



## **The complaint**

Mr and Mrs E complain that HSBC UK Bank Plc won't refund money they lost to a binary options investment scam.

As most of the correspondence is from Mr E, I'll treat all submissions as having come from him in this decision.

## **What happened**

Around November 2017, Mr E, a pensioner, was cold called by a merchant named Ashford Investments who offered him an opportunity to invest with them. He researched them and spoke with Mrs E and they thought it sounded like a good deal, so he paid £250 using his HSBC Visa debit card to open a trading account with them. Mr E saw some small profits and was persuaded to pay a further £15,000 (over two separate payments) on 21 November 2017. He paid these amounts using his HSBC Visa debit card – linked to his current account.

Mr E tried to withdraw some of his profits the same day but was unable to. He got suspicious and called HSBC to dispute the payments on 21 November 2017. HSBC advised Mr E that the payments were authorised by him and were not yet posted to his account, so he'd have to wait to dispute them. On 23 November 2017, Mr E called HSBC to dispute the payments again. He said he was unable to withdraw his money and hadn't been paid a bonus he was promised. He was advised by HSBC to wait to see if he received his bonus.

Mr E received a credit from Ashford investments (to his HSBC current account) on 23 November 2017 for £100. He subsequently received two further credits totalling £1,000 from them on 4 December 2017.

Mr E says Ashford Investments constantly called him and pressured him to pay more money.

On 6 December 2017, Mr E paid Ashford Investments a further two payments (using his HSBC Visa debit card) totalling £10,000.

On 15 January 2018, Mr E contacted HSBC to dispute all the transactions to Ashford Investments because he said they weren't allowing the withdrawal of funds. HSBC sent a declaration form to Mr E and asked for supporting information.

Once Mr E returned the paperwork to HSBC, it processed chargeback claims on his behalf and temporarily credited the disputed transactions to him. Ashford Investments' bank defended the chargeback claims and HSBC escalated them to Visa's pre-arbitration stage. They too were defended and HSBC advised Mr E that the disputed funds would be returned to Ashford Investments' bank.

Mr E complained to HSBC about its decision and HSBC replied advising it had followed Visa's rules and it couldn't do anymore to assist him. Mr E referred the matter to this office.

One of our Investigators upheld Mr E's complaint. He felt the chargeback ought to have been more rigorously pursued. HSBC didn't agree.

On 1 June 2022, I issued my provisional decision largely upholding this complaint. For completeness, I repeat my provisional findings (which form part of this final decision) below:

*I have considered all the evidence and arguments to decide what is fair and reasonable in all the circumstances of this complaint.*

#### *Chargeback*

*I've noted that when Mr E contacted HSBC in January 2018 to dispute four payments to Ashford Investments, he didn't appear to have the evidence required by Visa. His disputed payments didn't include the initial £250 paid to Ashford Investments, so I've not considered this payment as part of this complaint.*

*Mr E needed to produce (amongst other things); a dated screenshot of his trading account showing a balance and that he'd tried to withdraw an amount equal to or less than the available balance on the same day.*

*So whilst HSBC did attempt chargeback claims on Mr E's behalf, I'm not persuaded it had any reasonable prospect of success by escalating Mr E's claims to Visa's final stage of arbitration. And that's because Mr E didn't have the required evidence for it to do so. I do however think that HSBC would have likely recovered Mr E's initial £15,000 via the Visa chargeback scheme if it had better handled his call in November 2017. I'll explain this further below.*

#### *Fraud prevention*

*HSBC is aware of our general position on a PSP's safeguarding and due-diligence duties to protect customers from the risk of financial harm due to fraud. We have published many decisions on our website setting out these principles and quoting the relevant rules and regulations. It is unnecessary to rehearse them again here in detail.*

*It is common ground that the disputed payments were 'authorised' by Mr E for the purposes of the Payment Services Regulations 2009 ('the Regulations'), in force at the time. This is because they were made by Mr E using the legitimate security credentials provided to him by HSBC.*

*However, taking 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, I consider HSBC 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 its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and*
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made 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.*

- Updated its internal watchlist to include information from credible sources within a month of any adverse publication. Credible sources include information published on the FCA's watch list or the International Organization of Securities Commissions (IOSCO) Investor Alerts Portal.

