

The complaint

Ms H complains that HSBC UK Bank Plc (“HSBC”) didn’t help recover the money she lost to an investment scam.

What happened

In November 2017, Ms H came across Greenfields Capital on the internet when she was looking to invest money. She registered her interest and was subsequently contacted by a representative of Greenfields Capital who told her that returns on investment trading were considerably higher than on savings accounts. Ms H was told about the opportunity to earn up to £3,000 each month and was persuaded to invest with Greenfields Capital.

Ms H was assigned an account manager who executed trades on her behalf. She started with an initial deposit of £250 and was persuaded to invest more money after seeing the profits that were supposedly being made. Ms H even received some return on her investment to entice her to invest further sums.

The following transactions were made to Greenfields Capital:

Date	Type	Amount
20 November 2017	Debit card	£250
21 November 2017	Debit card	£5,000
21 November 2017	Debit card	£4,850
21 November 2017	Credit	£100
24 November 2017	Debit card	£5,000
24 November 2017	Debit card	£4,999
24 November 2017	Debit card	£10,000
27 November 2017	Credit	£500
7 December 2017	Debit card	£10,000
7 December 2017	Debit card	£9,999
7 December 2017	Debit card	£5,001
7 December 2017	Credit	£1,250
8 December 2017	Debit card	£10,000
21 December 2017	Debit card	£10,000
21 December 2017	Debit card	£5,001
21 December 2017	Debit card	£5,000
8 January 2018	Credit	£3,000
	Total payments	£85,100
	Total credits	£4,850
	Total loss	£80,250

Ms H eventually realised she had been scammed after a withdrawal request in January 2018 was declined. She complained to Greenfields Capital directly and also contacted Action Fraud. Ms H reported the matter to HSBC in March 2018. It presented a chargeback and

temporarily refunded the disputed transactions. But the chargeback was successfully defended, and HSBC reversed the monies it had temporarily returned to Ms H.

Ms H referred her complaint to our service, and it was considered by two investigators. Both upheld it but for different reasons.

The first investigator's view was that HSBC ought to have taken the chargeback to arbitration by the card scheme operator, Visa in this case. And had it done so, it was most likely that Visa would have ruled in favour of Ms H. In addition to refunding the payments along with interest, the investigator recommended £200 compensation to recognise the distress and inconvenience experienced by Ms H.

Another investigator reconsidered the complaint following further clarification from Visa regarding the chargeback process. She thought that HSBC didn't act unfairly in not taking the chargeback request further. But it ought to have intervened when Ms H made the third payment as there were fraud triggers by then. And had HSBC done so, the investigator thought that Ms H wouldn't have gone ahead with it and the subsequent payments. It was also her view that Ms H would have been able to provide HSBC with the information necessary to meet any chargeback requirements for the first two payments. She therefore asked HSBC to reimburse the transactions in full and add interest.

I issued my provisional decision in March 2022 and said that I planned to uphold this complaint, but the redress I intended to award was different to what the investigator recommended.

I invited further comments and evidence from both parties. Ms H said that she didn't have any further comments to make. HSBC agreed to settle the complaint in accordance with my provisional decision as a goodwill gesture and without admission of liability.

As neither party has provided anything further for me to consider, I see no reason to depart from my provisional findings. What follows below is my provisional decision made final.

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.

Given the information I've found during my research on Greenfields Capital, I'm satisfied that it wasn't a legitimate trader. There are warnings published about it on the Investor Alerts Portal of the International Organisation Securities Commissions ("IOSCO") by Superintendencia del Mercado de Valores in Panama, as well as by the Czech National Bank. And a warning has also been published by the Financial Conduct Authority ("FCA").

While I think that Greenfields Capital was likely operating a scam, the chargeback scheme rules don't automatically entitle Ms H to a refund based on these circumstances.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. Visa does give chargeback rights in relation to investments, but those rights are very narrow. Reason Code 53 (later changed to 13.5) 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.

