

## The complaint

Mr B is unhappy HSBC UK Bank Plc hasn't reimbursed funds he lost from investment scams.

## What happened

Mr B completed an online enquiry and was contacted by three companies he believed were linked about investment opportunities. He invested with firm T, then firm A (and firms linked to A) and finally firm N, all between May 2018 and September 2020. Mr T has explained he realised he'd been the victim of a scam with N when he attempted to withdraw his profits £1.5 million - and was asked to pay more and more fees to access this money. As he considered all the firms were linked, he then complained all the investments were scams.

HSBC referred Mr B to its fraud department when he complained and then he came to our service. Our investigator partially upheld Mr B's complaint. Both Mr B and HSBC disagreed and asked for an ombudsman to review the case.

I issued a provisional decision on this complaint in mid-January 2023. My findings were as follows:

*I'm issuing a provisional decision on this case as whilst Mr B has told us he began investing with T in July 2018, I can see from his statements that isn't the case. The first transactions are from May 2018, which changes how we would approach this investment. I have reached a different outcome on the payments surrounding A and have included further information about N.*

*While Mr B has explained why the three scams were all linked, I'm satisfied they should be treated separately. I can see he was dealing with individuals at each firm directly, so while I accept he may have been introduced to the firms through one form, he then dealt with the firms as individuals. And as our investigator set out, there were large gaps between each investment, so gave Mr B an opportunity to have further/new conversations and invest in a different company.*

### Investment 1 - T

*From his statements, Mr B invested with T between May and December 2018. As our investigator explained in her view, the FCA published a warning about Ton 21 May 2018. This is around a week before Mr B first invested with it. We consider that financial firms should have a system in place to look out for FCA warnings and update their records accordingly when these appear, but we do give them a period of time to do so. So it wouldn't be until the end of June 2018 that we'd say HSBC ought to have a process set up that blocked any payments directly to T.*

*I have considered whether any of the payments before this date ought to have triggered an intervention by HSBC, as it has a duty to monitor customer accounts and to look out for unusual or uncharacteristic payments, in order to attempt to prevent fraud. The first payment Mr B's sends to T is £3,500, but the previous month*

he sends a £3,000 payment to a foreign exchange firm. And in January he sent c.£3,200 to another organisation. So I can't say this payment in itself is unusual - it's not substantially higher than other payments he'd sent. However, the second payment, which was sent in June 2018, was for £7,750 and I consider this ought to have been stopped and Mr B been called.

Looking back at the previous months, £7,750 is an unusual amount for Mr B to send. There's only one other payment around this value and it's from July 2017, so nearly a year before. Considering that the payment is unusual, and that T is a new, international payee I think HSBC ought to have intervened. I'd expect the advisor to have asked Mr B questions about this payment and what he was doing. HSBC had access to the firm name and I'm satisfied Mr B would've been honest about what he was doing. So he'd have said he was newly investing with T, after it contacted him due to an enquiry form he'd completed online. I think HSBC then ought to have explained about the FCA register and warnings lists, and suggested Mr B look into these. And also the importance of regulation with investments.

Considering this was Mr B's first investment opportunity through the online enquiry he'd made, and he was about to send a large sum of money, I think he'd have listened to HSBC's warning and as a result done additional research. I'm satisfied he'd have then found the FCA warning. This sets out that T didn't have authorisation, says to be wary of it and provides information about scammers. I'm satisfied seeing this warning would've meant he didn't continue with this particular investment - due to the risks he'd perceive, after the information provided by HSBC in the call.

### Investment 2 - A

I've then thought about the second investment opportunity with A. While I've concluded Mr B wouldn't have continued with T, this doesn't mean he wouldn't have invested again elsewhere. This case deals with three separate companies and so I'm satisfied they would have been able to present themselves as such and so Mr B wouldn't necessarily have stopped investing all together after T. This is also because, while I accept Mr B would've been more cautious around his enquiry following what happened with T, A would've been able to show him that it didn't have the same regulatory issues.