*I'm satisfied that Ashford Investments were scammers. I say this because the FCA published a warning about them on 6 March 2018 (after Mr E made all of his payments). Ashford Investments were required to be regulated by the UK's Gambling Commission at the time of Mr E's payments and they were not, nor were they regulated anywhere else as far as I'm reasonably aware. A legitimate company would tend to comply with regulatory requirements.*

*As I'm satisfied Ashford Investments were scammers, I need to consider whether HSBC should have flagged any of the payments to them.*

*Whilst HSBC ought to be alert to potential fraud and scams, there are factors that can influence how it decides to flag payments. One of those factors include what it knows about the payee, other factors include what it knows about its customers and what's 'normal' account usage for them. In this case, the FCA hadn't yet published a warning about Ashford Investments, so I don't think HSBC could have reasonably been aware that they were potential scammers at the point of Mr E's payments of £15,000 on 21 November 2017. This is a large sum of money to pay out of an account but I don't think HSBC had built a picture of what 'normal' account usage looked like for Mr E yet as his HSBC account was newly opened and had already had large legitimate payments (over £15,000) paid in and out of it.*

*I therefore don't think HSBC could have reasonably concluded – at the point of Mr E's payments to Ashford Investments on 21 November 2017 – that Mr E could be the victim of a scam.*

*I do however think that HSBC were put on notice that Mr E may have fallen victim to a scam when he called it on 23 November 2017. HSBC has been unable to provide a copy of this call, so I've relied on the notes it has been able to provide.*

*The notes say*

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*'Ch said that he made a payment for £250.00 dtd 15 Nov2017 from ASHFORDINVESTMENTS for opening his online trading account. He tried to make a withdrawal recently but the system cancelled it. He then contacted his investment manager and he was advised that the withdrawal is going to be processed w/in 7 days. Also, he was promised to rcv bonus on his investment by the IM if he's going to invest £15000.00 on the account. The bonus will be given at the end of the month. Ch didn't cancel his account with the retailer yet. Hence, advised the ch to wait if he would be able to rcv bonus and if he' going to rcv the refund on the account'.*

*Mr E had called HSBC two days earlier to dispute the same payments and was asked to call back when the payments were posted to his account, which he did. I think it was clear that Mr E wanted his money back and had concerns about Ashford Investments.*

*I think HSBC's disputes team ought to have been aware of binary options scams as it was a common type of investment scam at the point of Mr E's payment. And Visa had expanded its rules a month earlier to cover scenarios where cardholders had problems with withdrawals from binary options and forex investment trading account. Ashford Investments were unregulated and unlicensed at the point of Mr E's payment, so I think HSBC could have*

*identified this when he called it to try to recover his funds. I think there were clear warning signs from Mr E's explanation that he was falling victim to a binary options scam.*

*Given the information that Mr E had volunteered, I think it would have been appropriate for HSBC to ask further suitably probing questions. There is no reason to doubt that Mr E would have explained what he was doing. In such circumstances, whilst the bank had no duty to protect him from a bad bargain or give investment advice, it could have explained to him the very high risks of getting involved with unregulated and unlicensed binary options dealers. It could have also explained its own customer experiences with unregulated and unlicensed high-risk investment traders in that customers would often be prevented from withdrawing available balances (which is an issue that Mr E was experiencing). 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 trading, 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 Financial Conduct Authority's consultation paper of December 2016; and the Gambling Commission's December 2016 scam warning that "an unlicensed operator is likely operating illegally"; 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).*

*Rather than providing Mr E with a meaningful warning and assistance with processing chargeback claims on his behalf (which would have likely succeeded as he still had access to his trading account and had just made a withdrawal request), HSBC suggested that he continue to engage with Ashford Investments. And it ought to have been reasonably aware (based on its own customer complaints and insights) that these investment scammers are well trained to overcome objections and would also provide smaller token withdrawals, to entice consumers to make further payments (which is what happened here). It was a missed opportunity to intervene.*

*If HSBC had asked Mr E the basic surrounding context of his introduction to Ashford Investments, it is likely he would have fully explained that he had been cold called him and everything was done over the phone and online with his 'broker'. HSBC did not need to know for certain whether Mr E was dealing with a fraudulent high risk investment trader or investing in a legitimate (albeit highly speculative) product; reasonable grounds for suspicion are enough to trigger a bank's obligations under the various regulations and principles of good practice. I consider there were such grounds here and, therefore, that HSBC ought reasonably to have provided a scam warning in light of all the information then known to financial professionals about the risks associated with unregulated forex and binary options dealers.*

*If HSBC had given a warning, I believe that Mr E would have paused and looked more closely into Ashford Investments before proceeding. There is no evidence that he was willing to take high risks or had a history of speculative investments or gambling. It seems more probable that he would have made further enquiries into whether or not Ashford Investments were regulated in the UK or abroad. He could have discovered they were not and the various regulatory warnings about the risk of unregulated investment scams (see above) including problems with withdrawals – which Mr E had experienced. In other words, I am satisfied that a warning from a trusted bank like HSBC would probably have exposed Ashford Investments' smoke and mirrors, causing him not to 'invest' any further and preventing any further losses.*

*Even if he had not worked out that this was a scam, it is likely that a warning would have alerted him to the common issues arising in relation to binary options and unregulated high*

