

The complaint

Mr M complains that HSBC UK Bank Plc (“HSBC”) won’t reimburse the funds he lost when he was scammed.

What happened

In February 2018, Mr M came across Greenfields Capital when he was looking online to invest money. He was subsequently telephoned by an individual claiming to be an account manager at Greenfields Capital and was sold an investment opportunity.

Over the next several weeks, the following transactions were made using Mr M’s debit and credit cards:

Transaction Date	Type	Merchant	Amount
27 February 2018	Credit card	Greenfieldscapital.com	£250.00 (undisputed)
28 February 2018	Credit card	Greenfieldscapital.com	£8,075.00 (undisputed)
28 February 2018	Debit card	Greenfieldscapital	£250.00
1 March 2018	Debit card	Greenfieldscapital.com	£250.00
1 March 2018	Debit card	Greenfieldscapital.com	£10,000.00 (blocked)
1 March 2018	Debit card	Greenfieldscapital	£2,500.00 (blocked)
1 March 2018	Debit card	Greenfieldscapital.com	£999.00 (blocked)
14 March 2018	Debit card	Greenfieldscapital	£250.00 (credit)
2 April 2018	Debit card	Credit Voucher	£700.00
2 April 2018	Debit card	Credit Voucher	£701.00
2 April 2018	Debit card	Greenfieldscapital.com	£700.00
2 April 2018	Debit card	Greenfieldscapital.com	£3,899.00
2 April 2018	Debit card	Greenfieldscapital.com	£9,999.00
2 April 2018	Debit card	Greenfieldscapital	£9,998.00
3 April 2018	Debit card	Greenfieldscapital	£7,500.00
5 April 2018	Debit card	Greenfieldscapital	£443.60 (credit)
		Total disputed payments	£33,997.00
		Total credits	£693.60
		Total loss	£33,303.40

Mr M says he agreed to the make the two credit card payments and these aren’t in dispute. But the remaining payments weren’t authorised by him (although at the time of reporting the matter to HSBC, he acknowledged that he had also authorised the two £250 debit card payments).

Mr M reported the unauthorised payments to HSBC when he noticed them on his bank statements. He also said that someone had transferred money from his savings account into his current account before the unauthorised payments were taken. Mr M attempted to

recover the funds from Greenfields Capital by making a withdrawal request, but it was declined.

HSBC presented a chargeback request after receiving additional documentation from Mr M. While awaiting a response, it also temporarily refunded the disputed amounts. The chargeback was successfully defended by the merchant and HSBC took it to arbitration. Visa, the card scheme operator in this case, ultimately ruled in the merchant's favour. Following this decision, HSBC reversed the funds that had been temporarily returned to Mr M.

Unhappy with this, Mr M referred his complaint to our service. Our investigator was persuaded that the disputed transactions were authorised by Mr M. She also concluded that Greenfields Capital wasn't a legitimate trader. It was also her view that HSBC hadn't acted done anything wrong in relation to raising a chargeback. But given it had blocked several payments to Greenfields Capital, the investigator thought that HSBC should have properly questioned Mr M before processing subsequent payments to the merchant. Mr M accepted the investigator's findings, but HSBC didn't.

I issued my provisional decision last month 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. Mr M said that he didn't have any further comments to make, and HSBC said that it accepted my findings.

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.

Mr M has accepted the investigator's conclusion that he authorised the payments in question. As authorisation is no longer in dispute, it isn't necessary for me to make a finding on this issue.

Given the information I've found during my research on Greenfields Capital, I'm satisfied that it wasn't a legitimate trader. It wasn't regulated by the Financial Conduct Authority ("FCA") which was a requirement at the time. There are also 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 was also later published by the FCA.

While I think that the Greenfields Capital was likely operating a scam, the chargeback scheme rules don't automatically entitle Mr M to a refund. Visa does give chargeback rights in relation to investments, but those rights are very narrow. Reason Code 13.5 (previously 53) 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.

From the information I've seen, it doesn't appear as though Mr M was in possession of this information when he contacted HSBC. Or, that he would have been able to provide all the required evidence if it had been requested at the time. Regardless, I can see that HSBC did present a chargeback and followed it through to arbitration. But Visa ruled in favour of the merchant.

My role is not to second-guess Visa's arbitration decision or its chargeback 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. Here, HSBC presented a chargeback even though it didn't have all the required evidence. In the circumstances, I don't think HSBC acted unreasonably in how it dealt with the chargeback request.

I've also considered whether HSBC ought to have done more to prevent the disputed payments from being sent in the first instance. For the avoidance of any doubt, like the investigator, I've only looked into the debit card transactions as the credit card transactions aren't in dispute.

It's common ground that the disputed payments were authorised by Mr M. Under the Payment Services Regulations 2017 in force at the time, Mr M is initially presumed liable for the loss even though he didn't intend for his money to go to fraudsters.

As a starting position, banks should execute an authorised payment instruction without undue delay. 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.

