

The complaint

Mr B complains that HSBC UK Bank Plc (“HSBC”) have failed to refund over £43,000 he lost as part of an investment scam.

What happened

The details of this complaint are well known to both parties so I will not repeat everything again here. In summary, Mr B lost over £43,000 from his HSBC accounts after making several payments to a scammer “TorexFx” (also known as “42 Marketing Limited”) from his credit card, Bonus Saver account and his Advance current account:

Transactions from HSBC credit card:

Date	Merchant	Amount	Running total
01/01/2020	XCHANGEPRO	£2,614.83	£2,614.83
05/02/2020	XCHANGEPRO	£5,277.43	£7,892.26
Total			£7,892.26

Transactions from Advance current account:

Date	Merchant	Amount	Running total
10/01/2020	42Marketing Ltd	£7,500	£7,500
25/03/2020	42 Marketing Ltd	£5,000	£12,500
Total			£12,500

Transactions from Bonus Saver account:

Date	Merchant	Amount	Running total
24/01/2020	42Marketing Ltd	£5,000	£5,000
19/02/2020	42Marketing Ltd	£18,000	£23,000
Total			£23,000

Mr B realised he had been scammed when he was unable to make withdrawals and received no further contact from TorexFx.

Our investigator upheld the complaint. He thought that HSBC ought to have questioned Mr B about the £7,500 payment he made on 10 January 2020, as this ought to have appeared unusual and out of character. Had it done so, the investigator thought HSBC could have prevented the scam, so he asked it to refund all the payments Mr B made to the scammer. HSBC disagreed, so the matter was escalated to me to determine.

I issued my provisional decision on this complaint in October 2022. I said I was minded to uphold it and set out the following reasons:

First, I note that the payments Mr B made to the scammer via his credit card were not included in the original investigation carried out by the investigator. It isn't clear why,

as these payments also formed part of the same scam. And these payments all form part of the money that Mr B has subsequently lost to the scam, as the amounts spent on his credit card have since been re-debited by HSBC. Mr B also included the credit card payments in his original submissions to this service when outlining which payments he was disputing. As such, I will be considering them within my decision.

It is common ground that the disputed payments were 'authorised' by Mr B for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. This is because they were made by him using the legitimate security credentials provided by HSBC. However, I've considered whether the bank should have done more to prevent Mr B from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

I am satisfied there were enough 'triggers' in this case to have alerted a responsible regulated bank such as HSBC that Mr B's account was being subjected to unusual and uncharacteristic activity. There were reasonable grounds to suspect a fraud or scam, and therefore justify an intervention (such as phoning him in order to ask discreet questions about the nature and purpose of the payments).

I appreciate there was no warning about TorexFx or 42 Marketing Ltd on IOSCO's Investor Alerts Portal or the FCA website until after he had made his payments. So, I do not think HSBC ought to have automatically blocked the payments that were made to the broker. The first payment Mr B made as part of the scam was for £2,614.83 on 1 January 2020 from his credit card. This wasn't made directly to the broker but was instead paid to a cryptocurrency exchange platform ("XCHANGEPRO"). The amount wasn't particularly unusual, especially to have been spent on a credit card. So, I don't think this payment ought to have prompted an intervention by HSBC.

However, the second payment Mr B made to the scammer was from his HSBC Advance account for an amount of £7,500, which I do think was a trigger for potential fraud. This is because it was a large international payment being made to a new payee. The amount being paid was out of character for Mr B, as his previous Advance account statements show that he rarely spent over £1,000. The largest payment he had made within the 12 months prior was for £2,956.52 on 19 March 2019. Therefore, a payment of £7,500 represented a 150% increase in spending from his next largest payment.

So, I'm satisfied the £7,500 payment marked a significant deviation from Mr B's normal spending pattern, such that HSBC ought to have identified the transaction to 42 Marketing as unusual and uncharacteristic. Therefore, it would have been reasonable for HSBC to have properly questioned Mr B before processing the payment he made to the broker in order to satisfy itself that all was well. However, no attempts to contact Mr B were made by HSBC.

If HSBC had fulfilled its duties and carried out due diligence by contacting Mr B and asking suitably probing questions, there is no reason to suggest he wouldn't have been forthcoming about 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 invited him to check whether the broker was in fact regulated overseas as Mr B says they had stated on their website.

HSBC could have also explained its own customer experiences with merchants like

TorexFx, in that customers would often be prevented from withdrawing available balances. 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 investment scams, including many warnings of potential fraud.

If HSBC had questioned Mr B about the payment, it would have likely discovered that he had recently been directed by a third party broker to invest money via a cryptocurrency exchange (which is a very common hallmark of investment scams). It would have also become apparent that the second payment Mr B was attempting to make was via different means again. The broker was also purporting to offer services to UK customers such as trades in forex, commodities, stocks, bonds and exchange traded funds, yet they were not regulated by the FCA. Therefore, I think there would have been reasonable grounds for suspicion here, and HSBC ought reasonably to have provided a scam warning in light of the information known to it about scams at that time.

