

The complaint

Mr C complains that HSBC UK Bank Plc won't reimburse money he lost to a scam.

The details of this complaint are well known to both parties, so I won't repeat them in full here. Instead, I'll recap the key points and focus on giving the reasons for my decision:

- Mr C was looking into investing online when he was contacted by Brighter Trade. After doing some research and speaking to representatives of this supposed trading company, he was convinced to pay Brighter Trade around £65,000 using both his HSBC credit card and debit card. The first payment took place on 22 October 2018.
- Everything looked to be going well, with Mr C seeing large profits on top of what he'd paid in. He had also successfully withdrawn £100 from his Brighter Trade account.
- Encouraged by this and what Brighter Trade were telling him, Mr C took out a £20,000 loan with HSBC which he used to fund further trades.
- But after a month or so after his initial payment, Mr C saw a significant drop in his investment. He continued to follow Brighter Trade's advice and invest more, in the hope that trading further would recover the loss.
- However, Mr C became suspicious when he'd make a withdrawal request but, in response, Brighter Trade kept telling him to make certain trades that only ended up with further losses.
- Mr C ended up reporting Brighter Trade to the authorities and the regulator, the Financial Conduct Authority (FCA). At which point, he found that Brighter Trade had recently been reported as operating a scam.
- Upon telling HSBC, the bank tried to recover the money – but Mr C didn't have the requisite evidence to make a successful claim. Ultimately, HSBC said it wouldn't reimburse Mr C's loss.
- Our investigator upheld the complaint in part, recommending that Mr C get most of the payments refunded on the grounds that HSBC ought to have done more to protect his account.

Mr C accepts this recommendation – but HSBC does not, submitting counter arguments. Because HSBC is not in agreement, the matter has been escalated to me to decide.

Provisional decision

I issued a provisional decision on this case on 15 March 2022. From which, I have copied the findings and redress sections below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

I would like to reassure the parties that although I have only set out the key points above, I have read and considered everything that's been provided. Having done so, I agree with the investigator's conclusion that the complaint should be partially upheld – but I've reached a different way for HSBC to put things right. My reasons are as follows:

- There is no dispute that Mr C authorised the transactions in question; he made the payments using his legitimate security credentials. Whilst he didn't intend for his money to go to fraudsters, he is presumed liable for the loss in the first instance.*
- HSBC is aware of our approach to expecting it to have been monitoring accounts to counter various risks. And having systems in place to identify unusual transactions or other indicators that its customers were at risk of being scammed. Including, in some situations, making additional checks before processing payments, or declining them altogether to protect customers from possible financial harm from fraud.*
- What's more, as explained in our published decisions, it's considered good industry practice for firms to have updated watchlists with types of scams and potential fraudsters. These watch-lists should be updated and communicated internally to staff within one month of an alert being posted by the FCA or IOSCO (the International Organisation of Securities Commission).*
- To that end, such an alert should automatically trigger HSBC's systems and lead to payments being paused, pending further intervention – such as making enquiries, or giving a scam warning.*
- Here, although Mr C did go on to pay Brighter Trade, his credit card statement shows the very first payment to the scam went to "INTLSECLTD", which is a different party. I'm satisfied this firm wasn't operating legitimately and searching INTLSECLTD returns a warning on the FCA website that this business was carrying on regulated activities within the UK without being authorised.*
- So, HSBC was aware that Mr C was instructing a credit card payment to this firm on 22 October 2018, and there was a warning about this trader published on the FCA website on 10 April 2018 – more than six months prior. Given this, I'm minded to say that HSBC ought to have automatically blocked this transaction which started the scam. It's my current thinking that HSBC had sufficient time to update and communicate its watch-list between the publication of the warning and this initial payment. It follows that it should have appropriately questioned Mr C before processing the transaction.*
- Had HSBC carried out its duties and asked Mr C about the first payment, I've no reason to doubt that he would have explained what he was doing. Whilst I accept HSBC had no duty to protect Mr C from a poor investment choice, or give investment advice, it could have provided information about the steps a customer can take to ensure, as far as is reasonably possible, that they are dealing with a legitimate person – such as checking the payee was authorised with the FCA. It could have drawn on its own knowledge, alongside information that was within the public domain about the high risks associated with trading and provided Mr C with a potential scam warning.*

