

The complaint

Mr W complains that HSBC UK Bank Plc won't refund money he lost to an investment scammer.

What happened

Mr W was looking to invest some savings. He met with a relationship manager at HSBC twice, once in October 2017 and then again in November 2017. He initially advised HSBC that he would be purchasing a property and looking to invest some of his remaining funds. During the second meeting, Mr W asked questions about Bitcoin investments and the HSBC relationship manager explained it wasn't something that HSBC offered. They agreed to meet again in the New Year. The relationship manager called Mr W on 17 January 2018, he requested that she call back in two weeks. The relationship manager called Mr W again on 31 January 2018 and a meeting was scheduled to take place a few weeks later.

Mr W carried out some research and came across Greenfields Capital (GC). They offered him an investment opportunity and advised that his capital would be insured but they couldn't guarantee any profits would be paid to him. GC said that they dealt with investments in Hong Kong and they had offices in Dubai and provided Mr W with evidence of their credentials and dealings with large well-established companies.

Mr W had discussions with GC for months, he'd built up a rapport with one of their agents and he answered all of his questions and pre-empted some. Mr W decided to invest with GC after he'd built up trust with them. Mr W was provided with an online GC trading account and could track his payments and log into his account independently.

Between January 2018 and March 2018 Mr W deposited just under £1.4m with GC using his HSBC current account. He paid three different beneficiaries which included GC directly using his Visa debit card, EVG Trading Limited using electronic bank transfer payments and Source Well Payments – using electronic bank transfer payments. He understood all the payments were being made towards his GC investment. During the same time period, Mr W received a total of just under £60,000 back from them.

Following Mr W's final payment in March 2018, GC gave Mr W a schedule of profits he was due to receive between May 2018 and June 2018. He was also told he'd receive the money he paid back by June 2018 and there would be a possibility of receiving around £3.2m for a matured property contract investment.

Mr W grew concerned when he didn't receive the profits he'd been promised. He called GC and was told his agent had been in an accident. He was told nobody else could process his payments.

Mr W started to carry out some independent research and saw reviews online indicating GC were scammers.

In August 2018, Mr W contacted HSBC and asked it to recover his payments. He complained that HSBC ought to have known GC were a scam company and should have done more to protect him.

HSBC contacted Mr W in September 2018 to obtain further detail from him about the scam and proceeded to contact the beneficiary banks in China and Hong Kong. HSBC said it couldn't process chargeback claims for Mr W because he had a relationship with GC. It further highlighted that it flagged some transactions and he confirmed that they were genuine and he'd be making more payments. HSBC concluded the transactions were authenticated by Mr W and it wouldn't be accepting liability.

Mr W referred his complaint to this office.

One of our Investigators reviewed the complaint and felt HSBC should have asked more questions when its fraud team flagged some of his online transfer payments and spoke with Mr W. She also felt it ought to have intervened in the earlier card payments. But she didn't think a meaningful warning would have made a difference to his decision to pay because Mr W was so bought into the scam.

Mr W didn't agree. He provided a comprehensive response and in summary said HSBC could have done a better job at intervening. It was a significant sum of money to pay in a short space of time and guidance from the regulator, relevant codes and good practice asserts a bank like HSBC should intervene and protect customers from fraud and scams and reimburse them when this has failed. He asked for the complaint to be passed to an Ombudsman for review.

The complaint has therefore been passed to me for determination.

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 don't uphold Mr W's complaint and I'll explain why.

Not every complaint referred to us as an investment scam is in fact a scam. Some cases simply involve high-risk investments that resulted in very disappointing returns or losses. Some investment companies may have promoted products – which were not regulated by the FCA—using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

Banks and other Payment Services Providers ("PSPs") have duties to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering (see below). But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice — and the FCA has confirmed that a fraud warning would not constitute unauthorised investment advice. So, the first question to resolve is whether GC was actually a scam.

I'm satisfied they were scammers, the Financial Conduct Authority (FCA) published a warning about them on 18 April 2018. For the avoidance of doubt, I don't think HSBC could

reasonably have known GC was a scam investment company prior to its regulator publishing a warning about them – there were no other credible warnings about them at the time of Mr W's payments.

