

## The complaint

Mr L complains that HSBC UK Bank Plc (“HSBC”) has refused to refund several payments he made using his HSBC Visa debit card. He says he made these payments on the advice of someone he believed was training him to trade. This person, Mr L says, turned out to be a fraudster and stole his money.

## What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

In short, Mr L says:

- He found out about what he thought was a trading company via online searches and social media.
- Once contact was made with this company, he started corresponding with ‘*Timothy*’ – a person he thought was a well-known provider of trading courses.
- He was told whilst he was still being trained, he would be assisted with trades and informed which accounts to transfer funds to.
- When he tried to withdraw his funds: “*Any requests to withdraw were met with delays in procedures and local finance regulations, plus once I knew 100% it was a scam, all requests were ignored.*”

On 22 July 2019, Mr L sent HSBC, amongst other things, the following:

*“On the 15th of March 2019, I fell victim to a **fraudulent** Crypto Currency / Forex / Binary Options representative from a company named **[Timothy]** (Real Company). Money was transferred from my account via Cexio and Binance exchangers by wire transfer and bank card payments for a total amount of **£30,180** utilizing your services. I was informed by the real **[Timothy]** that I was deceived by the false representative (hereinafter).”*

HSBC has said the following transactions are in dispute (transaction in red is a credit):

Date	Payment method	Merchant	Amount
15 March 2019	VISA	cexio London GB	£2341.49
15 March 2019		<i>Non-Sterling</i>	<i>£64.39</i>
18 March 2019	VISA	BUYEGLCOM GIBALTAR GI	£757.50
18 March 2019		<i>Non-Sterling</i>	<i>£20.83</i>
18 March 2019	VISA	www.coinify.com	£68.10
22 March 2019	VISA	cexio London GB	£1585.36
22 March 2019		<i>Non-Sterling</i>	<i>£43.59</i>
26 March 2019	VISA	SIMPLEX_PAYBIS EDINBURGH GB	£1728.06
26 March 2019		<i>Non-Sterling</i>	<i>£47.52</i>
26 March 2019	VISA	SIMPLEX_PAYBIS	£288.77

		EDINBURGH GB	
26 March 2019		<i>Non-Sterling</i>	£7.94
26 March 2019	VISA	cexio London GB	£2061.65
28 March 2019	VISA	BUYEGLCOM GIBRALTAR GI	£37.98
28 March 2019		<i>Non-Sterling</i>	£1.04
28 March 2019	VISA	BUYEGLCOM GIBRALTAR GI	£410.20
28 March 2019		<i>Non-Sterling</i>	£11.28
28 March 2019	VISA	cexio London GB	£2061.65
2 April 2019	VISA	SIMPLEX_PAYBIS EDINBURGH GB	£2308.35
2 April 2019		<i>Non-Sterling</i>	£63.47
2 April 2019	VISA	cexio London GB	£2061.65
29 April 2019	Bill payment	CEX.IO LTD	£1000.00
30 April 2019	VISA	BUYEGLCOM GIBRALTAR GI	£5815.62
30 April 2019		<i>Non-Sterling</i>	£159.92
30 April 2019	VISA	cexio London GB	£2061.65
2 May 2019	Bill payment	CEX.IO LTD	£2200.00
6 May 2019	Bill payment (credit)	CEX.IO LTD	£2150.00
7 May 2019	VISA	BUYEGLCOM GIBRALTAR GI	£200.21
7 May 2019		<i>Non-Sterling</i>	£5.50
7 May 2019	VISA	cexio London GB	£2061.65
14 May 2019	VISA	cexio London GB	£1133.91
		<b>Total amount debited:</b>	<b>£30,609.28</b>
		<b>Total less credits:</b>	<b>£28,459.28</b>

Mr L asked HSBC to try to recover his money from the various merchants set out above. As this did not happen, Mr L raised a complaint which was referred to our service.

One of our investigators considered the complaint. Although his figures for the disputed transactions differed slightly to those HSBC set out, he concluded that fraud triggers applied to Mr L's £2,061.65 payment to Cexio on 26 March 2019. He argued that there was no evidence to show HSBC provided Mr L with any meaningful warnings or gave him other reasons to doubt the legitimacy of the payments he made. He considered that this was a missed opportunity for HSBC to intervene, so he directed it to refund Mr L his money starting from the payment mentioned.