- *HSBC did take steps to check with Mr C before some of the payments were allowed to be let go. Including, sending a text message to him on 22 October 2018 to check if the transaction was genuine. However, as I understand it, these warnings did not speak of INTLSECLTD. So, HSBC may have stepped in – but I'm not convinced this was on account of it identifying this particular payee as being flagged by the FCA.*
- *I find this crucial, because, had HSBC acted on the information about this first payee, I'm satisfied Mr C would have noted the various warnings about trading scams and looked further into the venture being proposed. Including, checking whether the trader was regulated here or abroad.*
- *Mr C says – and I accept – that he thought we was dealing solely with Brighter Trade. Although he was aware that some of the payments were going to different beneficiaries, this was only because Brighter Trade had convinced him that it was necessary to pay other payees to facilitate the trading. I find it probable that being told about this obscure third party, especially one with such a warning on the FCA website, would've caused him to become credulous about what Brighter Trade were instructing him to do.*
- *What's more, I'm persuaded that Mr C would likely have come across not only the warning for INTLSECLTD as the payee, but an additional warning on the FCA about Brighter Trade. This was published on the very same day that he instructed this first payment (and therefore not something that Mr C would've found in the days prior to the 22 October 2018 when he first initiated his relationship with Brighter Trade). Indeed, an online search tells me that both INTLSECLTD and Brighter Trade provide the respective FCA warning pages on the very first return. I therefore consider it highly likely that coming across two warnings for both these firms would have exposed the scam and caused Mr C to stop trading, thereby preventing the loss thereafter.*
- *I acknowledge HSBC's submission that Mr C continued to invest with Brighter Trade even after he saw a considerable drop in his investment. Also, I've borne in mind that Mr C did successfully withdraw money from his investment. Both of which, could suggest that any intervention from the bank would probably not have prevented Mr C from continuing to send payments to the scam. However, this argument does not take into account that – at the time of the first payment – Mr C had no investments to monitor with Brighter Trade. Likewise, he hadn't yet managed to withdraw from his account as intended. Both these factors came later on, once Mr C had already sent multiple payments. In other words, at the very beginning, I'm satisfied that Mr C wasn't as convinced by the tactics of the scammers as he might've been later on. Hence, why I'm persuaded that an intervention along the lines I've described would've made a material difference.*
- *So, under these circumstances, if bank staff had sought to establish further details about the transaction on 22 October 2018, it seems highly likely that the scam would have been exposed there and then, thus preventing any further losses. Mr C would not have lost the first payment amount and he also wouldn't have been persuaded to send the subsequent payments that were lost.*
- *In fairness, I've also carefully weighed up whether Mr C can be considered blameworthy in this case and should therefore bear some responsibility for his loss. Mr C can only fairly be held partially responsible – with a commensurate deduction in compensation – if he reasonably foresaw some sort of risk of this sort of harm and proceeded nevertheless.*

- *HSBC submits that Mr C did exactly that – he carried on investing further sums with Brighter Trade despite seeing substantial losses. The bank has placed emphasis on this sudden drop in performance, as it believes this should've alerted Mr C to what was really happening with his money. But with all investment comes risk, and attempting to recover shortfalls by investing more is not the same as foreseeing a danger with the legitimacy of the scheme itself. With that in mind, I am not satisfied that Mr C's actions in this regard warrant a deduction.*
- *On the other hand, I have to consider that the evidence indicates that Mr C did not act with complete transparency when applying for the HSBC loan. By his own admission, he took out this lending having been persuaded by Brighter Trade to use it to invest more into the supposed trades and did not make this clear to the bank during his application. Normal lending procedure makes me think that it would be very unlikely that a bank like HSBC would grant a £20,000 loan if its intended purpose was to fund investment. And Mr C appears to concede that he did not tell the bank that that was what he was doing.*
- *Had Mr C been entirely honest with HSBC about what he intended to do with these loan proceeds, I am minded to conclude that the bank would've rejected his application and the loan would not have been approved – therein, preventing the loss Mr C has incurred by losing the £20,000 and having to still pay it back to HSBC. In light of this, I find it fair and reasonable that Mr C should bear some responsibility for the loss from the point of the loan onwards.*

