

The complaint

Mr C complains that HSBC UK Bank Plc (“HSBC”) didn’t help recover money he lost as part of a scam.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything in detail again here.

In summary, between May and August 2016, Mr C made several payments to a binary options broker called Edgedale Finance – part of Greymountain Management Group – who subsequently turned out to be fraudulent. Mr C was approached by an individual claiming to be from Edgedale Finance after he responded to an email which offered automatic binary options trading with a different broker.

After researching the company, Mr C decided to open a trading account with Edgedale Finance and was assigned an account manager. He started with an initial deposit of £250 which was matched by Edgedale Finance. Within a month, Mr C’s trading account balance had grown to around £1,500. Under the pretext of an ‘insured trade’ which meant the money traded could not be lost, Mr C was persuaded to make a series of deposits within the space of a few days.

But soon after making these deposits, Mr C started losing money. He eventually realised he’d been scammed when his withdrawal requests were declined. Mr C contacted HSBC as soon as he noticed that two further payments – £5,000 and £3,250 – had been charged to his debit card. But he was told it was too late to stop the payments.

The following payments were made from Mr C’s debit card:

	Date (on bank statement)	Amount
Payment 1	18 May 2016	£250 (not disputed)
Payment 2	28 June 2016	£5,000
Payment 3	30 June 2016	£5,000
Payment 4	30 June 2016	£5,000
Payment 5	1 July 2016	£5,000
Payment 6	1 July 2016	£5,000
Payment 7	1 August 2016	£5,000
Payment 8	1 August 2016	£3,250
	Total payments	£34,000

The merchant for each of these payments was Greymountain Management.

Mr C asked for HSBC’s assistance in recovering payments 2-8, but it refused to provide a refund. HSBC said it was unable to raise a chargeback for payments 2-6 as Mr C hadn’t provided the required evidence in time. And the last two payments couldn’t be considered fraudulent as they went to Mr C’s trading account even though they weren’t authorised using

the Authorised by Visa secure site like the previous payments. Unhappy with this, Mr C referred his complaint to our service and the matter was escalated to me to determine.

I issued my provisional decision in March 2022. I said that I intended to uphold it and set out the following reasons:

Payments 1-6

Mr C didn't include the initial payment of £250 when he raised a dispute with HSBC, and when he later referred his complaint to our service. As such, it hasn't been considered in previous investigations. I haven't considered it in my decision either.

Given the information I've found during my research on Greymountain Management and Edgedale Finance, I'm satisfied that Mr C has likely been the victim of a scam, rather than simply losing money because of a high-risk investment. There are warnings published about the companies on the Investor Alerts Portal of the International Organisation Securities Commissions ("IOSCO"), although months after Mr C made the payments.

While I think that the companies were likely operating a scam, the chargeback scheme rules don't automatically entitle Mr C to a refund. As the investigator explained, the possible chargeback 'reason codes' under Visa – the card scheme operator relevant here – didn't specifically cover binary options or investment trading at the time of these transactions. Under the circumstances, HSBC could only have successfully presented a chargeback claim if the broker had promised – in writing – Mr C guaranteed returns or profits which weren't received. I haven't seen evidence of this, so I don't think HSBC acted unfairly by not pursuing a chargeback claim.

I've also considered whether HSBC ought to have done more to prevent the payments from being sent in the first instance. There's no dispute that Mr C authorised the transactions; he made them by using his legitimate security credentials. While he didn't intend the money to go to scammers, under the Payment Service Regulations 2009 (PSR 2009) applicable at the time, he's 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.

There was no regulator warning about Greymountain Management when Mr C authorised the payments. Given there's no credible evidence of it being reported as a scam or fraudulent company when the payments were made, I wouldn't have expected HSBC to have picked up payments to Greymountain Management as being suspicious based on the merchant name alone.

Our investigator didn't think payments 2 and 3 were unusual or uncharacteristic for Mr C's account. But she thought payment 4 ought to have flagged on HSBC's

systems as there was an increase in the account activity. It was also her view that had HSBC intervened at the time and asked Mr C appropriate questions, it would likely have led to the scam being uncovered and he wouldn't have gone ahead with the remaining payments. But I don't share the view that this payment (or indeed payments 5 and 6) ought to have alerted HSBC to the possibility that Mr C's account was being subjected to unusual activity. I'll explain why.

