

## **The complaint**

Mr O is unhappy HiFX Europe Limited won't refund money he lost as a result of a scam.

## **What happened**

In late 2020, Mr O began communicating with what he believed was a genuine investment company. After speaking at length to a representative of the company, someone Mr O said sounded very professional, he was persuaded to purchase shares that the company predicted would increase in value. In early 2021, after the company's prediction appeared to come true, Mr O made a further payment, supposedly for the purchase of more shares. Mr O became concerned because he wasn't able to track his investment or even understand exactly what had been purchased with his money. He asked to withdraw his funds from the investment, but was met by excuses, threats and demands for more money. Mr O cut off contact and realised he'd been the victim of a scam.

For both transactions (totalling £86,000) Mr O utilised HiFX's services – exchanging his pounds sterling for euros and instructing it to send payments to a bank account in another country.

Mr O had initially attempted to make a payment to HiFX from his business account, but this hadn't been accepted due to the name on Mr O's HiFX account not matching the name of the account the funds had come from. Mr O applied for a business account with HiFX but it declined his application after he explained that the payment he was making was for business purposes and that he was using money gathered from several investors to invest in a company based overseas. He explained that the business he'd originally intended to start had been badly hit by the pandemic – so he was restructuring the business to, among other things, invest in stocks and shares. In the call where the account opening was discussed, Mr O briefly mentioned the name of the fraudulent investment company.

Instead of using a HiFX business account, a few days later Mr O used his personal HiFX account to make the first payment (and the second a few months later).

Mr O complained to HiFX that it hadn't asked him any questions about the payments he was making, despite his young age and the large sums involved. He compared its actions to his bank, which it said would contact him before processing even low value payments.

HiFX said that it had simply followed his instructions in making the payments and, though it had attempted to recall his money, those attempts were unsuccessful.

One of our investigators didn't uphold his complaint. They were of the view that there was nothing about the payments that stood out as being out of the ordinary and they didn't think the conversation prior to the first payment should have put HiFX on notice of a potential scam as it was in relation to the separate matter of opening a business account.

Mr O disagreed, so the case was passed to me for a final 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.

There's no dispute that Mr O authorised these transactions and that means that under the Payment Services Regulations 2017 he is presumed liable for the loss in the first instance.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider HiFX 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 that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which payment service providers are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make 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.

I've first considered whether HiFX should have processed the transactions at all, given that they were not comfortable opening a business account for Mr O. Their concerns were not, however, that he might be falling victim to a scam, but rather about the way his business was funded.

Also, HiFX say that Mr O's personal and business account were not linked under the same profile and I've seen evidence which seems to demonstrate this. So, it doesn't appear there was any connection made between the business account application and the personal account transactions (at least, not at the time). Given that the personal account and business account application were made in different capacities, I don't think they were unreasonable not to link the two.

In any case, had HiFX simply refused to carry out the transactions (without interacting with Mr O) it seems unlikely that the loss to him would have been prevented. There's no reason to think he wouldn't have simply used the services of another payment service provider (after all it was the fraudsters that had recommended HiFX to Mr O and he doesn't seem to have had any particular preference for them).

In order to have any reasonable prospect of preventing the scam, HiFX would have needed to provide some sort of warning to Mr O. Such a warning would not necessarily take the form of a conversation before the payments went ahead – I'd only expect that to happen where HiFX had, or ought to have had, concerns Mr O was at risk of financial harm from fraud. So, I've thought about whether it should have intervened and, if it should, what form I'd expect that intervention to take.

I note the amounts of the transactions were significant – the first being almost £50,000. But, it's relevant to consider that due to the nature of HiFX's business customers are more likely to use it for occasional high value international transactions. It also had no previous account activity to compare the first transaction against – so nothing to suggest that the activity

wasn't typical for Mr O. While it did presumably know his age, I don't think this put him at particular risk of financial harm. So, overall, I don't think that the activity stood out as being particularly suspicious or remarkable.

I've thought about whether it would be fair to say that HiFX ought to have taken into account the earlier conversation it had with Mr O in relation to setting up a business account when deciding whether to allow these transactions to proceed. But as HiFX don't seem to have linked Mr O's personal account and business account application, I can't fairly say this should have happened.

So, I don't think that there were any particular grounds for HiFX to have thought Mr O was at risk of financial harm from fraud but, given the amounts involved, I think it should have provided a warning to him in line with good industry practice.

I note that Mr O was required to input the purpose of each transaction when setting up the payments. So, such a warning could and should have been tailored to the stated payment purpose.

Mr O chose 'business payment' as the reason for both payments. This was true, of course. However, I don't think that, had HiFX given a tailored warning based on this payment reason, it would have been particularly relevant to Mr O's situation and, in the circumstances of this case, I don't think it would have changed his decision to go ahead.

I'd expect a warning about a business payment to address the risk of account details having been intercepted or changed. It might reasonably also give a general warning about ensuring that the recipient of the payment is correct and legitimate and, perhaps, not to move money at the request of a bank or other trusted organisation. But, for a warning to have had any prospect of dissuading Mr O from making the payment I think it would have had to be much more focussed on investment scams, how they work and how to avoid them. As there was no reason for HiFX to give such a warning, I don't think it made a mistake by not doing so.

So, while HiFX might have provided a warning based on the payment reason Mr O selected, I don't think the activity was so unusual and suspicious that it ought to have discussed the payments with him to establish whether he was at risk of financial harm from fraud and, for the reasons I've explained, I don't think a written warning would have made a difference to his decision to go ahead with the payments, as it wouldn't have been particularly relevant to his circumstances.

Finally, I'm satisfied with the attempts HiFX made to try and recover Mr O's money. It contacted the bank which received the funds, but that bank said that the beneficiary account was closed, and no funds remained.

So, while I know this will be very disappointing for Mr O and I understand the big impact this matter has had on him, I don't think HiFX have made a mistake here and I won't be asking it to refund the payments he made.

### **My final decision**

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 17 June 2022.

Rich Drury  
**Ombudsman**