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 Mr M made the first two payments on his debit card. An IOSCO alert about Greenfields Capital was first published on 13 March 2018. And the FCA's warning was published on 18 April 2018. So, the remaining payments were all authorised less than a month after the first published warning.

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. Two of the disputed payments were to Credit Voucher (even though the purchase was to facilitate deposits to Mr M's account with Greenfields Capital). There is no regulator warning about this firm. So, for similar reasons, I wouldn't have expected these payments to have triggered HSBC's systems either.

But this isn't the end of the matter. I've considered the operation of Mr M's account in the months leading up to the disputed payments. This is to determine whether they were so unusual or uncharacteristic that I think HSBC ought to have intervened.

I don't consider any of the disputed payments to be out of line with Mr M's general account activity. The account statements show that it wasn't unusual for him to make large-value payments from his account. For instance, I can see third-party payments for £9,950 in August 2017, as well as £10,930 and £7,620 in November 2017. So, I don't consider any of the disputed payments to be so unusual or uncharacteristic that HSBC ought to have intervened.

That said, HSBC did block several payments to Greenfields Capital on 1 March 2018. Given HSBC's fraud detection systems were triggered and required an intervention, it's my judgement that HSBC had reasonable grounds to suspect fraud or scam at this time. So, it would have also been reasonable for the bank to have asked Mr M appropriate probing questions before processing the payments.

I understand HSBC called Mr M on 6 March, but he asked for a letter to be sent to him regarding its enquiries. And so, HSBC wrote to him. It is also my understanding that a response wasn't received. Mr M's debit card or his account wasn't blocked during that time. There were no further transactions to Greenfields Capital until a month later – on 2 April – when four payments were authorised on the same day. On this occasion, none of the payments were blocked by HSBC.

I've carefully considered the circumstances here and it is my judgement that HSBC fell short in its duty of care by processing the payments authorised on 2 April. I say this because it already had concerns about payment attempts to Greenfields Capital at the beginning of March. To an extent, I can understand HSBC had reasons for not blocking Mr M's debit card (or indeed his account) completely while it made enquiries. But I can't see that the concerns it had about payments to Greenfields Capital were addressed. I therefore question why only a month later HSBC executed multiple same-day payment instructions – totalling £24,596 – to the very same merchant without further intervention.

I consider it would have been prudent for HSBC to have satisfied itself that all was good with regards to Mr M's payments to Greenfields Capital *before* processing them. If Mr M had difficulty discussing matters over the phone, HSBC could have suggested a visit to the branch. Or, sent a reminder about its written request.

I haven't seen the contents of HSBC's letter. While it is not up to our service to dictate what questions a bank should ask, HSBC could have, for example, asked how Mr M 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. 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 is no reason to doubt that Mr M would have explained what he was doing, I accept it is possible that he might not have revealed enough information to lead HSBC 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 that Mr M would have likely shared information which aligned with the hallmarks of this type of scam, as he had

been given no reason to think he had to hide this information from his bank, and neither had he 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).

I accept that, when simply executing authorised payments, banks such as HSBC don't 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 don't think HSBC would have acted out of line, had it warned Mr M along the lines that I've described.

Had HSBC indicated the potential for fraud and provided Mr M with a potential scam warning, it seems more probably to me that he would have made further enquiries into investment scams and whether Greenfields Capital was registered/licensed with the FCA or even regulated abroad. He could have discovered it wasn't and would have seen the various regulatory warnings about the risk of such scams. So, I am satisfied that a warning from his trusted bank would probably have exposed Greenfields Capital's false pretences, such that it would have prevented Mr M from sending further payments.

I've also considered whether Mr M is partly to blame for what happened. And I think that he is. I've noted Mr M has told our service that he had previous investment experience. However, I'm not aware that he carried out any due diligence before contracting with Greenfields Capital. I haven't seen any evidence that Mr M carried out any research into the investment, the trader, or the investment type to reassure himself that the opportunity as presented was genuine. So, I do think that Mr M ought to bear some responsibility for his losses. Considering the individual circumstances of this complaint, I think that it would be fair to reduce compensation by 20%.

Putting things right

To put matters right, HSBC UK Bank Plc needs to reimburse Mr M the last five payments to Greenfields Capital (from £700 on 2 April 2018 onwards), less any credits he received from it, along with a 20% deduction for contributory negligence. That would mean an award of £25,121.92.

As the monies paid to Greenfields Capital was transferred in from Mr M's savings account, I consider it would be fair and reasonable for HSBC to pay interest on the disputed payments at the applicable savings account rate rather than 8% simple interest that was recommended by the investigator. This interest will need to be paid from the date of loss to the date of settlement (less any tax properly deductible).

My final decision

For the reasons given, my final decision is that I uphold this complaint. I require HSBC UK Bank Plc to put matters right for Mr M as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 May 2022.

Gagandeep Singh
Ombudsman