

## The complaint

Mr W complains that HSBC UK Bank Plc has refused to refund payments he made to what he believed was a legitimate investments trading company (Olsson Capital). Mr W made these payments using his HSBC Visa debit card.

## What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

In short, between March and April 2018, Mr W made several payments (using his HSBC Visa debit card) to what he thought was his trading account with Olsson Capital. At the time, Mr W believed they were a legitimate investments trading company. However, Mr W says, amongst other things, *'After two particularly large investments my account manager evaporated never to be seen or heard of again, there were anomalies on the trading platform and my money was characterised by OC [Olsson Capital] as loss in trading. The terrible truth struck home, I had been scammed.'*

Based on Mr W's bank statements, below are all the (international) payments concerned, which I have identified Mr W made using his HSBC Visa debit card (credits are in italics):

Date	Payee	Amount
9 March 2018	MP1.me*olssoncapit	£2,500
13 March 2018	olssoncapital	£1,871
13 March 2018	olssoncapital	£5,000
<i>16 March 2018</i>	<i>olssoncapital (credit)</i>	<i>£451</i>
<i>20 March 2018</i>	<i>MP1.me*olssoncapit (credit)</i>	<i>£940</i>
22 March 2018	MP1.me*olssoncapit	£10,000
22 March 2018	MP1.me*olssoncapit	£10,000
22 March 2018	MP1.me*weissfinanc	£10,000
22 March 2018	MP1.me*weissfinanc	£5,000
22 March 2018	olssoncapital	£10,000
22 March 2018	weissfinance.com	£10,000
22 March 2018	weissfinance.com	£10,000
27 March 2018	MP1.me*weissfinanc	£10,000
27 March 2018	MP1.me*wilkinsfina	£10,000
9 April 2018	B2G GMBH	£72,623
11 April 2018	B2G GMBH	£75,000
<i>20 June 2018</i>	<i>OLSSONCAPITAL (credit)</i>	<i>£5,000</i>
<i>20 June 2018</i>	<i>MP1.ME*OLSSONCAPIT (credit)</i>	<i>£10,000</i>
	<b>Total amount debited less credits:</b>	<b>£225,603</b>

Mr W asked HSBC to recover his money. Because this did not happen, he raised a complaint which he also referred to our service.

One of our investigators considered the complaint and upheld it. He thought that fraud triggers applied to Mr W's payment of £10,000 on 22 March 2018 (fifth payment in the above chain). He argued that there was no evidence to show HSBC provided Mr W with any meaningful warnings or gave him other reasons to doubt the legitimacy of the payments he made. The investigator held that this was a missed opportunity for HSBC to intervene, so he asked it to refund Mr W all the money he lost.

Mr W accepted the investigator's findings, but HSBC did not.

In the interest of conciseness, I will repeat HSBC's response here, which it has helpfully summarised its key points in the conclusions section of its submissions:

*Overall, we consider that that the adjudicator's view is unsupportable. As such, we do not accept that we should be held responsible for [Mr W's] loss for the following reasons:*

- The adjudicator does not take into account that the Payments were made to a series of different beneficiaries or that [Mr W's] own account to us was that he was dealing with three separate companies;*
- The adjudicator references the FSA Consultation Paper, but the standards applied in the opinion are inconsistent with this. He does not explain the basis for his conclusions. His conclusion that this was a scam simply because [Mr W] was paying an international payee and investing in binary options does not bear basic scrutiny and is inconsistent with other decisions being received from your service;*
- There is no justification for the conclusion that we ought to be responsible for all of the Payments when the adjudicator finds that we ought to have been concerned by the fifth Payment. Even on the basis of the adjudicator's reasoning (with which we do not agree) the award should be reduced by £19,371; and*
- The adjudicator's contributory negligence assessment is fundamentally flawed and unsupportable. [Mr W's] losses were directly referable to his failure to carry out any research and his actions were objectively reckless and inconsistent with how a reasonable person would have behaved, particularly given the sums he invested. The general principle that consumers must take responsibility for their decisions should be applied in the present case.*

As an agreement could not be reached, the complaint has been passed to me to make a decision.