HSBC did not accept the investigator's findings. In the interest of conciseness, I will repeat HSBC's response here, which it has helpfully summarised its key points in the conclusions section of its submissions:

*Overall, we consider that that the adjudicator's view is unsupportable. As such, we do not accept that we should be held responsible for [Mr Ls] loss for the following reasons:*

- *The adjudicator inappropriately adopts a template response for 'binary options' scams when this case does not involve binary options;*
- *There is no evidence that any of the beneficiaries that received the Payments were operating or involved in any scam;*
- *The adjudicator concludes that we were required to intervene on the basis of a payment sent to a legitimate cryptocurrency platform regulated by GFSC, making the*

- FCA regulation considerations irrelevant;*
- The adjudicator's conclusion on causation is unsupported by evidence and simply his own speculation; and*
- The adjudicator's contributory negligence assessment is fundamentally flawed and unsupportable. [Mr L's] losses were directly referable to his failure to carry out appropriate research and his actions were objectively careless. The general principle that consumers must take responsibility for their decisions should be applied in the present case.*

As an agreement could not be reached, the complaint has been passed to me to make a decision.

On 17 February 2022, I issued a provisional decision upholding this complaint in part. For completeness, I repeat my provisional findings below:

*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 agree with the investigator that this complaint should be upheld in part. However, I am of the view that fraud triggers applied to a payment Mr L made which was later than the one the investigator relied on. I will explain why below.*

*It is common ground that the disputed payments were 'authorised' by Mr L for the purposes of the Payment Services Regulations 2017 (PSRs), in force at the time. This is because they were made by Mr L using the legitimate security credentials provided to him by HSBC. These must be regarded as 'authorised payments' even if Mr L believes he was the victim of a sophisticated scam.*

*As a starting position, banks are under an obligation to follow their customers' instructions. Banks have a duty to make payments or accommodate cash withdrawal requests correctly and promptly so that legitimate payments are made correctly. So, consumers who authorise a payment, even where that turns out to be fraud related or they were tricked into doing so, start off on the 'back-foot' when it comes to getting that payment returned to them because the bank was following a valid instruction.*

*There are some situations where we believe that banks – taking into account relevant rules, codes and best practice – ought to have been on alert or notice that something was not right or should have looked at the wider circumstances surrounding the transaction before making the payment. So, I have looked into what this means for this case and whether HSBC should have done more here to prevent the payments in dispute.*

#### *Unusual or uncharacteristic activity*

*The investigator concluded that fraud triggers applied to Mr L's £2,061.65 payment to Cexio on 26 March 2019. However, I am not persuaded they applied at this stage. I am of the view fraud triggers applied to Mr L's £5,815.62 payment to BUYEGLCOM GIBALTAR on 30 April 2019 – particularly given the significant amount involved for a single transaction.*

*Having considered this together with the particular circumstances of this case, I am satisfied there were reasonable grounds for HSBC to suspect fraud or a scam, and therefore justify an intervention. In light of the amount of the payment involved in relation to how Mr L normally operated his account, I think that HSBC ought to have identified the risk of harm. In other words, this was a highly unusual and uncharacteristic pattern of spending for Mr L compared with their recent history on the account – which indicated that something untoward might be happening. For example, when reviewing Mr L's bank statements, there is nothing*

to suggest he was willing to take high risks or had a history of speculative investments or gambling.

Overall, it would have been reasonable for HSBC to have properly questioned Mr L before processing the payment in order to satisfy itself that all was well.

### Causation

I am satisfied that, had HSBC identified the payment(s) as unusual and suspicious, asked relevant questions of the Mr L it would have been apparent that the Mr L was falling victim to a scam. In other words, but for HSBC's failure to make further enquiries, it would have been on actual notice that Mr L was going to suffer financial harm from fraud.

If HSBC had asked Mr L 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 originated from his 'broker', Timothy, i.e. the fraudster. So, whilst HSBC may have known that Mr L was sending money to a legitimate crypto trader, BUYEGLCOM GIBALTAR, I think it still should have provided a scam warning in light of all the information known to banks about the increasing number of scams associated with fraudsters selling what is made out to be cryptocurrency.

After all, at the 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 crypto trading, including many warnings of potential fraud. For example, the FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018. Regulated businesses ought reasonably to take notice of such insight. By the time Mr L made the payment concerned on 30 April 2019, cryptocurrency scams had risen greatly in frequency and it's reasonable to conclude that banks, such as HSBC, had also had time to digest these warnings and put mechanisms in place to detect and prevent this type of fraud.

Nevertheless, even if a intervention by the bank would have identified that the payment was going to Mr L's own account with BUYEGLCOM GIBALTAR, the conversation should not have stopped only on the basis that the money appeared to be going somewhere safe and within the consumer's control.

I say this because, by the time Mr L made this payment, I think HSBC had or ought to have had a good enough understanding of how these scams worked to have been able to identify the risk of harm from fraud. Including, that the consumer often first purchases the cryptoasset and moves the money on to the fraudster under the assumption they're moving the money into their own wallet.

With this in mind, I would have expected HSBC to have asked questions about the context and true purpose of the payment. While it is not up to our service to dictate which questions a bank should ask, HSBC could have, for example, asked how Mr L had been contacted, whether he had parted with personal details in order to open a trading account, whether the investment opportunity was linked to a prominent individual, or advertised on social media etc. – all of which apply in this case. These are all typical features of cryptocurrency scams – and form part of a reasonable line of enquiry to protect a consumer from the potential risk of a prominent type of scam.