Having concluded that this was a scam rather than just a 'bad bargain' I must now go on to consider four more issues in order to determine the outcome of the complaint:

1. Was chargeback an option to recover Mr W's losses?
2. Were the payments Mr W made out of character and unusual and should HSBC have intervened before processing any of them?
3. If so, would HSBC's intervention have made a difference and prevented or reduced the loss?
4. And if so, should Mr W bear some responsibility for the loss such that it would be fair and reasonable to reduce compensation proportionately.

Chargeback

Chargeback is relevant here because a number of Mr W's payments to GC were made using his Visa debit card.

Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. HSBC) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Mr W).

I think HSBC's decision for declining Mr W's chargeback claim was incorrect. Although Mr W had a relationship with GC, it ought to have considered chargeback claims in accordance with the relevant dispute 'reason code'. I'm satisfied reason code 13.5 was the most appropriate reason code in this instance because it covered scenarios relating to investment trading merchants refusing to allow cardholders to withdraw their available funds from their trading platforms. However, for HSBC to present a chargeback request using this reason code Mr W would have been required to produce dated evidence that he had available funds in his trading account on the same day he requested to withdraw them. I've not seen that Mr W had this evidence so it follows that I don't think he had any appropriate chargeback options and therefore, although HSBC used the wrong reasoning, I don't think it would have made a difference if it had tried to present a chargeback request correctly.

Were the payments unusual or uncharacteristic?

Whilst Mr W has made reference to the Contingent Reimbursement Model (CRM), this didn't take effect until 28 May 2019, i.e. after Mr W made all of his payments. It wasn't retrospective and therefore it's not applicable to Mr W's complaint.

It is common ground that Mr W authorised the scam payments in question here. I accept that these were 'authorised payments' even though Mr W was the victim of a scam. So, although he did not know he was being scammed, under the Payment Services Regulations and the terms and conditions of the 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.

It's clear there were fraud triggers here because HSBC's fraud department called Mr W on 8 February 2018 after he initiated electronic bank transfer payments to EVG Trading Limited. During the call, the fraud department asked Mr W whether he'd authorised the payment. He confirmed he had and that further payments would be made to the beneficiary.

HSBC's relationship manager recalled sometime after the meeting scheduled for February 2018 (which Mr W failed to attend), whilst reviewing his account, she noticed a number of high value payments from it. The relationship manager called Mr W (likely after the majority of the payments to GC had been made) and queried the amounts and frequency, cautioning it was highly unusual that Mr W hadn't met the person managing his investments. Mr W told the relationship manager that he'd done his research and was entirely comfortable with his investments which he was managing through an online platform.

HSBC's fraud department made a further call to Mr W on 7 March 2018 when he made his first electronic transfer payment to Source Well Payments. Mr W confirmed the payment was authorised by him and that further payments to the beneficiary would follow.

I think HSBC ought to have intervened in some of Mr W's earlier payments. On 25 January 2018, he made seven payments to GC totalling just under £60,000. These were significantly larger payments out of his account than usual and HSBC ought to have been concerned that Mr W's account was being subjected to unusual and uncharacteristic activity. I am satisfied HSBC ought fairly and reasonably to have intervened by calling Mr W to ask some questions about the nature and purpose of the payments before agreeing to process them.

Whilst HSBC's fraud department did have conversations with Mr W when the recipient and patterns of his payments changed (as I think it should have), I don't think it went far enough with the questions it asked and simply sought to confirm whether he'd authorised the payments. They were missed opportunities to appropriately intervene.

Would HSBC's intervention have made a difference and prevented Mr W's loss?

If HSBC had fulfilled its duties by asking suitably probing questions at the times it did and when I consider it ought to have flagged his payments as unusual, there is no reason to doubt that Mr W would have explained what he was doing and that the purpose of the payments were to invest. Not least because in later calls where HSBC did intervene, Mr W explained he was making investment payments and would be making more.

In such circumstances, whilst HSBC had no duty to protect him from a bad bargain or give investment advice, it should have asked Mr W some further questions to ascertain whether he was likely to be at risk of financial harm from fraud. I've thought carefully about the sorts of questions HSBC should've asked, bearing in mind the features of investment scams at that time.

