

The complaint

Mr F complains that HSBC UK Bank Plc refuses to refund the money he lost to an investment scam.

What happened

Around November 2017, Mr F was searching for a merchant that would allow him to invest in Bitcoin. He came across Greenfields Capital ('GC') and was interested in them as they offered a range of services – including investing in stocks, shares and currency. Mr F spoke with a broker from GC who offered a training programme – which Mr F completed. GC also offered Mr F a dedicated account manager who would guide him through his early trades and advised him he could withdraw his money as and when he wished.

Mr F realised he'd fallen victim to a scam towards the end of December 2017 when he tried to withdraw funds from his trading account and his account manager advised he'd not met the required trading volume to do so. This came as a surprise to Mr F. After further conversations with GC, Mr F was blocked from accessing his trading balance and when he regained access, saw that he'd lost a substantial amount due to trades that his account manager placed. He was still unable to withdraw what remained in the account.

I've included the list of disputed transactions below. These were made using Mr F's Visa debit card – linked to his HSBC current account.

Transaction No.	Date	Payee	Method of payment	Debits (£)	Credits (£)	Running Total (£)
1	28 November 2017	GC	Debit card	£1,000		£1,000
2	30 November 2017	GC	Debit card	£2,500		£3,500
3	30 November 2017	GC	Debit card	£9,000		£12,500
4	30 November 2017	GC	Debit card	£10,000		£22,500
5	12 December 2017	GC	Debit card	£7,499		£29,999
6	14 December 2017	GC	Debit card	£2,500		£32,499
7	14 December 2017	GC	Debit card	£7,500		£39,999
8	14 December 2017	GC	Debit card	£10,000		£49,999
9	18 December 2017	GC	Debit card	£7,500		£57,499
10	28 December 2017	GC	Debit card	£9,995		£67,494
11	28 December 2017	GC	Debit card	£5,000		£72,494
12	28 December 2017	GC	Debit card	£10,000		£82,494
13	29 December 2017	GC	Debit card	£9,995		£92,489
14	29 December 2017	GC	Debit card	£7,099		£99,588
15	5 December 2018	GC	Debit card		£3,500	£96,088
16	11 January 2018	GC	Debit card	£4,999		£101,083
Total				104,583		£101,083

In January 2018, Mr F contacted HSBC to report the scam and requested a refund of the disputed transactions. HSBC discussed processing chargeback claims on Mr F's behalf and requested supporting evidence from him. Once Mr F provided HSBC with supporting evidence it processed chargeback claims. These claims were defended by GC's bank. HSBC decided to escalate the claims to Visa's final stage of arbitration but Visa concluded Mr F hadn't provided the required documentation and deemed the claims 'invalid'.

Unhappy with the outcome and HSBC's lack of protection, Mr F referred his complaint to this service.

One of our investigators felt HSBC should refund Mr F's transactions, less any amounts returned/refunded. Mr F agreed but HSBC did not and asked for an Ombudsman's 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 uphold this complaint and I'll explain why.

Was Mr F scammed?

Banks have various and long-standing obligations to be alert to fraud and scams and to act in their customers' best interests. But these are predicated on there having been a fraud or scam. So, my first consideration must be whether Mr F was most likely scammed.

At the time GC offered its services to Mr F they would have been required to be licensed by the UK's Gambling Commission – but I've noted they were not, nor were they regulated or licensed in any other jurisdiction (as far as I'm reasonably aware).

I've noted the FCA published a warning about GC on 18 April 2018. There was also an earlier warning on the International Organisation of Securities Commissions (IOSCO) Investor Alerts portal dated 13 March 2018.

Taking everything together, I'm persuaded GC was operating a scam.

Prevention

As I'm satisfied that GC was operating a scam, I need to consider whether HSBC could have reasonably suspected that at the time of Mr F's payments.

It's common ground that Mr F authorised the scam payments in question here. He was tricked by the scammers into instructing HSBC to make the payments. I accept these were 'authorised payments' even though Mr F was tricked. So although he didn't intend the money to go to scammers, Mr F 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.

The first two transactions

I agree with our investigator's assessment that neither transaction 1 nor 2 appeared all that remarkable when considering Mr F's normal account spend. There is a balance to be struck but at the point of the first two transactions (international transactions of £1,000 and £2,500 to a new payee), I don't think HSBC could have reasonably concluded that Mr F could be falling victim to a scam. As there were no prior credible warnings published about GC, I don't think either transaction (which were broadly in keeping with Mr F's normal account spend) ought to have been flagged as suspicious by HSBC. Other than them being international transaction, I don't think they were unusual enough for HSBC to have had reasonable grounds to interrupt Mr F's instructions.

Transaction three

I think HSBC ought to have intervened at transaction 3. This was the second transaction on the same day to GC and was for £9,000 – bringing the total value of transactions to GC to £11,500 on that day.

I do think the size of transaction 3, coupled with it going to a new overseas payee ought to have flagged as unusual to HSBC. I've not seen Mr F make transactions of this magnitude - within a reasonable timeframe - having examined the statements provided by HSBC.

I think HSBC reasonably ought to have spoken to Mr F, before allowing the transaction through, and to have asked Mr F who the transaction was for, what it was for, and for the basic surrounding context, and to have then proceeded appropriately from there, with the intention to disturb or unearth a potential fraud or scam.

This transaction was substantially higher than any transactions Mr F had made leading up to the scam. Therefore, it would have been reasonable for it to have properly questioned Mr F before processing the transaction to satisfy itself that all was well.