Although there is no reason to doubt that Mr L would have explained what he was doing, I accept that it was possible that he might not have revealed enough information to lead the bank to understand whether he was at risk of financial harm from this particular type of fraud (or any type for that matter). I can't know for certain what would have happened. However, I reach my conclusions not based on mere possibilities, but rather on what I find most probable to have happened in the circumstances. And on balance, I'm satisfied Mr L would have likely shared information which aligned with the hallmarks of this type of scam. I say

*this because when our investigator asked Mr L what made him think he had fallen victim to a scam, and what he did when he became aware – Mr L said:*

*“They kept delaying my withdraw claims, plus their promises of funds being sent or giving me access to accounts and information were subject to delays or excuses, which raised my concerns. My initial reaction was a little panic, then I started looking for help, with my bank, the internet and anyone who would listen. following some advice, I started recording everything I could, like screen prints of accounts and dates, copy of conversations with scammer, saving his contact information.”*

*In light of this, I think Mr L’s losses were foreseeable to HSBC despite the payment on the face of it not leaving the Mr L’s control. And I am satisfied that, had the HSBC, having identified the payment as unusual and suspicious, asked relevant questions of Mr L, it would have been apparent that the he was falling victim to a cryptocurrency scam. In other words, but for the HSBC’s failure to make further enquiries, it would have been on actual notice that Mr L was going to suffer financial harm from fraud.*

*Further, even if they had not worked out that this was a scam, it is likely that a warning would have alerted Mr L to the common issues arising in relation to so-called crypto currency ‘brokers’. Which, in turn, would probably have led them to second guess their supposed broker’s credentials, i.e. whether Timothy was in fact the prominent individual he was claiming to be. The result of which, would likely have stopped Mr L in his tracks.*

*So, in any case, Mr L’s losses, though not arising from the initial transfers, ought to have been within the contemplation of, and foreseeable to, HSBC. Therefore, and taking into account what is fair and reasonable in all of the circumstances, I am satisfied HSBC can be held responsible for the loss Mr L has suffered – that is, starting from Mr L’s £5,815.62 payment to BUYEGLCOM GIBRALTAR on 30 April 2019*

*Finally, I accept that, when simply executing authorised payments, banks such as HSBC do not have to protect customers against the risk of bad bargains or give investment advice. However, the FCA has confirmed that a fraud warning would not constitute unauthorised investment advice – so I do not think the bank would have acted out of line, had it warned Mr L along the lines that I’ve described.*

#### Contributory negligence

*There’s a general principle that consumers must take responsibility for their decisions. I have duly considered whether Mr L should bear some responsibility by way of contributory negligence. However, in this case, I do not think Mr L could have foreseen the risk that the company they were dealing with was a scam and simply did not appreciate what they were doing or the consequences of their actions. Moreover, I do not place too much weight on general but arcane information in the public domain, because of the information imbalance between financial professionals and ordinary consumers.*

*All in all, I am satisfied there was no contributory negligence on this occasion and Mr L was simply the unwitting and blameless victim of a clever fraudster.*

#### Chargeback

*For the avoidance of doubt, I have also thought about whether the chargeback process was an option for Mr L. As the scammer was not a party to the payment concerned, Mr L could not have a valid claim against the legitimate company paid. This is because the legitimate company provided the services as intended, which was to purchase the cryptoasset. The subsequent transfer to a wallet would not give rise to a valid chargeback claim, so I do not think Mr L had a legitimate chargeback claim.*

#### Disputed transaction amounts

*I have considered the disputed transactions our investigator set out in his assessment. In doing so, I can see that they differ slightly to the figures HSBC has set out in its submissions. Having considered Mr L's bank statements, I am satisfied that the amounts HSBC has provided are correct (set out in the background section). Therefore, I will be relying on these figures when dealing with the below section.*

### **Responses to my provisional decision**

Mr L responded to say he agreed with my provisional findings and was happy with the outcome. However, HSBC did not respond.

### **What I have 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.

Given that Mr L agreed with my provisional findings, but HSBC did not respond – I see no reason to depart from my provisional findings.

### **My final decision**

For the reasons set out above, my final decision is that I uphold this complaint in part. I therefore direct HSBC UK Bank Plc:

- Pay Mr L all the money he lost, less the amount *CEX.IO LTD* credited to his account (that would mean £11,488.46);
- Pay 8% interest on this amount from the date it was debited from Mr L's account until the date of settlement; and
- If HSBC UK Bank Plc deducts tax in relation to the interest element of this award it should provide Mr L with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 31 March 2022.

Tony Massiah  
**Ombudsman**