At the time Mr W fell victim to the scam, investment scams carried common features. For example, the promise of unrealistic returns, receiving the opportunity to invest via an unsolicited offer and cold call or fake celebrity endorsement, with fraudsters often applying pressure to their victims to invest quickly and investors being unable to withdraw their available funds. These were also common features of binary options/forex trading scams – which were common types of investment scams at the time.

Against this backdrop I'd have expected HSBC to ask Mr W some questions to see if there were any signs that this was an investment scam (as described above). Had it done so, I'm persuaded Mr W would've explained he had been actively looking to invest sums that had credited his account since 2017. He would've explained he'd shopped around which included meeting with HSBC's relationship manager on two occasions.

I think Mr W would've also disclosed that he'd had time to think about the investment opportunity and had not been placed under any pressure to make a quick decision as he was in contact with GC for months before deciding to invest with them. Mr W would've explained he was investing in property and making overseas payments as his investments were overseas.

Upon receiving this information from Mr W, I'm not persuaded HSBC would've been concerned that Mr W was falling victim to an investment scam as there were no obvious indicators of what I consider to be well published investment scam types at the time. I accept the potential rate of return was higher than the rates a high street bank would've offered, but I've also noted the high returns were not promised and rather Mr W was told they could be received and his capital was insured. I accept some of the possible rates of return potentially indicated a high risk investment, which might not have been suitable for Mr W, but as I've explained, it would not have been HSBC's role to provide him with financial advice. And I've also noted that Mr W paid around £13,000 to a binary options dealer prior to making payments to GC, so he had some history of making large payments to high risk investments.

Nevertheless, I think HSBC should've gone on to ask Mr W what checks he'd done to establish the legitimacy of the investment.

I've thought very carefully about what Mr W would've likely said in response. We do have testimony from HSBC's relationship manager who explained that she'd queried this investment with Mr W and he said he'd done his research and was entirely comfortable with the investment. I think Mr W built such a level of trust with the GC agent that he considered them his friend (as advised by Mr W) and had seen documentation and literature about his investment. Mr W also told this service that he had full independent access to his trading account and could see all the deposits he'd made were reflected in his account.

So had HSBC asked Mr W what checks he'd done to verify the legitimacy of GC, taking into account Mr W's submissions and the evidence that's available, I think it's more likely than not he'd have disclosed that he'd carried out independent checks and was satisfied with his decision to invest with GC.

I think the more funds Mr W invested, the more bought in he was to the scam, so I don't think HSBC could have dissuaded him from investing during the later calls it had with him – even if it would have asked more probing questions as I think it ought reasonably to have done.

I also have to take into account that following Mr W's losses, he was cold called by a claims management company (CMC) who offered to get his money back. One of our Investigators let Mr W know that the FCA had published a warning about the CMC and explained that this

could be another scam. Mr W was still happy to continue to liaise with the CMC, despite this warning.

And so I think, even if Mr W did have concerns about investment scams following more appropriate conversations with HSBC, which for the avoidance of doubt I don't think he would have, I think it's more likely than not he would have directed his concerns to the agent he considered a friend at GC rather than an independent third party and that's because he trusted him. After all, he had discussed investments with an independent third party (the HSBC relationship manager) but decided not to discuss his GC investment with her when she contacted him, despite meeting her on two occasions to discuss investment opportunities.

It's also notable there were no credible warnings at that time about GC or property investment scams.

So overall, for the reasons I've explained, I'm not persuaded intervention from HSBC would've made a difference and prevented Mr W's loss in the particular circumstances of this case.

Given I've found that it's more likely than not a meaningful intervention from HSBC wouldn't have made a difference and exposed the scam, it is unnecessary for me to go on to consider whether Mr W should share any responsibility for the loss he incurred.

But I want to be clear that I understand Mr W fell victim to a very sophisticated scam. He is not to blame for this; the cruel scammers are to blame. I appreciate how disappointing this will be for Mr W and he will understandably feel aggrieved about his loss. But for the reasons set out above, I don't consider it fair to hold HSBC liable for this.

HSBC did what I'd expect it to do by attempting to recover the electronic transfer payments following Mr W's report. It was unfortunately unable to.

My final decision

My final decision is, despite my natural sympathies for Mr W's loss, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 October 2022.

Dolores Njemanze
Ombudsman