**On 23 May 2022, I issued a provisional decision upholding this complaint in part. For completeness, I repeat my provisional findings below:**

[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 do not agree with the investigator that this complaint should be upheld in full. However, I do think it should be upheld in part. Further, because of the compensation limits I must observe, I am limited in terms of what I can direct HSBC to pay Mr W. I set out my reasoning below.*

#### Chargeback

*For completeness, I have considered whether Mr W had any chargeback rights regarding his payments. Having done so, I am not satisfied he did. I say this because Mr W does not have the necessary evidence required under the Visa chargeback scheme.*

### Unusual or uncharacteristic activity

*HSBC is aware of our general position on a PSPs' 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 W for the purposes of the Payment Services Regulations 2009/2017 ('the Regulations'), in force at the time. This is because they were made by Mr W using the legitimate security credentials provided to them by HSBC. These must be regarded as 'authorised payments' even though Mr W was the victim of a sophisticated scam. So, although he did not intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Mr W is presumed liable for the loss in the first instance.*

*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.*

*First, regulated firms ought reasonably to take notice of common types of scams. As long ago as June 2012, the Financial Conduct Authority's ("FCA") predecessor indicated – in its consultation paper entitled *Banks' Defences Against Investment Fraud: detecting perpetrators and protecting victims* – that it was good industry practice for firms to build up an updated watch-list of types of scams and potential perpetrators; and regularly to share "timely and detailed intelligence" with other banks, UK and overseas regulators, the police, etc. Whilst the regulator gave no specific timings, it is not unreasonable in my view to expect an international bank to update its watch-list and communicate internally to staff within, say, one month of an alert being posted by the FCA or on the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"). In my judgment, such alerts should automatically trigger alarm-bells – and lead to the payment being paused – pending further enquiries (and a possible scam warning) to the payer.*

### *Fraud triggers*

*In Mr W's case, the FCA's warning about Olsson Capital was published on 28 March 2018. This was before most of the payments concerned, and less than a month before Mr W's payments on 9 April and 11 April 2018. For these reasons, I do not think HSBC ought to have automatically blocked these payments.*

*Notwithstanding this, in light of the significant amount of Mr W's two (international) payments on 13 March 2018 for £1,871 and £5,000 – especially when taken together – I do think there are fraud triggers here.*

*It appears there was some issue with these payments. I say this because I have heard a telephone call between Mr W and HSBC about making a £6,871 (£1,871+£5,000) payment to Olsson Capital. During that call, amongst other things, HSBC provided Mr W with 30 minutes to make the payment mentioned.*

*In the course of the call, I would have expected HSBC to have asked Mr W suitably probing questions about the payment he wanted to make, rather than simply allowing him to do so – particularly given Mr W had mentioned Olsson Capital by name. If HSBC had done this, I do not doubt Mr W would have explained what the payment was for and what he was doing. In turn, HSBC would have had an opportunity to provide Mr W with a meaningful and robust scam warning – as well as, for example, informing him that it is common practice in the type of scam concerned, for the scammers to make token credits to induce the innocent victim into making further payments. Moreover, HSBC could have invited Mr W to check whether Olsson Capital were regulated by the FCA (as required at the time) and he would have discovered they were not.*

*I am of the view that had Mr W been told the above, this would have dissuaded him from continuing with the payment – which in turn, would have prevented the subsequent payments he made.*

*Further, I can see that Mr W also spoke to HSBC over the telephone about the £72,623 payment he made on 9 April 2018. Again, during this call, HSBC did not ask Mr W any probing questions about the payment, nor provide him with a scam warning. HSBC simply asked Mr W if he was satisfied with the beneficiaries' bank details – despite the payment being international and for a significantly large amount. I should also highlight the fact that at this point, the FCA's warning about Olsson Capital had been published (28 March 2018). Had HSBC questioned Mr W about the payment and what he was doing – I would have expected the FCA warning to come to light, which in turn HSBC should have put to Mr W.*