Putting things right

- *It's common ground that the loan was used to facilitate trades from 16 November 2018 and thereafter. It's my judgment that Mr C should be reimbursed the payments on and following this date, minus a 25% deduction for contributory negligence. On account of the evidence, I find this a proportionate reduction to reflect the role he played in this part of his loss.*
- *I understand that Mr C has now fully repaid this loan. Accordingly, if the outstanding balance has been cleared then the remaining funds should be repaid to Mr C. He should also be reimbursed all of the interest that has been charged on the loan – interest that wouldn't have been payable had HSBC taken adequate steps and the scam been unravelled at the point of which I've provisionally determined.*
- *For the avoidance of doubt, in accordance with my provisional findings, I propose that Mr C should receive the entire amount lost to the scam prior to the loan date. Because, had HSBC intervened on account of the information available to it, I'm convinced Mr C would not have gone ahead with sending the payments at all.*
- *Considering that some of these payments were made using Mr C's credit card, the corresponding interest and charges applied to these transactions should be addressed by HSBC, so that he is effectively put back into the position he would've been in had they not been made. This is not necessary for the payments in question made by Mr C's debit card, because (as far as I'm reasonably aware) these did not incur a charge or interest.*

- *Finally, to make up for the time that Mr C has been deprived of these funds, HSBC should add 8% simple interest on the refunds for the disputed transactions, calculated from the date the payment was made to the date of settlement.*

My provisional decision

For the reasons given above, I intend to uphold this complaint and require HSBC UK Bank Plc to:

- *For the payments made using Mr C's credit card, rework the account so that all interest and charges arising from the disputed transactions are refunded*
- *Reimburse Mr C 100% of the disputed payments from 22 October 2018 until 16 November 2018 (less any credits received)*
- *Refund Mr C all but 25% of the disputed payments from 16 November 2018 up until and including the final disputed transaction (less any credits received)*
- *Add 8% simple interest per year to the refund amounts from the date of the payments to the date of settlement (minus any lawfully deductible tax); and*
- *Refund the interest paid on Mr C's HSBC loan."*

Response to my provisional decision

Mr C accepted my proposed decision and had nothing further to add.

HSBC on the other hand does not accept. In response, it submits that a greater reduction should be made to the payments that are to be returned to Mr C.

In summary, the bank puts forward that any percentage deduction for contributory negligence ought to apply to all of the disputed payments – not just those that took place on and after 16 November 2018. This is in light of Mr C's failure to carry out rudimentary checks before parting with significant sums of money.

Secondly, instead of or in addition to this, HSBC says it's only fair that Mr C be held liable for 100% of what was lost as a result of the payments made from December 2018 onwards. Those being, the transactions that occurred once Brighter Trade had clearly demonstrated that they were untrustworthy. Including, having not adhered to the promise of allowing withdrawals. HSBC states that these in particular total £16,741.13 out of the overall amount in question.

Now that both parties have responded, the case has been returned to me for review.

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 carefully reviewed HSBC's response to my provisional findings, my judgment of what it should do to put things right for Mr C ultimately remains unchanged. I'll explain why.

Turning first to the argument that Mr C ought to bear a reduction in what's to be returned to him for all of the payments – as opposed to beginning this from 16 November 2018 (when he took out the loan) and onwards.

While I acknowledge HSBC's position that Mr C failed to carry out basic checks of Brighter Trade, the fact remains that the regulatory warning about this firm was first published on the very day that he instructed the first payment in dispute here.

To that end, any prior research (of the FCA's website, as emphasised in HSBC's submissions) would have proved unfruitful; there were no such alerts about Brighter Trade leading up to 22 October 2018.

Plus, research tends to take place before one makes a commitment or purchase. So, naturally, Mr C may well have gone ahead and looked at what the regulator had to say about this so-called broker before he executed the first 'investment'. But any such due diligence wouldn't have made a real difference leading up until the date of payment – there was no FCA warning ahead of that.

What's more, as far as I am reasonably aware, there was no compelling guidance about Brighter Trade within the public domain before this date either (at least, HSBC has not referenced it, nor have I seen such evidence). Hence, why I think there being no alert by the FCA, coupled with no real circumstantial forewarning, would actually have led to Mr C going ahead as planned – instead of causing him to become credulous about Brighter Trade.

I accept that Mr C might've double-checked this firm's status later on in the sequence of payments, which would probably have identified the warning being highlighted. Nonetheless, if I were to take on board what HSBC suggests ought to have happened (i.e. Mr C making adequate checks before making any of the payments) I find that this is a specious argument. Because, had Mr C checked prior to 22 October 2018 and been satisfied due to the lack of warning to say otherwise, I find it even *less* likely that he would've checked again.

Especially, when considering that after leaving his HSBC accounts the payments looked to have safely arrived in his Brighter Trade account. In other words, checking beforehand would've likely reassured Mr C that all was well. Which understandably would've saved the need for him to look once more at what might be recorded online – reinforced by his impression that he could 'see' his investments on Brighter Trade's bogus platform.