Mr B invested with A between September 2019 and January 2020. It was regulated abroad at the time Mr B invested with it. And it was allowed to offer investment services in the UK until June 2020. It was only in June 2020 that Cyprus Securities and Exchange Commission (CySEC) confirmed that A, and the firms associated with it, had decided to cease investment opportunities for UK customers. This meant they no longer held passporting rights (and so stopped having FCA authorisation). This is therefore a very different firm to T, as at the time Mr B invested with A, it was authorised to offer its services in the UK. I can see from Mr B's statements that he received a payment from A at the end of June 2020, so it was likely paying him any funds left in his account, as it closed its UK accounts and stopped dealing with these customers. This firm is therefore not a scam, but a genuine, overseas investment firm.

Mr B did send some larger payments to A. But even if HSBC had contacted him about these, I think he'd have confirmed what he was doing and received similar advice - to do research and look at the FCA website so he could check he wasn't falling victim to a scam. HSBC doesn't have a duty to protect customers from bad bargains or risky investment decisions. I accept Mr B lost a large sum with A, but for the reasons I've explained above, that doesn't make it a scam. It was authorised, but

*offered very high-risk investments. HSBC didn't need to automatically block payments to A or research it and how it operated for Mr B. And I don't think Mr B would've stopped investing as a result of a call, as if he'd done the suggested research, he'd have seen the firm he was investing with was authorised.*

### *Investment 3 - N*

*I've then considered the final investment firm, N. Mr B invested with it between July and September 2020. Mr B didn't invest with N directly, but used genuine cryptocurrency exchanges to send money to a wallet in his name and then moved the funds to N.*

*I've found a warning about Non the International Organisation of Securities Commissions (IOSCO) Investor Alerts Portal. This is from the Swiss Financial Market Supervisory Authority, FINMA, stating that N isn't on its commercial register. N has no FCA regulation and from the paperwork Mr B held, it was based in Switzerland. However this warning was posted on 29 September 2020, so six days after Mr B has told us he stopped investing with N. So this information wouldn't have been available to him at the time of investing. Considering this warning and the fees N requested from Mr B to withdraw his 'profits' - which were unrealistically exponential considering what Mr B invested in such a short time - I am satisfied N was most likely a scam.*

*I've thought about whether the payments to N ought to have triggered HSBC to intervene. I'm in agreement with our investigator that the payment on 31 July 2020 ought to have prompted HSBC to call Mr B. While he did have some higher-level spending on his account in the months just prior, this was a single payment to a cryptocurrency exchange for £10,000. So I've considered whether this call would've prevented Mr B investing further with N.*

*HSBC should've enquired with Mr B about what he was doing and why. But there are no warnings about N from when Mr B was investing, so even if he had told them that he was moving money from his cryptocurrency wallets to N, I don't consider there are clear indications to HSBC that this was a scam. At this time, Mr B had invested with A using the same enquiry process. And A offered very high-risk investments, so it seems Mr B was confident with the kind of high-risk investment cryptocurrency presented. While he wasn't investing with A anymore, he hadn't reported it as a scam at that time. And as he's explained contact came through the same enquiry, it doesn't seem he would've presented any concerns to HSBC if questioned about what he was doing or how he found out about N.*

*N is distinct from both T and A in that this investment related to cryptocurrency trading. This didn't require UK regulation, so while I accept Mr B would've taken some learnings from his experience with T, he wasn't investing in the same way. And he was aware of this, as he was purchasing cryptocurrency directly from legitimate exchanges to then invest. So I'm not satisfied that a call from HSBC would've prevented Mr B going ahead with this investment. He'd have had confidence based on his experience with A and at this time was more experienced with investing in general. Despite high losses with T and A Mr B chose to invest again and in another high-risk area. While HSBC could give a general scam warning, there isn't anything it could've known about N that would've meant it needed to refuse to process the payments. And in the same way, there was also nothing online to cause Mr B concern and stop him investing. So I don't consider he is due any reimbursement for the funds he sent to invest in N, as I don't think HSBC made a mistake in processing these at the time.*

### Recovery options for all the firms

*The majority of the payments Mr B made into these investments were by VISA debit card, so the recovery option here would be VISA's chargeback scheme. In order to make a successful chargeback claim for the first payment to T, Mr B would've needed specific evidence and for T not to have successfully defended the claim.*