*In such circumstances, whilst HSBC had no duty to protect Mr W from a bad bargain or give investment advice, it could have invited him to check whether the payee was registered with the FCA. It could have also explained its own customer experiences with merchants like Olsson Capital in that customers would often be prevented from withdrawing available balances etc. 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 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; the Gambling Commission's December 2016 scam warning that "an unlicensed operator is likely operating illegally"; and Visa's business news 26 October 2017 and so forth).*

*There is no evidence that HSBC provided Mr W with any meaningful warnings or gave him other reasons to doubt the legitimacy of the payments he was making. It was a missed opportunity to intervene.*

### Causation

*If HSBC had asked Mr W what the payments were for and the basic surrounding context, it is likely they would have fully explained what they were doing and that everything had been done over the phone and online with the merchant. HSBC did not need to know for certain*

*whether Mr W was dealing with a fraudulent binary options 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, overseas binary options.*

*If HSBC had given a warning, I believe that Mr W would have paused and looked more closely into Olsson Capital before proceeding. It seems more probable that Mr W would have made further enquiries into binary-options scams and whether or not Olsson Capital were regulated in the UK or abroad. He could have discovered they were not and the various regulatory warnings about the risk of binary-options/forex scams (see above). In other words, I am satisfied that a warning from HSBC would probably have exposed Golden Market's [Olsson Capital's] false pretences, causing Mr W to stop 'trading' and preventing further losses.*

### 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). I do not place too much weight on general but arcane information in the public domain for reasons previously alluded to about the information imbalance between financial professionals and ordinary consumers.*

*In Mr W's submissions, I can see he says, amongst other things, "They [Olsson Capital] described themselves as new to the UK, situated in Canary Wharf and in anticipation of receiving FCA registration." Despite this, Mr W made payments to Olsson Capital. To my mind, based on what Olsson Capital had told Mr W – particularly about FCA regulation – he should have carried out further due diligence, rather than making the payments he did.*

*Therefore, I take the view that Mr W should bear some responsibility for what happened. And so, I think it would be fair to reduce compensation by 20%.*

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

Mr W responded to say he had nothing further to add. HSBC responded stating, in very broad summary:

- The provisional decision is formulaic and templated.
- It is unlikely that if HSBC had intervened, it would have been able to dissuade Mr W from continuing to 'trade'.
- There is nothing to show a link between Olsson Capital and the various merchants Mr W made payments to.
- The 20% deduction for contributory negligence I suggested is inadequate.

I will deal with each of these points in turn below.

### **What I have 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.

### *Formulaic and templated provisional decision*

HSBC should not be surprised to receive similar outcomes on cases with similar features. I say this because it is aware that the scams in question broadly follow the same pattern to lure people into what they are led to believe is a genuine investment. Where we find fraud triggers apply to a payment(s) – we will consider whether the bank concerned intervened and provided their customer with a relevant scam warning; and if it did not do this, whether such a warning would have made a difference in the circumstances. Our Service has found that in several cases, the outcomes will invariably be the same – save for some individual circumstances.

HSBC is reminded of its obligations to comply with DISP 1.4.2 – to appropriately analyse ombudsmen decisions concerning similar complaints it receives; and DISP 1.3.2A – to ensure that lessons learned as a result of determinations by the ombudsman are effectively applied in future complaint handling.

### *Intervention*

HSBC says, amongst other things, '[Mr W] *already knew that [Olsson Capital] were not FCA regulated (as acknowledged in the PD). Therefore the PD's conclusion that "had Mr W been told [to check whether Olsson Capital were regulated by the FCA], this would have dissuaded him from continuing with the payment – which in turn, would have prevented the subsequent payments he made" is undermined entirely by the fact that [Mr W] was armed with this knowledge from the outset but that this did not cause him to stop trading or to carry out further due diligence into the merchant and the type of investments he was dealing with.*'

HSBC has slightly taken what it has quoted from my provisional findings out of context. In any event, I acknowledge the point it is attempting to make here. However, if HSBC had provided Mr W with a robust and meaningful scam warning, it should not have simply set out the fact Olsson Capital were not FCA regulated. I would have expected such a warning to have gone further – for example, properly delineating the risks about potential investment scams. I say this in particular because during the period Mr W made his payments – there was more than sufficient information in the public domain about the very high risks associated with binary options including many warnings of potential fraud. This includes, but not limited to, FCA publications on the matter. Further, banks have more of an insight about the deceptive tactics companies such as Olsson Capital use – which should be highlighted to their customers and probing questions asked where necessary.

