with it and the subsequent payments. It was also her view that Mr P would have been able to provide HSBC with the information necessary to meet any chargeback requirements for the previous payments. She therefore asked HSBC to reimburse the transactions in full and add interest.

HSBC didn't agree, so the matter was escalated to me for review and determination. I issued my provisional decision in February 2022. I said that I didn't intend upholding his complaint, and set out the following reasoning:

> *Mr P says that his dealings were with eMarketsTrade. Given the information I've found during my research on this company, I'm satisfied that Mr P has likely been the victim of a scam, rather than simply losing money because of a high-risk investment. eMarketsTrade wasn't regulated (as required) by the Financial Conduct Authority ("FCA") at the time it contracted with Mr P. There's also a warning published about it by the FCA, albeit nearly three months after Mr P made the final payment he disputes. And, its website appears to have vanished without trace.*
>
> *While I think that eMarketsTrade was likely operating a scam, the chargeback scheme rules don't automatically entitle Mr P to a refund based on these circumstances.*

Chargeback is a voluntary scheme run by the card scheme operator. In this case, the operator is Visa. Visa will ultimately arbitrate on a dispute between the merchant and cardholder if it can't be resolved between them. Such arbitration is subject to the rules of the scheme – so there are limited grounds on which a chargeback can succeed or be deemed a 'valid claim'. My role is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the card issuer (HSBC in this case) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder.

Visa does give chargeback rights in relation to investments, but those rights are very narrow. Reason Code 13.5 (previously 53) allows claims for misrepresentation for investments where the merchant refuses to allow the cardholder to withdraw available balances. But Visa requires very specific evidence – a copy of the cardholder's investment account showing the date, the withdrawal amount, and the available balance at the time the withdrawal request was made.

From the information I've seen, Mr P didn't provide the required evidence to HSBC when he requested a chargeback. He first provided evidence in March 2019. Although there's a screenshot dated 5 March 2019 which shows an available balance on this trading account, there's no evidence of a withdrawal request being made on the same date. The next time Mr P provided this information to HSBC was in May 2019. This time, he included a screenshot dated 30 April 2019 of the 'withdraw' screen. But this screenshot doesn't show the balance available to withdraw. Although Mr P provided another screenshot which shows an available balance, there's no date.

I can see Mr P informed HSBC on both occasions that nothing happened on the website when he attempted to withdraw the available balance. I accept it wasn't Mr P's fault that he was unable to provide the specific evidence required by Visa. But HSBC could only have successfully presented a chargeback claim if Mr P had provided this evidence. But because he didn't, I don't think HSBC acted unfairly by not pursuing the chargeback. Under Visa's rules, there was no reasonable prospect of success.

The next question I've considered is whether HSBC ought to have intervened before allowing any of the disputed payments to be made.

There's no dispute that Mr P authorised the transactions; he made them by using his legitimate security credentials. While he didn't intend the money to go to scammers, Mr P is presumed liable for the loss in the first instance. However, in accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent bank to potential fraud or financial crime, it might be liable for the losses incurred by its customer as a result.

HSBC is aware of our approach of expecting it to have been monitoring accounts to counter various risks, to have systems in place to identify unusual transactions or other indicators that its customers were at risk of fraud and, in some situations, to make additional checks before processing payments, or declining them altogether to protect customers from possible financial harm from fraud.

As the investigator explained, it's considered good industry practice for firms to have updated watch-lists with types of scams and potential fraudsters and for those watch-

lists to be updated and communicated internally to staff within one month of an alert being posted by the FCA or the International Organisation of Securities Commissions ("IOSCO"). Such an alert should automatically trigger its systems and lead to a payment being paused, pending further intervention – such as making enquiries, or giving a scam warning.

*But as the investigator also pointed out, there was no FCA or IOSCO warning about EW*TRADING FINANCE or FXPLACE.TRADEFXPLA when Mr P authorised the payments. Although Mr P thought he'd made the payments to eMarketsTrade, it was these merchants that had requested the funds from his bank. But even if it was the case that eMarketsTrade had requested the payments from HSBC, there were no warnings from the FCA or IOSCO at the time of these payments that indicated it was a scam company.*

*In other words, I wouldn't have expected HSBC to have picked up payments to EW*TRADING FINANCE, FXPLACE.TRADEFXPLA, or indeed eMarketsTrade as being suspicious based on the merchant name alone, given there's no credible evidence of them being reported as a scam or fraudulent company when the payments were made.*

*That said, I've also reviewed Mr P's account history starting 12 months prior to the first disputed transaction. I don't consider the first three payments – all to EW*TRADING FINANCE – particularly unusual or out of character. Mr P had occasionally made card payments for similar amounts. It's not unreasonable that these payments weren't flagged by HSBC's systems as suspicious. There's a balance to be struck between identifying payments that could potentially be fraudulent – and then responding appropriately to any concerns – and ensuring minimal disruption to legitimate payments.*

In my view, the fourth payment – £7,208.27 to FXPLACE.TRADEFXPLA – was unusual. It was for an amount that didn't fit in with Mr P's general spending pattern based on the previous 12 months. It was also a foreign transaction to an overseas merchant. Having considered the available information, I think that there were grounds for additional checks here.