*risk investment dealers, which in turn would have revealed the truth behind his supposed broker's (mis)representations — i.e. that they were not really regulated UK investments but highly-risky bets more akin to a wager in which the broker must lose if he is to win. So before Mr E made any further payments, he would probably have stopped in his tracks. But for HSBC's failure to act on clear triggers of potential fraud or financial harm and its failure to appropriately assist Mr E with processing chargeback claims when he initially requested them, Mr E would probably have not lost any further money. And would have likely recovered the £15,000 he had already paid through the Visa chargeback scheme.*

### *Contributory negligence*

*Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).*

*In the circumstances, I do think it would be fair to reduce compensation on the basis that Mr E should share blame for what happened. I don't think Mr E could reasonably have known that Ashford Investments were scammers when he opened a trading account with them, there was no adverse information about them at the time. But Mr E said he suspected Ashford Investments were scammers when they didn't allow him to withdraw his money which I've noted was after his payments of 21 November 2017.*

*Whilst I can see why Mr E was persuaded to invest further by being permitted to make withdrawals totalling £1,100 in between November 2017 to December 2017 (before he made further payments) and was promised reimbursement with further payments, he had suspicions this might be a scam.*

*I think it would be fair to reduce compensation by 15% on the basis that Mr E should share some blame for what happened. I've taken a view that 15% is appropriate because whilst Mr E had concerns about Ashford Investments, I think HSBC (a financial professional) alleviated some of these concerns by suggesting that he re-engage with Ashford Investments to see if they would permit withdrawals and add bonuses to his account. It should have known that they would likely provide token withdrawals to keep Mr E investing further, so I think it provided reassurance that Mr E should continue to communicate with Ashford Investments. And in my view, this enabled Mr E to be scammed further.*

*But I have to recognise that Mr E said he questioned his personal judgement in continuing to invest with them based on the behaviour of his broker and it would be fair that he shares (a much lesser proportion) of the blame here*

*Finally, I think HSBC should pay Mr E £200 compensation for how it handled his initial chargeback requests. I think it could have stopped the scam in its tracks on 23 November 2017 but instead, it provided poor advice to Mr E which enabled him to be scammed further. This was avoidable and caused Mr E trouble and upset because by the time he contacted HSBC again in January 2018, he was unable to obtain the evidence required to process a successful chargeback claim because he'd lost his money.*

### **Responses to my provisional decision**

HSBC didn't reply to my provisional decision.

Mr E replied to my provisional decision and added some additional points. In summary he said:

- He tried to gather as much information as he could from Ashford Investments and the police officer he reported the matter to agreed the tactics were both harassing and menacing.
- 15% contributory negligence does not portray the whole picture for HSBC's failings in relation to chargeback and fraud prevention. It is an international corporate bank.
- The entire matter has caused him unnecessary stress and illness.

### **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 done so, I remain satisfied that this complaint should mainly be upheld.

I have no doubt that Mr E had a harrowing experience with Ashford Investments and in his initial dealings with them, he couldn't have reasonably known they were scammers. However, Mr E realised quite quickly that they could have been scammers, this was in his testimony. So whilst I agree that HSBC failed to correctly explain the chargeback process to Mr E in his initial calls to it and it could have identified that he'd fallen victim to a scam, I have to take into consideration that Mr E chose to pay Ashford Investments more money despite having concerns they were scammers.

Having said that, I do appreciate Ashford Investments alleviated some of Mr E's concerns about being unable to withdraw money from his trading account by permitting smaller withdrawals. I also appreciate by HSBC providing what I consider to have been incorrect advice – this contributed to pushing Mr E back into the arms of the scammers. So when weighing all of this up, I have taken into consideration all parties contributing factors and in this case, HSBC is mostly to blame for the loss. But Mr E did contribute to some of his losses by continuing to engage with Ashford Investments which was against what he described as his own personal judgement. I therefore think a reduction of 15% is fair and reasonable in the circumstances of this complaint.

Having taken into consideration HSBC's failure in providing incorrect advice to Mr E about his chargeback options, I think it should pay compensation. I have taken into account that most of the distress caused to Mr E was the result of the actions of the cruel scammers, not HSBC. And because of this, I think £200 is a fair and reasonable sum to recognise HSBC's failings under the circumstances.

### **My final decision**

For the reasons set out above, I mainly uphold this complaint. HSBC UK Bank plc should refund to Mr and Mrs E all of their stolen payments – but subject to a 15% deduction for contributory negligence.

As Mr E received £1,100 in 'pay-out' inducements from Ashford Investments, these should be deducted from the overall settlement. This leaves a total loss balance of £23,900, so 85% of that would amount to an award of **£20,315**.

The funds originated from Mr and Mrs E's newly opened current account and they required easy access to that money. HSBC should add interest to that sum (less any tax properly deductible) at 8% simple per year from the respective dates of loss to the date of refund. HSBC should also pay £200 compensation to Mr and Mrs E.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Mrs E to accept or reject my decision before 15 July 2022.

Dolores Njemanze  
**Ombudsman**