Therefore, had HSBC provided Mr W with a robust and meaningful scam warning, I am persuaded, on balance, that this would have dissuaded him from continuing with the payment concerned – which in turn, would have prevented the subsequent payments he made.

### *Link between Olsson Capital and other merchants*

Mr W has provided evidence showing his Olsson Capital account history. Having considered this, I am satisfied that there is a link between Olsson Capital and the other merchants he made payments to in order to deposit his 'trading account'. I say this because the payments in question tally up with deposits shown on Mr W's Olsson Capital account history.

I should highlight the fact that the evidence I am referring to is included in HSBC's business file which it provided to this Service.

### *Contributory negligence*

I acknowledge that Mr W could have done more to protect himself – particularly given the fact Olsson Capital are not regulated (albeit Mr W says they told him at the time that they were anticipating this). As a result, I have suggested a deduction for contributory negligence. That said, Mr W's own failings do not absolve HSBC of all its responsibilities as the financial professional in its relationship with Mr W.

For the reasons already given (and by other ombudsmen in other cases), it is not unrealistic to expect a bank to intervene when a customer's payments suddenly change pattern and become unusual or uncharacteristic when compared with the way the account has been run in recent times. Such activity is a clear indicator of potential fraud, so triggers the bank's obligations to monitor and undertake due diligence, which are independent of any duties the customer may also owe.

In Mr W's case, there were clearly issues with the payment I say fraud triggers apply to. This is highlighted in the telephone call which occurred between Mr W and HSBC referred to in my provisional findings – something which HSBC has not commented on in its response. Despite these issues, HSBC did not provide Mr W with a scam warning.

Apportioning liability for contributory negligence is not an exact science. With this in mind, I have reflected on the fact that although Olsson Capital told him they were anticipating FCA regulation – he nevertheless made the payments he did. Having done so, I am still satisfied that a 20% deduction is fair and reasonable in the circumstances of this complaint.

### **My final decision**

For the reasons set out above, my final decision is that I uphold this complaint in part.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £150,000, £160,000, £350,000, £355,000 or £375,000 (depending on when the complaint event occurred and when the complaint was referred to us); plus any interest and/or costs/interest on costs that I consider appropriate.

In Mr W's case, the complaint event occurred before 1 April 2019 and the complaint was referred to us after 1 April 2020 but before 1 April 2022 (it was referred to us in October 2020), so the applicable compensation limit would be £160,000.

If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

### **Decision and award:**

- I uphold this complaint in part. I think that fair compensation is £223,103, including any applicable transaction fees – but subject to a 20% deduction for contributory negligence; plus
- 0.10% interest on this amount from the date it was debited from Mr W's account until the date of settlement.
- To be clear, this includes all the payments Mr W made from 13 March 2018, less credits to his account.

*(Mr W says that the source of the money to fund the investment scam came from his savings accounts with HSBC UK Bank Plc and another bank. He also says the interest on both accounts was 0.10%.)*

**My provisional decision is that HSBC UK Bank Plc should pay Mr W £160,000; plus 0.10% interest on this amount from the date it was debited from Mr W's account until the date of settlement.**

**Recommendation:**

- I think fair compensation is more than £160,000, so I recommend that HSBC UK Bank Plc pays Mr W the balance.
- This recommendation is not part of my determination or award. HSBC UK Bank Plc does not have to do what I recommend. It is unlikely that Mr W can accept my decision and go to court to ask for the balance. Mr W may want to get independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 3 August 2022.

Tony Massiah  
**Ombudsman**