

## The complaint

Mr and Mrs S complain that HSBC UK Bank Plc hasn't reimbursed them for money lost to a fraudulent investment.

## What happened

This complaint relates to money lost on Mr S's sole credit card and from his joint account with Mrs S, using his debit card.

Mr S says he saw an endorsement from a celebrity for company B, who said they were an investment broker. He started with an initial lower deposit and then received a 'return' on the investment so he continued to deposit more sums. Mr S sent c.£26,000 from the credit card account and joint account over two weeks, with the vast majority sent over five days.

Mr S has described how B interacted with him, using pressuring tactics and guarantees of profits to get him to send these further funds. His account lost a large sum and he was then passed to different contacts who said they would recover this if he deposited more and they would pay him bonuses to match his deposit. He's also then described how he wanted to withdraw some funds and was told he couldn't until he'd deposited more money. When he explained he didn't have any more funds, he was told he couldn't withdraw his balance without this and then he was ignored by B. This is when Mr and Mrs S realised it was a scam.

HSBC looked into the scam, but said it couldn't help Mr and Mrs S. It said they didn't have the evidence for a chargeback claim. And that the credit card transactions didn't benefit from protection under Section 75 of the Consumer Credit Act 1974. Mr and Mrs S complained about this, but HSBC didn't change its stance.

Mr and Mrs S came to our service and our investigator ultimately upheld their case. He said that the credit card payments did benefit from Section 75 protection. And he said that the second debit card payment sent by Mr S ought to have triggered an intervention by HSBC, as it was unusual for this account. He felt this intervention would've unravelled the scam and stopped Mr S sending any further funds. And as Mr S had flagged the scam with HSBC while he was still actively dealing with B, he also considered that HSBC could've explained chargeback claims – and Mr S could've then successfully claimed the first payment back through this voluntary scheme.

Our investigator therefore concluded that HSBC should refund all the money Mr and Mrs S sent B, minus the initial payment they received back. He awarded 8% interest on the payments.

HSBC disagreed with the outcome. It maintained Section 75 didn't apply and said that Mr S hadn't taken the appropriate care or research before sending his funds. It disagreed the second payment should trigger and said that an intervention wouldn't have stopped Mr S as he was confident in B at this time. It highlighted that the celebrity had distanced themselves from this advert before Mr S says he saw it. And it disagreed with the interest rate applied. So the case has been 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.

### *Credit card payments*

I'm in agreement with our investigator that Section 75 does apply to these payments. By this time HSBC has received a number of final decisions from our service setting out our approach to credit card payments made to these types of scams. Testimony can be accepted as evidence with Section 75. And Mr S has provided paperwork he also received from B when he was depositing funds and believed he was trading with it. While we do hold evidence dated after the payments in question, I consider this evidence adds weight to Mr S's testimony around the false promises, sales tactics and pressure used by B in the earlier stages of the scam – as these are shown to happen in the later exchanges.

As HSBC doesn't agree it's liable to Mr S under Section 75, I've first considered the Act. In summary, it sets out that there must be:

1. a debtor-creditor-supplier agreement falling under section 12(b) or 12(c); and
2. a transaction financed by the agreement; and
3. a claim for misrepresentation or breach of contract related to that transaction;
4. but not a claim which relates to any single item which the supplier has attached a cash price below £100 or in excess of £30,000

First, there doesn't seem to be any dispute that a credit card account is a relevant debtor-creditor-supplier agreement under the Act. And, I'm satisfied here there is nothing that 'breaks' the debtor-creditor-supplier chain. There are three parties involved the scam, Mr S as the 'debtor', HSBC as the 'creditor' and then B is the 'supplier'.

The second consideration is whether the 'transaction' is 'financed' by the agreement. Mr S first deposited funds to open an account in exchange for being able to use those funds on an investment platform and being able to withdraw them as and when he wished. And then he later deposited more funds to profitably trade on that account and withdraw them as he wished. Given the exchange of money in return for certain contractual promises – I'm satisfied there was a 'transaction' for each of the deposits (the "deposit-transactions") as defined by the Act. And I'm satisfied the deposit-transactions did then finance the agreement, as it was these funds that enabled Mr S to obtain and use the 'investment' account.

Third, the claim must relate to the transaction and be for misrepresentation or breach of contract. Mr S's claim is that he was pressured and tricked into depositing the payments with B for its purpose of stealing his funds and pressuring/encouraging him to deposit more funds. And he was misled into depositing the funds as he believed he was genuinely trading, guaranteed a profit and would be able to access these funds. Mr S now says B is a scam firm and not a genuine investment broker. So his claim does relate to both misrepresentation by B as well as it breaching the contract he agreed.