*I've considered what I think most likely to have happened and from my experience of these cases, it's unlikely Mr B would've been able to recover the first payment. I can't safely say that he would've been able to produce the required evidence - what is required is very specific and scam firms often operate in a way that makes this hard to acquire. Or that even if a claim had been made, it then would've then been successful - we have seen scam firms including T defend these cases to banks in the past. So I can't say HSBC missed an opportunity to recover these funds in this case.*

*As A was a legitimate firm, I don't think Mr B could've successfully claimed the card payments he made towards it back - a chargeback claim wouldn't have succeeded in this situation. Some of the payments to A are not card payments, but the same logic applies here. A was a genuine firm, so any other recovery options also wouldn't succeed, as it wasn't a scam firm and Mr B was able to invest his money as intended.*

*Then coming to N, while I accept it was a scam, Mr B didn't pay it directly. He paid cryptocurrency exchanges from his HSBC account and moved the money from them to the scam firm. He did receive the service paid for from the exchanges, so he couldn't successfully recover these funds either.*

### Contributory negligence

*As I'm partially upholding this case and intending for HSBC to reimburse some of the payments Mr B made to T, I've then considered if Mr B should bear any responsibility for his losses to this investment.*

*As I've set out, the FCA published a warning about T before Mr B sent his first payment. So if he had done research himself, it's likely he'd have found this warning. It comes up in the first entries when you search the firm name. However I do accept that he may not have fully understood the significance of it at the time - as many people aren't aware of the warning list and its importance. But finding this warning in itself should have been a concern to Mr B - he provided it to us as part of his initial submission, so he did find it at a later date. So I consider he did miss an opportunity to prevent himself being the victim of this scam, meaning a deduction is fair in this case.*

*I've considered what proportion Mr B should be held accountable for and I think 25% is a fair deduction. I don't consider he should share equal responsibility with HSBC as it has suggested. I can't fairly say that Mr B not doing full research should hold the same weighting as it failing to act in its duty of care to monitor customer accounts and to step in where there's a risk of fraud. Especially when HSBC is the party with far more experience and knowledge around the type of scam Mr B fell victim to. But I do recognise that some research likely would've shown concerning results, hence the deduction.*

HSBC responded accepting the provisional decision.

Mr B responded rejecting it and setting out the rules and codes he considered HSBC should've followed. He also said that his age made him vulnerable and that HSBC should've done more. He felt it should've been aware of the foreseeable risk due to its extensive experience, especially in comparison to his low experience and skill in this area.

As both parties have responded to the provisional decision and the deadline has passed, the case has now been passed back 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.

While I have read Mr B's further submissions in detail, they don't change my findings in this case. Mr B hasn't responded specifically to the points in my provisional decision but has instead provided general principles, rules and codes which he considers HSBC needed to follow. I had already reviewed the relevant parts of these before issuing my provisional decision. And, for example, in the decision I set out why I didn't consider A was in fact a scam at all. Mr B hasn't explained why he disagrees with this, or provided any evidence to counter my findings.

I'm satisfied I have already covered off what Mr B has said in response to the provisional decision. It's not in dispute that HSBC has a duty of care or that it has in this case failed in that duty at times. And that is the reason I partially upheld this case. But HSBC is not responsible for high-risk investment decisions with genuine firms. Or for all the payments Mr B made. I've set out at which points I do think payments ought to have triggered interventions, but then the next step is to ask would this have stopped/unravelling the scam. For T, I felt it could have, but not for N, so then there is no refund due for anything paid to N.

Mr B has said that his age made him more vulnerable to this kind of scam. But he proactively went looking for investment opportunities. And as above, A wasn't a scam at all, it was a regulated high-risk investment and he's said he was introduced to all three investments in the same way. So I can't see that his age really played a factor in this or that HSBC needed to do anything differently in this case because of it. So my findings remain the same as in my provisional decision and I still only partially uphold this case.

### **Putting things right**

HSBC UK Bank Plc should reimburse Mr B for the payments he made to T only from the second payment on 12 June 2018 onwards, minus 25% for contributory negligence. No interest award is due on this payment.

### **My final decision**

For the reasons set out above, I partially uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 February 2023.

Amy Osborne  
**Ombudsman**