

## The complaint

Ms F complains that HSBC UK Bank Plc (“HSBC”) have failed to refund over £23,000 she says she lost to 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 brief summary, Ms F says she invested over £35,000 with a merchant called Tradeo, which she paid using her HSBC debit card, but says she has since discovered was an investment scam. She was able to recover around £12,000 and said HSBC should refund the remaining loss, as it ought to have prevented her from falling victim to the scam.

HSBC refused to refund the amount as it said Ms F had authorised the payments, and that Tradeo was a legitimate trading company, such that there was little to suggest she had been scammed or that any scam warning would have prevented her from making the payments. Our investigator didn’t uphold the complaint. She also didn’t consider there to be enough evidence to suggest that Ms F had been scammed given that Tradeo was a legitimate trading merchant that was regulated overseas. Ms F disagreed, so the matter has been escalated to me to determine.

## 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.

I would like to reassure the parties that although I have only set out the key points, I have read and considered what’s been provided. Having done so, I agree with the conclusions reached by the investigator for the following reasons:

- The relevant regulations and industry guidance makes it clear that banks have a duty to protect consumers from the risk of financial harm, including fraud and scams. But the obligation to warn customers of the risk of such financial harm will only reasonably have been engaged if there were sufficient grounds for suspecting the payee was a fraudster; meaning that HSBC could have delayed the payments while concerns about the payee were discussed with Ms F.
- So, I would need to be satisfied that Tradeo was operating a scam when these payments were made from December 2020 onwards in order to expect HSBC to have done anything further here. When determining this, I’ve borne in mind that certain high-risk investment traders (such as CFD merchants) may use sales methods, or communication styles that can be seen to be unfair. Especially, when considering the financial losses incurred because of a disappointing return on an investment that’s been promoted. Even so, not all complaints to us involving CFD merchants are in fact a scam. While the ways and means of these businesses can be viewed as unreasonable or even unethical – that doesn’t necessarily mean they amount to the high legal threshold or burden of proof for *fraud*.

- I've consulted the official organisations that publish warnings about merchants that operate in the UK and abroad, including the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"), as well as the FCA's own warning list. These watchlists, along with other reputable sources, lead me to believe that there were no warnings about Tradeo at the time these payments were made. Rather, the evidence demonstrates that Ms F's money went to a legitimate business that was regulated in another jurisdiction at the material time (and continues to be so now). Tradeo is operated by U R TRADE FIX Ltd, which was also registered with the FCA. Illegitimate or illegal firms set up with the intention of scamming consumers are highly unlikely to submit themselves to regulatory oversight.
- I've taken into consideration the concerns Ms F has raised about the techniques employed by the broker she was dealing with, who took control of her computer and applied high pressure sales tactics to persuade her to invest. But while this practice may be unethical, her money was still invested in a legitimate trading platform, so it still cannot be said that it was lost to a scam. Indeed, I can see from the merchant's response to Ms F's chargeback that she even had 10 trades close with a profit (albeit several others with a loss).
- Overall I'm not persuaded Tradeo was fraudulent or operating a scam. As a result, HSBC's duty to intervene wasn't triggered. There was the inevitable risk of Ms F's investments returning a loss, based on market performance. And I can see that this risk is also stated on Tradeo's website, where it explains that CFDs come with a high risk of losing money rapidly. I understand Ms F may be unhappy with the company she has invested with, but the respondent to this complaint is HSBC, so I can only consider and comment on the actions of the bank within this decision. HSBC isn't required to protect its consumers from the risk of financial loss due to investment choices or bad bargains. Therefore, I don't consider HSBC acted unfairly by failing to intervene in these payments. It follows that I will not be asking it to take any further action.
- I appreciate that Ms F also raised a chargeback in an attempt to recover her money, which HSBC duly pursued. However, I can see that this was successfully defended by the merchant, who had provided evidence of the services provided in response to the chargeback claim. As such, I don't think HSBC ought to have pursued her claim any further in these circumstances.

### **My final decision**

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 2 February 2023.

Jack Ferris  
**Ombudsman**