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. From the information I've seen, it doesn't appear as though all the required information was available when the chargeback request was presented. Ms H provided a copy of the email she sent to Greenfields Capital requesting a withdrawal. But the screenshot of the trading account balance she provided isn't dated.

Even though HSBC attempted a chargeback, the evidence supplied doesn't meet Visa's requirements. It doesn't appear that Ms H was in possession of evidence showing the available balance on the date of the withdrawal request when she contacted HSBC. Or, that she would have been able to provide it if HSBC had requested it at the time. In the circumstances, I don't think HSBC acted unreasonably in not progressing the chargeback request. I'm also not persuaded that it would have been successful in recovering the first two payments in the way suggested by the second investigator.

I would also add here, that had Ms H been able to provide the evidence Visa requires, she wouldn't have been entitled to all of the transactions she's disputed – only to the withdrawal amount, or the available balance at the time of the withdrawal request.

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

Under regulations, and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even if they were duped into doing so, for example as part of an investment scam.

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.

The disputed payments were made by Ms H using her legitimate security credentials. I therefore conclude that these were authorised payments for which Ms H is liable unless there's evidence that HSBC could and should reasonably have done more to protect her and that this would have made a difference to her decision-making.

I've taken 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. HSBC ought to have been monitoring accounts to counter various risks, have systems in place to identify unusual transactions, or other indicators, that its customers were at risk of fraud and, in some situations, make additional checks before processing payments, or declined them altogether, to protect its customer from possible financial harm from fraud.

As long ago as June 2012, the then regulator, indicated – in its consultation paper *Banks' Defence Against Investment Fraud; detecting perpetrators and protecting victims* – that it was good industry practice for firms to put together an updated watch-list of types of scams and potential scammers; and to regularly share “*timely and detailed intelligence*” with other banks, UK and overseas regulators, the police etc.

While the regulator didn't give any indication of when those watchlists ought to be updated, it's not unreasonable to expect an international bank, like HSBC, to update those lists, and communicate with staff, within a month of a warning being published by the FCA or IOSCO.

In my judgement, such alerts should automatically trigger the bank's fraud prevention systems and lead to payments being paused, pending further intervention – such as making enquiries of the customer about the payment or giving a scam warning.

Here, there were no regulator warnings in place about Greenfields Capital when Ms H made the payments in dispute. An IOSCO alert was first published on 13 March 2018. And the FCA's warning was published on 18 April 2018. In the circumstances, I wouldn't have expected HSBC to have picked up payments to Greenfields Capital as being suspicious based on the merchant name alone.

But this isn't the end of the matter. I've considered the operation of Ms H's account in the year leading up to the disputed payments. This is to determine whether the transactions were so unusual or uncharacteristic that I think HSBC ought to have intervened. The account statements show that it wasn't unusual for Ms H to make large-value payments from her account. For instance, there was an external or third-party payment for £14,000 in October 2017, as well as a cheque payment for £10,300 in April 2017.

So, the disputed payments when considered individually don't appear to be so unusual or uncharacteristic that HSBC ought to have intervened. That said, I consider the account activity was unusual when the third payment to Greenfields Capital on 24 November 2017 – for £10,000 – was authorised. The proximity and the substantial increase in the value of the payment ought to have triggered HSBC's systems. It was the third payment to Greenfields Capital that day, and sixth overall within a few days. I consider it would have been reasonable for HSBC to have properly questioned Ms H before processing this payment.

Had HSBC carried out its due diligence and duties and asked Ms H about the payments, I've no reason to doubt that she would have explained what she was doing. And while I accept that HSBC didn't have a duty to protect Ms H 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 merchant – such as checking that Greenfields Capital was registered or licensed with the Gambling Commission (which it was required to do at the time of the payments).