I've considered the operation of Mr C's account over several months leading up to the disputed transactions. A transaction for £5,000 doesn't appear to be unusual or out of character. Looking at the account activity, I can see several transactions for similar or higher amounts during that period. I acknowledge that there was an increase in the frequency of transactions to Greymountain Management (Edgedale Finance). But that in and of itself doesn't make the transaction sufficiently unusual or suspicious. The transaction in question was the fourth overall payment that Mr C had made to this merchant, with the initial payment being well over a month prior. Given this gap, Mr C didn't make a series of payments to a new payee as the investigator appears to have suggested.

I acknowledge that Mr C transferred large sums of money into his account before making the payments. But looking at the account history, it doesn't appear to be the first time that there were credits for a large amount. So, I don't consider this to be unusual or uncharacteristic for Mr C's general account activity.

I realise that this will come as a considerable disappointment to Mr C. But I'm not minded to tell HSBC to refund payments 2-6 as I find nothing so unusual or so uncharacteristic about them that HSBC ought to have suspected he might be falling victim to fraud.

Payments 7 and 8

HSBC has already agreed to refund these payments. So, it isn't necessary for me to make a detailed finding. But briefly, in line with applicable regulations, Mr C isn't liable for payments he didn't authorise, unless he failed with intent or gross negligence to comply with the terms of the account or keep his personalised security details safe.

Here, these payments didn't go through the secured site setting. This makes them different from the previous payments which were authorised by Mr C. Having considered his testimony, the actions he took when he discovered the debits on his account, and the reminders he received from Edgedale Finance to complete and return the transaction declaration form for these payments (to confirm they were made by him), I'm not persuaded that Mr C gave his consent to make these payments. They were, therefore, unauthorised.

I also haven't seen anything that leads me to conclude Mr C failed with intent or gross negligence to comply with his obligations. So, Mr C isn't liable for the payments and HSBC needs to put things right.

HSBC has questioned the investigator's recommendation of adding simple interest at 8% per year to the refund. It has suggested applying the account rate instead. But it has long been our approach that 8% simple interest per year is a fair award for loss of use rather than loss of investment opportunity. It doesn't represent what returns Mr C might have received by investing or saving the money, which have tended to attract low interest rates for some time now. It has been our approach for many years

to add interest at 8% simple on loss in these types of situation and I see no reason to depart from that here.

HSBC has also argued that it is being penalised for the delay by our service in dealing with Mr C's complaint. But it had the opportunity to settle this complaint sooner if it wanted to. I think it's also worth mentioning that HSBC didn't confirm its position on the investigator's view which was sent in July 2020 – despite chasers. It also didn't respond when it was notified in December 2020 that the case was being progressed to the ombudsman stage. So, the delay in progressing this complaint wasn't due to just our service.

I invited further comments and evidence from both parties.

HSBC said it had nothing further to add and it agreed with my provisional findings.

Mr C said that he was disappointed given that my provisional findings varied so much from the investigator's recommendation. Mr C also said it seemed that I'd not taken an important factor into consideration, namely that HSBC had ignored the fact he'd kept in touch with Edgedale Finance even after realising he'd been scammed. He thought this contact may help in tracing and recovering his money, but HSBC ignored this information.

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 C for his comments. I completely understand his disappointment, not least because the complaint has been ongoing for some time now and our investigator's recommendation was different.

I'd like to reassure Mr C that I took the information he's mentioned into account before reaching my provisional outcome. I know he feels strongly about HSBC not making use of his continued contact with Greenfields Capital to trace it and recover his money. But I wouldn't expect a bank to undertake the sort of investigation Mr C appears to suggest here. It would be more appropriate for law enforcement agencies to carry out such lines of enquiries. I would, of course, expect a bank to co-operate with such an investigation.

The payments in dispute were made using a debit card. The only recourse HSBC had in trying to recover Mr C's funds was through a chargeback. I've already explained in my provisional decision why I don't think HSBC acted unreasonably or unfairly by not pursuing a chargeback. To recap, Visa requires very specific evidence when it comes to chargebacks. I haven't seen any evidence of a written promise by Edgedale Finance to Mr C that he was guaranteed returns or profits (which weren't later received) at the time of making the payments.

In summary, having considered the matter very carefully, I see no reason to depart from my provisional findings.

Putting things right

To put things right for Mr C, HSBC UK Bank Plc needs to refund the last two transactions that I've listed in the table under the 'what happened' section. That would make an award of £8,250.

The bank also needs to pay simple interest at the rate of 8% per year (less any tax properly deductible), calculated from the respective date of transaction to the date of refund.

My final decision

For the reasons given above, and in my provisional decision, I uphold this complaint and direct HSBC UK Bank Plc to put matters right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 April 2022.

Gagandeep Singh
Ombudsman