But even if HSBC had carried out further checks, I'm not persuaded that this would have unravelled the scam at this stage. I say this because in July 2018, there wasn't information available to HSBC that eMarketsTrade, or indeed FXPLACE.TRADEFXPLA as it appeared on Mr P's statement, was involved in a scam. So, any fraud warning that it could have given him following contacting him would have been about investment scams in general.

If Mr P had gone away to do some checks, he wouldn't have found any warnings about eMarketsTrade on the FCA website, given a warning wasn't published until five months later. My research also shows that there wasn't adverse information in the public domain about eMarketsTrade at that time. I've seen some negative reviews about it pre-July 2018, including delays with processing withdrawals and customers losing money. But while this could be seen as circumstantial evidence that helps build an overall picture of eMarketsTrade, this is not in itself sufficient evidence of fraud.

Mr P's research might have led him to discover that eMarketsTrade wasn't registered with the FCA. But I'm not confident that this discovery would have led him to act differently. Mr P has told us that he trusted his account manager and had no reason to doubt his word. And I can see from the information provided that Mr P felt *reassured by his account manager's response when he questioned the merchant name appearing differently on his bank statement.*

Given how caught up he'd been in the scam, if Mr P had questioned eMarketsTrade's registration status with his account manager following a suitable intervention from HSBC, I think it's more likely than not that any explanation he would have been given would have left him reassured that everything was above board.

Mr P's own testimony is that he was swept away and was happy with how his account was progressing. His trust had been gained. He had access to the online platform where he could see his trades, balance, and progress. Mr P has told that us he could see his profits staring back at him from his account dashboard. And although he'd enquired about making a withdrawal, he was persuaded to leave the funds in his trading account. Mr P's testimony is that the problems really started when his deposits started disappearing faster. And when he was unable to withdraw his available balance of £23,476. But this happened later. Therefore, I'm not convinced that any contact from or further discussion with HSBC would have stopped Mr P from going ahead with the fourth payment.

As time went on, the payments came to form part of Mr P's pattern of account activity. The account history meant that other – similar value – payments to FXPLACE.TRADEFXPLA didn't appear significantly out of character and therefore indicative of fraud. So, they wouldn't reasonably have appeared suspicious to HSBC. And by this point, as seen from Mr P's bank account statements, there were large-value transactions to other overseas merchants as well. So, I'm not persuaded that HSBC acted unfairly or unreasonably in its dealings with Mr P. Any failings by HSBC were not the dominant, effective cause of Mr P's losses; they were just the part of the background history or events that led up to them.

I invited further comments from both parties. HSBC said it had nothing further to add. Mr P said that he had shredded any documentation relating to eMarketsTrade to clear any reminders of what had happened. He had presumed that he had been unsuccessful with his complaint, given so much time had passed since he first contacted our service. In his response, Mr P also said that he had forwarded some of the documentation to the company he had engaged with – and paid a fee to – to try and recover his money. He said HSBC took so long to reply to him as well as the company assisting him. And the situation caused him financial and emotional hardship.

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 thank Mr P for his comments. I'm sorry to hear about his circumstances, and don't doubt that this has been a stressful and difficult period of time. I also acknowledge that he's had to wait a long time for an outcome to be reached on his case.

I can see that Mr P has previously informed our service that he had destroyed any documentation relating to the scam. While I appreciate he's told us his reasons for taking this action, as mentioned in my provisional decision, Visa requires very specific evidence when it comes to chargebacks. Without this information, it won't consider a chargeback claim to be valid. It may be the case that Mr P forwarded the information to the claims management company he used at the time. But this information wasn't made available to HSBC, nor was it included in Mr P's submissions to our service.

In summary, having considered the matter very carefully, I see no reason to depart from my provisional findings. I realise that this will come as a considerable disappointment to Mr P. Not least because the complaint has been ongoing for some time now and our investigator previously upheld it. But I think that it’s the cruel actions of the scammers – not HSBC’s errors – that caused the loss here.

My final decision

For the reasons given above, and in my provisional decision, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 30 March 2022.

Gagandeep Singh
Ombudsman