Finally, the claim must not relate to a single item to which the seller has attached a cash price of less than £100 or more than £30,000. Here, the 'cash price' of the deposit-transactions is the value of each deposit-transaction. And in this case all are within the required bracket.

I'm satisfied that in this case Mr S deposited the funds as B made contractual promises to him about what would happen with these funds and what he would receive in exchange. So

Section 75 does apply in this case to the three credit card deposit-transactions. I've therefore considered whether Mr S has a valid claim for misrepresentation or breach of contract.

### *Misrepresentation*

Mr S claims that B misrepresented themselves as legitimate enterprises when this was not in fact the case. For a claim of misrepresentation to be successful it's necessary to show not just a false statement of fact was made, but that this statement induced Mr S into entering into the agreement with B.

I've reviewed Mr S's testimony as well as the evidence he's been able to supply of his conversations with B. Alongside this, I've looked at the Financial Conduct Authority (FCA) register and the International Organization of Securities Commissions (IOSCO) investor alerts portal. And wider information available now about B, such as articles and reviews of it which have been published since.

Mr S's testimony is corroborated by both other complaints of this nature and by specific complaints our service has received. And there are now many articles and reviews setting out that people have been scammed by B in the same way Mr S has described to us. So I find his testimony both plausible and persuasive. I can also see that in July 2018 B said to Mr S funds would be sent money back when the account was in profit, but despite it showing a credit balance after this, Mr S wasn't ever able to withdraw.

I've also seen that B offered Mr S a £10,000 bonus to match a payment it wanted him to make. But in the account terms it states he would have to have an account balance of at least 50,000 times this figure to withdraw any bonuses (so in this case over a billion pounds). The emails don't mention how bonuses work in practice. And I note the terms also state that if the required threshold isn't met, Mr S is able to request an "irregular withdrawal", which would just be what he's deposited minus any losses. But that B has no obligation to accept this. It's clear from Mr S's testimony that this is not how the account or withdrawal process were explained to him. And I'm persuaded this was misrepresented to Mr S, as I don't see why would anyone trade with a company that requires you to have made such an unrealistic profit to withdraw funds – and has no obligation to allow any withdrawal below this figure.

The FCA and IOSCO also have both published warnings about B. The FCA warning is from August 2018, so not something Mr S could've seen at the time. But this sets out B isn't regulated to act in the UK, but has been doing so. In terms of IOSCO, there's a warning from 2019. These warnings combined with Mr S's testimony and the articles and reviews I've seen lead me to seriously question whether any actual trades were being placed for Mr S, or whether in reality this was an elaborate scam simply designed to mislead people and steal their funds. It seems highly unlikely any legitimate firm would have so many negative reviews and warnings about it. And as Mr S was shown his account was trading and making profits, this is why he then deposited more funds. But this was not true and instead repeated misrepresentations by B.

Taking into account all of the above, I don't think B was operating a legitimate enterprise. This means that I think it made misrepresentations to Mr S – specifically that it was running a genuine enterprise through which he could have made an actual profit from the platform, that could be withdrawn. I'm also satisfied that if Mr S had known and understood the truth, he wouldn't have deposited any money. So he was therefore induced into the contract on the basis of these misrepresentations.

Mr S paid a transaction fee on each of his payments. I consider this loss a direct consequence of him making this deposit-transaction, as it wouldn't have occurred had he not

made the payment. And so I consider this should be included as a consequential loss of the misrepresentation.

I'm satisfied B misrepresented itself to Mr S and this induced him into the contract and into making all the deposit-transactions he did, plus paying the associated transaction fee. This means that under a misrepresentation claim, I'm satisfied Mr S is entitled to a reimbursement of all the funds he sent from his HSBC credit card due to these scams. I therefore don't consider I need to look at whether there was also a breach of contract by B in this case.

### *Debit card payments*

I've considered whether the second payment Mr S made to B from his joint account with Mrs S ought to have triggered, as the investigator has set out. And I'm in agreement with him that it should have. The limited account information HSBC has provided shows the second payment being for over £7,000. And as he'd already sent over £3,000 to B that same day, this meant he'd sent over £10,000 to a new, international payee in a very short space of time.

HSBC has said it wouldn't have known this payment was going to binary options and that by the time the second payment was sent it wasn't a 'new payee' anymore. But I don't agree. As all three debit card payments were made the same day, the payee was still new regardless of the 'trigger point' being a second payment. And it is still unusual for someone to pay the same payee multiple large payments in short succession, after all why couldn't these be simply sent as one payment. Considering the value sent and the fact this was a newly added, international payee, I think HSBC should've blocked the second payment and contacted Mr S.

HSBC has picked up on the fact Mr S has said he really started to trust B after the first few days. But at the point the debit card payments were made, he had only been interacting with B for two weeks and hadn't received any large sums back – so I don't think they were made at a time when HSBC couldn't have stopped Mr S with the appropriate warnings. After all B had given Mr S no reason not to trust it, but HSBC's warning would've done that.