If HSBC has given a warning, I believe that Mr B would have paused and looked more closely into TorexFx before proceeding. I've seen little to suggest that he was willing to take high risks or had a history of speculative and high-risk investments or gambling. It seems more probable that he would have made further enquiries into investment scams and whether or not TorexFx was regulated in the UK or abroad. Mr B could have discovered they were not (indeed, he has since provided evidence to show that he approached CySec after discovering the scam to ask if the broker was regulated by them, to which he discovered they weren't). In other words, I am satisfied that a warning to Mr B from his trusted bank would probably have exposed the broker's false pretences, which would have prevented any further losses.

So, but for HSBC's failure to act on clear triggers of potential fraud or financial harm, Mr B would probably have not lost his money. I therefore intend asking it to refund all the payments Mr B made to the scammer (across his current account, savers account and credit card) from the £7,500 payment made on 10 January 2020 onwards.

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 have therefore considered whether Mr B ought reasonably share some of the responsibility for the loss he has sustained. HSBC submit that a deduction should be made from any refund awarded to Mr B as he failed to carry out sufficient due diligence before parting with his money. They also say his profession would have given him more knowledge than an average lay person looking to invest their money.

However, Mr B has explained that he did carry out research online about the broker before parting with his money. He said he did not find anything negative at the time. And having carried out historic searches of both TorexFx and 42 Marketing Ltd, it seems there was no other evidence (such as online forums) that Mr B could have found at the time that would have indicated the broker was not legitimate. So, even if Mr B failed to carry out sufficient due diligence, it wouldn't have made a difference here as it wouldn't have likely led to him discovering it was a scam. He had also been told about the broker by a family member (who has also been scammed) who at the time recommended TorexFx as a good investment opportunity due to the returns he appeared to be making.

I also do not think Mr B's profession means that he ought to have been less susceptible to the scam. He has explained that his role does not have anything to do

with financial risks and is simply operational. And I've not seen anything else to suggest that Mr B had prior knowledge that should have prevented him from falling victim to this sort of scam. He said he wasn't promised any specific returns from the broker that would have appeared unrealistic, and said the returns seemed to match what the markets were showing at the time.

Therefore, I'm not persuaded there was any contributory negligence on this occasion; Mr B was simply the unwitting and blameless victim of a clever fraudster. The bank was the professional in financial matters; Mr B was a layperson. Therefore, I do not consider it would be appropriate to reduce compensation in these circumstances.

Finally, given that the majority of the scam payments were bank transfers made directly from Mr B's accounts, I have also considered whether HSBC ought to have considered refunding the payments under the Contingent Reimbursement Model (CRM) Code. However, given the payments were either made via Mr B's credit card or via international transfer, the Code would not apply to any of the transactions.

I note that Mr B disputed the credit card payments with HSBC, which have since been re-debited from his account. And I understand he has raised a separate complaint to HSBC about its handling of this, as it failed to tell him it would be taking back both credits that had been applied to his account. As this forms the basis of a separate complaint, I'm unable to address this here as HSBC have not had a chance to respond to it.

However, I have thought about whether HSBC could have done more to recover Mr B's credit card payments via either a chargeback or section 75 claim. However, in these circumstances, Mr B used his credit card to pay a legitimate crypto-exchange platform (XCHANGEPRO) before the funds were subsequently transferred on to the scammer. So, he wouldn't be able to make a successful chargeback claim in these circumstances because the company he paid has seemingly provided the services as intended (i.e. the purchase of cryptocurrency). Therefore, I do not think HSBC were under any obligation to pursue a chargeback claim for Mr B.

Similarly, in terms of a potential claim being made under section 75 of the Consumer Credit Act 1974, the Act requires there to be a debtor-creditor-supplier agreement in order for a successful claim to be made. However, in these circumstances, the recipient of the funds from the credit card was the crypto platform; it was not TorexFx as the supplier. And given there's no evidence (such as representation documents or declarations of deposit) to demonstrate that the payments were made to TorexFx from Mr B's credit card, there is therefore no valid debtor-creditor-supplier agreement, and neither is there a transaction that has been financed by that agreement in these circumstances. As a result, any section 75 claim would have likely failed, so I do not think HSBC have acted unreasonably by failing to pursue such a claim either.

I invited further comments and evidence from both parties. Mr B responded accepting my provisional findings. HSBC offered no further comments by the deadline set in my provisional 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.

Given that neither party had any further comments or evidence to submit, I see no reason to

depart from the conclusions set out above.

I therefore uphold this complaint and will be asking HSBC to put things right for Mr B in line with my directions below.

My final decision

For the reasons given above, I uphold this complaint and direct HSBC UK Bank Plc to:

- Refund the payments Mr B made to the scammer from 10 January 2020 onwards:
 - For the payments made from Mr B's Bonus Saver account, HSBC should also pay interest at the applicable account rate from the date the payments were made to the date of settlement.
 - For the payments made from Mr B's Advance account, HSBC should also pay 8% simple interest per annum from the date the payments were made until the date of settlement.
- Refund Mr B the £5,277.43 loss incurred from his credit card and rework his account to reimburse any interest and charges levied as a result, as though the payment had not taken place.
- Pay 8% simple interest per annum on any payments Mr B made towards this credit balance as a result of the scam, from the date he paid them to the date of settlement.

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

Jack Ferris
Ombudsman