

## The complaint

Mr C complains that HSBC UK Bank Plc didn't do enough to protect him from losing money to an investment scam.

## What happened

Mr C has explained that in 2019 he made the following debit card payments and bank transfers from his current account held with HSBC (and other accounts which are not the subject of this complaint), for what he later realised was an investment scam.

Transaction No.	Date	Payee	Method of payment	Amount (£)	NSTF (£)	Total (£)
1	3 April 2019	VIVZ ODSTENPNY ZAVO	International Bank Transfer	£5,000.37	£4	£5,004.37
2	10 April 2019	Advice confirms/Moorwand Ltd	<b>Credit</b>	£1,682.10		£3,322.27
3	20 May 2019	Simplex_Bitstamp	Visa debit card (international payment)	£11,500.51	£316.26	£15,139.04
			<b>Total</b>	<b>14,818.78</b>	<b>320.26</b>	<b>15,139.04</b>

Mr C got in touch with HSBC on 31 May 2019 when he realised he'd been scammed. Ultimately HSBC didn't reimburse Mr C's loss, so he referred his complaint about HSBC to this service. As our investigator – who recommended that the complaint be upheld – was unable to resolve the matter informally, the case has been passed to me for a decision.

## 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. I'll explain why.

### Was Mr C scammed?

Banks have various and long-standing obligations to be alert to fraud and scams and to act in their customers' best interests. But these are predicated on there having been a fraud or scam. So, my first consideration must be whether Mr C was most likely scammed.

Mr C has explained he was dealing with 10 Capital. That is, the payments he made were for what he thought was a legitimate investment with 10 Capital. I've noted the FCA published a warning about 10 Capital on 14 May 2019. It further uploaded this warning on the International Organisation of Securities Commissions (IOSCO) Investor Alerts portal on 15 May 2019. Amongst other things the FCA said the warning was related to '*...fraudulent or manipulative practices (insider dealing, market manipulation, misrepresentation of material information, etc.)*'.

Mr C was asked to first pay legitimate crypto exchanges before his payments would be forwarded onto 10 Capital.

This means I'm satisfied the payments in this case were most likely destined for 10 Capital.

Taking everything together I'm persuaded 10 Capital was operating a scam and most likely received the payments in dispute here.

### Prevention

It's common ground that Mr C authorised the scam payments in question here. He was tricked by the scammers into instructing HSBC to make the payments. I accept these were 'authorised payments' even though Mr C was tricked. So although he didn't intend the money to go to scammers, Mr C is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider HSBC should fairly and reasonably:

- Have been monitoring accounts – and any payments made or received – to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

My fellow ombudsmen and I have referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions published on our website.

### *The first payment*

I don't think the investigator's assessment on this was unreasonable. There is a balance to be struck but at the point of the first payment (an international payment for £5,000.37 to a new payee), HSBC reasonably ought to have spoken to Mr C, before allowing the payment through, and to have asked Mr C who the payment was for, what it was for, and for the basic surrounding context, and to have then proceeded appropriately from there, with the intention to disturb or unearth a potential fraud or scam. This payment was substantially higher than any payments he'd made leading up to the scam.

I have no reason to believe Mr C wouldn't have been open with HSBC. HSBC reasonably ought to, therefore, have quickly learned from such a conversation with Mr C the basic background to the payment instruction – that Mr C was sending money to 10 Capital for the purpose of a binary options type investment, which he'd seen on Facebook.

I think this really ought to have raised flags for a professional bank like HSBC – either there and then, or after HSBC referring internally for advice before reverting back to Mr C regarding whether the payment should be allowed through. In such circumstances, whilst the bank had no duty to protect Mr C from a bad bargain or give investment advice, it really ought to have invited Mr C to look more closely into this trader. It could have also explained

its own customer experiences with unregulated and unlicensed high-risk investment traders is that customers would often be prevented from withdrawing available balances. After all, at that 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 binary options trading, including many warnings of potential fraud (e.g. Action Fraud’s June 2016 warning; the European Securities and Markets Authority’s July 2016 warning; the Financial Conduct Authority’s consultation paper of December 2016; and the Gambling Commission’s December 2016 scam warning that “*an unlicensed operator is likely operating illegally*”; City of London Police’s October 2017 report noting victims had lost ‘over £59m’ to binary options fraud; Visa’s Business News publication of October 2017 where it expanded its chargeback scheme rules to cover binary options and investment disputes arising from merchants often unlicensed and unregulated deploying ‘deceptive practices’; and so forth). After all, scams like this aren’t new to regulated firms. And it seems likely HSBC would’ve seen numerous consumer complaints about scams like this.

The FCA warning about 10 Capital wasn’t published until 10 May 2019 (10 days before the second payment). But, given what I’ve said above, I think HSBC ought to have given Mr C a very stern warning indeed, including explaining how scams like this work, and the red flag surrounding the lack of regulation, advertising on Facebook and having to first buy crypto before sending it onto the trader to invest. And I do think that Mr C would most likely have listened and taken HSBC’s warnings seriously. The FCA warning about 10 Capital wasn’t yet published (although it would have been by the second payment on 20 May 2019). But I do think – if necessary after referring internally for advice – that HSBC ought to have been able to impress upon Mr C the risk he was being scammed, and that ultimately this would likely have led to Mr C ceasing payments to the scammers. So I think that if HSBC had done what it reasonably ought to have done, it’s most likely Mr C wouldn’t have proceeded with the first payment, nor indeed the second payment.

I’ve taken note of the fact that Mr C received a credit of €2,000 before the second payment. But I’ve also noted that early withdrawals are often permitted in similar scams to:

- a) Legitimise the payee
- b) Encourage further larger deposits

It’s unsurprising therefore that Mr C was persuaded to invest larger sums after receiving this credit. I think a financial professional like HSBC could have explained the common tactics used in similar scams in order to inform Mr C of the common operation of such scams.

#### Did Mr C contribute to his loss?

I think this was a sophisticated scam and Mr C couldn’t have reasonably foreseen that he was dealing with a scammer. Once Mr C was provided access to his trading account, he saw large balances and I don’t think he could have reasonably known that the trading balance was likely fake or a simulation – unless prompted by his trusted bank.

I’ve noted HSBC’s concern about Mr C paying money to release money but this is again, a common feature of this type of scam. I don’t think Mr C failed by believing what the scammer told him to be true. HSBC is of course more familiar with this type of scam than a lay consumer.

Overall, I don’t think Mr C contributed to his losses, so I don’t suggest the overall settlement be reduced.

## **Putting things right**

I've explained why I think, if HSBC had done what it reasonably ought to have done, Mr C would not have lost the payments in dispute.

HSBC should therefore pay Mr C £15,139.04. I've already deducted the credit received by the scammers and included the NSTFs as I don't think these would have been incurred had HSBC stopped the first payment as I think it should have. To compensate Mr C for having been deprived of this money, HSBC should also pay Mr C interest on the loss at 8% simple per year, calculated from the date of loss to the date of settlement.

## **My final decision**

For the reasons set out above, I uphold this complaint. HSBC UK Bank plc should refund to Mr C all of his stolen payments plus the associated fees (NSTFs). Interest should be applied at 8% simple, per year, from the respective dates of loss to the date of settlement (less any lawfully deductible tax).

As Mr C received €2,000 in 'pay-out' inducements from 10 Capital, these should be deducted from the overall settlement. This leaves a total loss balance of **£15,139.04**.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 January 2023.

Dolores Njemanze  
**Ombudsman**