Regardless, HSBC concedes that it ought to have recognised the relevant warning about INTLSECLTD for this initial payment. The bank acknowledges it should have identified that this beneficiary posed a high risk of fraud and took appropriate action.

From this, I must take that HSBC agrees that it needed to have done more to protect Mr C. And had it done so, Mr C wouldn't have needed to check the FCA website or other means of online research – bank staff (as the financial professionals in the equation) could've done that for him. Or, at the very least, encouraged Mr C to check himself when the warning about Brighter Trade had (by that time) been published.

HSBC has suggested that seeing a considerable downturn in his investments ought to have raised enough suspicion for Mr C to have questioned the legitimacy of Brighter Trade. It's common ground that he thought his trades were faring well – but this then took a severe downward turn in mid-November 2018. The bank says that (if not earlier) Mr C should bear a higher degree of responsibility for the role he played from this point and thereafter.

However, I am conscious that this coincided with when Mr C took out the loan with HSBC anyway. I have therefore made provision for this in my findings, which ultimately means that Mr C should not receive all of the subsequent payments in light of his acts/omissions. So, in effect, the same principle applies; Mr C should fairly be held responsible for contributing to his own loss from this moment in time until the end of the series of payments in dispute here.

Still, for the avoidance of doubt, I maintain that seeing a sudden drop in an investment is not inherently suspicious or unusual in the context of identifying fraud and scams. Even with the considerable amounts involved here this remains so. Such is the nature of a volatile and high-risk investment venture like the one Mr C thought he'd entered into, both losses and gains can be extortionate. It's certainly not unheard of that the value of CFDs, cryptocurrency etc. fluctuate suddenly overnight, without warning. Mr C knew this when he entered into the agreement with Brighter Trade.

Indeed, Mr C saw his investment rise rapidly in the early stages and at a similar speed to that of his later losses in profit. It follows that this huge decrease in his investment pot would not necessarily have caused him to question the credibility of the investment platform itself. Instead, to expand on the rationale in my provisional decision, I think the focus would more likely have been on how to use this volatility to his advantage once more and reinstate the profits on his capital.

Conversely, I find that the question of whether Brighter Trade was genuine ought to have triggered with Mr C when he was told to lie – or at least not be entirely honest – with HSBC about the intended purpose of the loan.

Being told to circumnavigate lending protocols and manipulate the criteria of an application to his favour is something that I believe should've caused Mr C to question why he was being told to take such steps if everything with Brighter Trade was above board. In my view, this is highly suspicious and conflicted with what Mr C believed he was entering into.

Therefore, for the reasons given above and before, I continue to think that the deduction in Mr C's compensation ought reasonably to take place from 16 November 2018 onwards.

Finally, I have thought again about whether Mr C ought fairly to be refunded for the last group of payments – those occurring after Brighter Trade made it increasingly difficult to withdraw what he thought was his initial investment.

When doing so, I must consider that, in order to conclude that he should be held accountable for the entire amount in question (as HSBC has referenced it, that being approx. £16,700), I would need to be convinced that Mr C was completely responsible for the situation he found himself in. To not be refunded anything from these transactions would only happen if I thought he contributed so substantially to his own financial loss that it would be unreasonable to ask HSBC to make any contribution to the relevant payments.

Yet, as described in my provisional decision, this was not the case here. But for HSBC's failure to step in at the first payment, it's highly likely that Mr C would not have ended up making these particular transactions to permit access to his funds. Taking adequate steps to identify and counter the financial harm before it occurred would've naturally averted this scenario entirely – which, as mentioned, HSBC appears to accept. Consequently, I cannot safely conclude that the bank didn't have a principle role to play in the circumstances that later transpired.

So, overall, I am not persuaded that the state of affairs in December 2018 should warrant Mr C being held completely responsible for the final payments HSBC has drawn attention to. Taking this and everything into consideration, I am of the view that my provisional findings still provide a fair and reasonable outcome to this case.

My final decision

For the reasons given above and previously, my final decision is to uphold this complaint and require HSBC UK Bank Plc to:

- For the payments made using Mr C's credit card, rework the account so that all interest and charges arising from the disputed transactions are refunded
- Reimburse Mr C 100% of the disputed payments from 22 October 2018 until 16 November 2018 (less any credits received)
- Refund Mr C all but 25% of the disputed payments from 16 November 2018 up until and including the final disputed transaction (less any credits received)
- Add 8% simple interest per year to the refund amounts from the date of the payments to the date of settlement (minus any lawfully deductible tax); and
- Refund the interest paid on Mr C's HSBC loan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 26 April 2022.

Matthew Belcher
Ombudsman