I say this because, as HSBC has pointed out, Mr S also told us he found B through a celebrity endorsement that was proven to be fake. If HSBC had properly intervened I expect it to have asked Mr S about what he was doing and why. The payment went direct to B so it could see who he was paying. And I'm persuaded he would've explained about B and how he found it. HSBC, as the more experienced party, could then have given him a specific investment scam warning and also highlighted that not all these endorsements were genuine. I think Mr S then would've looked into B further and could've found for himself the comments from the celebrity saying that the firms using his image were a scam. I'm also satisfied he would've shared about the returns he was guaranteed, which should've been of concern to HSBC. And this would've meant he stopped investing with B.

As Mr S had already sent over £10,000, I think he would've come back to HSBC and asked for assistance, as he later did. I expect HSBC to have then explained to Mr S about the chargeback process, as he'd then believe he'd been scammed. And I can see that Mr S nearly had the required evidence he needed to put in a chargeback claim, despite not knowing what was fully required. So I think it's most likely he would've been able to supply the evidence required by VISA in June 2018.

The issue I can see with what Mr S did proactively evidence is that his images don't show the when they're taken. They show his available balance, the amount he's trying to withdraw and I've seen emails which also evidence him asking B for this withdrawal. I can see he's

always requesting to withdraw less than or equal to the available sum. But the issue is we can't see that the two things occurred at the same time. If HSBC had explained to him what was needed to meet the rules and submit a chargeback claim, I think it's most likely he would've been able to supply this. It seems he had access to his account until at least late August 2018, but possibly even longer considering other emails we hold. And the account he held showed the information required by VISA to submit this kind of claim.

I'm also satisfied Mr S would've had the funds from the first payment available, as he had only submitted it that day – and as per his testimony, which HSBC has itself relied on, he reported that the first few weeks were 'brilliant'. The terms allow him to attempt a withdrawal for the amount he's paid in minus any losses – and I'm satisfied he'd have had this amount available in mid-June, as it doesn't seem he'd suffered any great losses at this stage, he'd been misled into thinking he was very profitably trading.

I accept there's a possibility B would've defended this chargeback if it was made. But quite often scam merchants don't reply to these at all. And given the terms Mr S had agreed to, needing to make over a billion to be allowed to withdraw, if HSBC had pushed it to arbitration I think it's most likely VISA would've found in Mr S's favour. But as HSBC didn't give him this opportunity, he was denied this chance. Due to this I consider HSBC should put him in the position I consider it most likely he would've been in, so as if he'd successfully made a chargeback claim for the first debit card payment.

Since the view was issued our service has contacted Mr and Mrs S about the interest award. HSBC disagreed with awarding 8% simple interest as Mr S had pointed out the money used for this scam came from his ISA. I can see from his credit card statements that he did very quickly make repayments to the credit card to cover the investment amounts. And I accept his testimony that he moved this money from savings to spend. So on that basis I don't agree the interest rate applied is appropriate. This has been discussed with Mr and Mrs S and they have agreed that the ISA interest rate is what's fair in this case.

HSBC has also argued that for both accounts Mr S should have a deduction for his personal negligence, which it considers contributed to this scam. I've considered whether I do think a deduction is fair in this case, but I don't think it is.

There were no active warnings about B when Mr S first invested with it. And after completing an online search using a feature to show what would come up in a popular search engine for B in early June 2018, I haven't found negative reviews or concerns. While HSBC has some doubts about how Mr S came across B, I've seen a copy of the fake celebrity endorsement and it does list the newspaper Mr S recalls as somewhere they say they advertised. And HSBC hasn't provided any evidence this didn't in fact happen. I also haven't seen anything to suggest Mr S ignored any obvious 'red flags' before he invested the above funds, so I don't think he should have a deduction for contributory negligence.

## **Putting things right**

### *Credit card*

HSBC UK Bank Plc should reimburse Mr S all the payments he sent on his credit card and the associated transaction fees. I can't see he was charged interest on these payments as he repays this part of his balance in full almost immediately. Due to this, HSBC should award interest on these reimbursements at the ISA account rate from the respective dates of loss to the date it reimburses the funds.

### *Debit card*

HSBC UK Bank Plc should reimburse Mr and Mrs S the amount sent to B from their joint account including all associated transaction fees, minus the payment received from B in July 2018. HSBC should award them interest on these reimbursements at the ISA account rate, from the respective dates of loss to the date it reimburses the funds.

### **My final decision**

For the reasons set out above, I uphold Mr and Mrs S's complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 21 July 2022.

Amy Osborne  
**Ombudsman**