While it is not up to our service to dictate what questions a bank should ask, HSBC could have, for example, asked how Ms H had been contacted, whether she 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. These are all typical features of investment 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's no reason to doubt that Ms H would have explained what she was doing, I accept it is possible that she might not have revealed enough information to lead HSBC to understand whether she 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 that Ms H would have likely shared information which aligned with the hallmarks of this type of scam, as she had been given no reason to think she had to hide this information from her bank, and neither had she been coached to tell them something different.

HSBC could have also explained its own customers' experiences with unregulated and unlicensed high-risk investment traders in that customers would often be prevented from withdrawing available balances and trading accounts could be manipulated. 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 and

CFDs, 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 FCA's consultation paper of December 2016; the Gambling Commission's scam warning of December 2016; 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).

There's no evidence that HSBC provided Ms H with any meaningful warnings or gave her other reasons to doubt the legitimacy of the payments she was making. Had it done so, I'm satisfied that Ms H would have looked into the investment opportunity further and discovered more information about this type of investment, how high-risk it was and whether Greenfields Capital was regulated in the UK or abroad. She could have discovered that it wasn't. Indeed, it's likely that she would have come across the various regulatory warnings about unregulated investment scams that I've mentioned above. This would have been enough to give Ms H second thoughts such that she wouldn't have gone ahead with the third payment on 24 November 2017, and subsequent payments.

I therefore conclude that HSBC ought to have intervened on the third payment to Greenfields Capital on 24 November 2017 (sixth overall) and had it done so, Ms H wouldn't have incurred further losses. This adds up to £65,001. Ms H also received credits totalling £4,850 directly from Greenfields Capital. This amount is what she recovered directly from it, so it's only fair that it is deducted from the loss that HSBC needs to reimburse.

HSBC has questioned the application of 8% interest on the refund and argued that this provides a windfall for Ms H. But the 8% interest isn't there to replace interest she might have earned had the money stayed in her account or was invested into cash-based investments. It is to compensate Ms H for the loss of use of the money. It has long been our approach that this is a suitable rate to compensate for being deprived of the funds, and I remain satisfied that it is fair to apply it in this case.

I've also carefully thought about whether Ms H is partly to blame for what happened. And I think that she is. I say this because Ms H's account information shows that she has previous investment experience. I can see large ad-hoc as well as regular credits from different financial businesses. I understand Ms H was looking for something that offered better returns than what was being offered on savings or deposit accounts. Here, she says she was told about opportunities to earn £3,000 per month. And given literature showing potential profits of 500%. But given Ms H had investment experience, she ought to have known that substantial profits come with substantial risks.

I'm not aware that she carried out any due diligence before contracting with Greenfields Capital. I haven't seen any evidence that Ms H carried out any research into the investment, the trader, or the investment type to reassure herself that the opportunity as presented was genuine. Or that she was dealing with a legitimate trader. So, I do think that Ms H ought to bear some responsibility for her losses. I consider that it would be fair to reduce compensation by 20%.

I've thought about whether a payment for the distress and inconvenience this matter has caused Ms H is appropriate. I think that the substantive cause of her distress and inconvenience was Greenfields Capital. I acknowledge what Ms H has said about her experience with HSBC when she requested a chargeback. But for the reasons I've given above, I don't think there were grounds for a successful chargeback even if the customer service provided by HSBC had been better. I also recognise that HSBC has already paid £150 for accidentally debiting more funds than what it had credited into Ms H's account

when it offered a temporary refund. In the circumstances, I won't be telling HSBC to pay more compensation.

Putting things right

To put matters right, HSBC UK Bank Plc needs to reimburse Ms H the last eight payments to Greenfields Capital (from £10,000 on 24 November 2017 onwards), less any credits she received from it, along with a 20% deduction for contributory negligence. That would mean an award of £48,120.80.

The bank should also add simple interest at the rate of 8% per year (less any tax properly deductible), calculated from the date of each reimbursed payment to the date of refund.

My final decision

For the reasons given, my final decision is that I uphold this complaint. HSBC UK Bank Plc needs to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 9 May 2022.

Gagandeep Singh
Ombudsman