If HSBC had fulfilled its duties by asking suitably probing questions, there is no reason to doubt that Mr F would have explained 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 explained to him that GC were required to be licensed by the UK's Gambling Commission in order to offer their services. And given that GC also offered other services that required FCA regulation, HSBC could have also advised Mr F that GC most probably required regulation to operate legitimately and pointed him to the direction of the FCA and the UK's Gambling Commission for further advice.

HSBC could have explained its own customer experiences with unregulated and unlicensed high-risk investment traders in that customers would often be prevented from withdrawing available balances. Whilst HSBC has pointed out that Mr F hadn't yet tried to make withdrawals at the point of transaction 3, he understood he could at any time, without restriction. Yet when he later tried to withdraw the full amount available on his trading platform, he was unable to. I think if HSBC had appropriately brought this to his attention,

he'd have likely paused and looked into this further, before deciding to part with any more of his funds.

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 trading, 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; and the Gambling Commission's December 2016 scam warning that "an unlicensed operator is likely operating illegally"; City of London Police's October 2017 report noting victims had lost 'over £59m' to binary options fraud; Visa's Business News publication of October 2017 where it expanded its chargeback scheme rules to cover binary options and investment disputes arising from merchants often unlicensed and unregulated deploying 'deceptive practices'; and so forth).

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

Credible regulator warnings were not published about GC until after Mr F made all his payments. But, given what I've said above, I think HSBC ought to have given Mr F a very stern warning indeed, including explaining how scams like this work, and the red flag surrounding the lack of licensing and regulation. And I do think that Mr F would most likely have listened and taken HSBC's warnings seriously and ceased payments to GC.

So, I think that if HSBC had done what it reasonably ought to have done, it's most likely Mr F wouldn't have proceeded with transaction 3, or any subsequent transactions to GC.

I've noted that Mr F made a further transaction of £4,999 to GC on 11 January 2018 (after he realised he'd been scammed). I've further noted at the time Mr F asked HSBC to assist him with recovering his money back from GC, HSBC advised Mr F to continue to try to withdraw from his trading account (in order to obtain the required chargeback evidence). Mr F explains that at the time he made his withdrawal request, GC offered to refund £5,000 to him but instead, they debited his account. So this doesn't alter my opinion that Mr F would have likely not invested any further funds with GC if HSBC had given a meaningful warning, not least because Mr F didn't (intentionally) invest any further funds with GC after he suspected he'd been scammed and only re-engaged with them on the advice of HSBC.

Did Mr F contribute to his loss?

I think this was a sophisticated scam and Mr F couldn't have reasonably foreseen that he was dealing with a scammer. Mr F was provided with training and what he believed was an experienced account manager to guide him through trades. Once Mr F was provided access to his trading account, he saw he'd made profits. I don't think he could have reasonably known that the trading balance was likely fake or a simulation – unless prompted by his trusted bank.

I've noted HSBC's comments that Mr F ought to have carried out further checks into GC before parting with a substantial sum of money. But what HSBC has failed to recognise is that there weren't any credible warnings about GC at the time Mr F paid them. I don't think Mr F could reasonably have had the insight that a financial professional like HSBC had into the operation of these sophisticated scams, simply because HSBC would have seen more examples than Mr F.

Overall, I don't think Mr F contributed to his losses, so I don't suggest the overall settlement be reduced.

Chargeback

As I decided that transactions 1 and 2 shouldn't have triggered HSBC's fraud detection systems, I've reviewed how HSBC handled Mr F's chargeback claims and whether it could have done more to successfully pursue *all* of his disputed transactions.

Chargeback is a voluntary scheme run by Visa (the scheme relevant to Mr F's debit card transactions) whereby they 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 each 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.

In this case, HSBC pursued chargeback claims on Mr F's behalf and escalated them to Visa's final stage of arbitration and Visa determined the claim was invalid as Mr F didn't produce the evidence required of the 'reason code'. I've seen that HSBC asked Mr F for the evidence required of the 'reason code' and Mr F provided as much supporting evidence as he could. These chargeback claims seem to have failed because Mr F's account balance screenshot and withdrawal evidence needed to be dated on the same day – whereas the evidence provided by Mr F was dated on different days.

Ultimately, as Visa had the final say, I can't say that HSBC could have done anymore than it did to help prepare and pursue Mr F's chargeback claims.

Putting things right

I've explained why I think, if HSBC had done what it reasonably ought to have done, Mr F would not have lost the disputed transactions.

HSBC should therefore pay Mr F £101,083. I've already deducted the credit received by the scammers. However, HSBC should examine its internal notes against Mr F's bank statements as its business file submissions indicate Mr F received a further credit of £5,000 from GC – I believe this was in relation to transaction 16, which Mr F believed would be credited rather than debited from his account. But HSBC hasn't provided any supporting evidence that this payment was received.

Providing this payment was not later re-debited through HSBC's chargeback claims, HSBC will be entitled to deduct credits from GC or successful chargeback claims made against the GC transactions that have not been accounted for. HSBC should provide Mr F with a breakdown of its calculations.

As Mr F was interested in investing in Bitcoin trading at the time he came across GC, I think it's likely that if he had decided not to invest with GC, he'd have likely invested with a legitimate company offering Bitcoin trading. Given the very high risks associated with crypto, it's likely Mr F would have lost money, so I don't think HSBC should apply any additional interest to this award.

My final decision

For the reasons set out above, I uphold this complaint and require HSBC UK Bank Plc to:

- Refund all the transactions made to GC (less any refunds received from GC or refunds received as the result of successful chargeback claims).
- Provide Mr F with a breakdown of its refund calculation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 26 May 2023.

Dolores Njemanze
Ombudsman