

The complaint

Mr G complains about HSBC UK Bank Plc.

He says that HSBC didn't do enough to protect him from becoming the victim of three scams that he fell victim to and would like HSBC to refund him the money he has lost.

What happened

In 2016, Mr G received an email advertising an investment opportunity with 'Ivory Option'. He responded as he was interested how the investment worked and was contacted by a 'broker'. Mr G was impressed with the 'broker' and how professional they seemed. He provided identification and signed paperwork and began to invest. Mr G was also able to make small withdrawals from his investment which persuaded him of the legitimacy of the 'company'.

In June 2017, Mr G was told that the company was rebranding to '72 Option' following a supposed crash and was persuaded to continue to trade with the 'new' company as he was told that even though he had lost money in the crash, he would be able to get this back.

However, Mr G was then pressured by his 'broker' to invest more money to achieve a certain turnover in order to make a withdrawal. During this time, he was paid out small amounts of money.

Then, Mr G paid a final £10,000 to be able to meet a certain 'threshold' Mr G and realised he had been the victim of a binary options scam.

He was then contacted by a separate company who informed him that it was dealing with funds that had been lost through Ivory Option and 72 Option. Mr G paid money through cryptocurrency to recover his funds. However, this too turned out to be a scam.

Mr G had by this time lost a significant sum of money and was desperate to try and recover his funds so began searching for ways in which to do this. He contacted a third company he found online which apparently specialised in scam recovery. Mr G paid money to this third company, but again realised that he had been scammed for a third time. Mr G complained to HSBC, but it didn't uphold his complaint.

He then brought his complaint to this Service and our Investigator looked into things but didn't think that it should be upheld.

Mr G asked for an Ombudsman to make a decision on the complaint, so it was passed to me.

I have previously issued a provisional decision on Mr G's complaint, where I explained that I intended to uphold it in part.

Mr G accepted this, but HSBC did not, and made further comments which I have taken into account and will address in my 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.

Having done so, I have decided to uphold this complaint in part, for the reasons set out in my provisional decision.

While I have taken into account what HSBC has said in response to my provisional decision, this hasn't changed the outcome I have reached.

As Mr G has unfortunately been the victim of three separate scams, I will deal with them separately.

Ivory Option and 72 Option

Mr G made the following payments to this first scam.

Date	Payee	Amount
7 October 2016	Ivory Option	£2,250
10 October 2016	Ivory Option	£250
4 November 2016	Ivory Option	£2,500
10 November 2016	Ivory Option	£7,500
2 February 2017	Ivory Option	£2,500
5 May 2017	Ivory Option	£7,000
9 June 2017	Ivory Option	£13,000
29 June 2017	72 Option	£1,000
3 July 2017	72 Option	£10,000
3 July 2017	72 Option	£250
	Total payments	£46,250
	Monies returned to Mr G	£2,946
	Total loss	£43,304

HSBC is aware of our general position on a PSP's safeguarding and due-diligence duties to protect customers from the risk of financial harm due to fraud. We have published many decisions on our website setting out these principles and quoting the relevant rules and regulations. It is unnecessary to rehearse them again here in detail.

It is common ground that the disputed payments were 'authorised' by Mr G for the purposes

of the Payment Services Regulations 2009 ('the Regulations'), in force at the time. This is because they were made by Mr G using the legitimate security credentials provided to him by HSBC.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider having 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.

I do understand HSBC's point about the dates the payments were made, and that at the time, it didn't have much experience of dealing with this kind of scam – however, as long ago as June 2012, the FCA's predecessor (the Financial Services Authority – 'FSA') indicated—in its consultation paper entitled Banks' Defences Against Investment Fraud: detecting perpetrators and protecting victims—that it was good industry practice for firms to build up an updated watch-list of types of scams and potential perpetrators; and regularly to share "timely and detailed intelligence" with other banks, UK and overseas regulators, the police, etc.

Whilst the regulator gave no specific timings, it is not unreasonable in my view to expect an international bank to update its watch-list and communicate internally to staff within, say, one month of an alert being posted by the FCA or International Organization of Securities Commissions (IOSCO). In my judgment, such alerts should automatically trigger alarm-bells—and lead to the payment being paused—pending further enquiries (and a possible scam warning) to the payer.

An IOSCO warning was published about Ivory Option in May 2016, and 72 Option in December 2016 – both more than one month prior to Mr G making payments. So, I'm satisfied that HSBC's fraud detection systems should have picked up the payments in question.

I would then have expected HSBC to contact Mr G and question him about what he was doing before acting on Mr G's request to satisfy itself that all was well.

I see no reason to think that Mr G would not have been honest with HSBC 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 explained to him the very high risks of getting involved with unregulated and unlicensed binary options dealers. It could have also explained its own customer experiences with unregulated and unlicensed high-risk investment traders 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

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").

I haven't seen any evidence that HSBC intervened in any of the payments that Mr G made to Ivory Option, or to 72 Option – so it missed an opportunity to intervene here.

If HSBC had asked Mr G what the payments were for and the basic surrounding context, it is likely he would have fully explained what he was doing and that everything had been done over the phone and online with his 'broker'. HSBC did not need to know for certain whether Mr G was dealing with a fraudulent high risk investment trader or investing in a legitimate (albeit highly speculative) product; reasonable grounds for suspicion are enough to trigger a bank's obligations under the various regulations and principles of good practice. I consider there were such grounds here and, therefore, that HSBC ought reasonably to have provided a scam warning considering all the information then known to financial professionals about the risks associated with unregulated forex and binary options dealers.

If HSBC had given a warning, I believe that Mr G would have paused and looked more closely into Ivory Option and 72 Option before proceeding. There is no evidence that he was willing to take high risks or had a history of speculative investments or gambling. It seems more probable that he would have made further enquiries into whether or not Ivory Option or 72 Option were regulated in the UK or abroad. He could have discovered they were not and the various regulatory warnings about the risk of unregulated investment scams (see above). In other words, I am satisfied that a warning from his trusted bank would probably have exposed the scam, causing him not to 'invest' and preventing any losses.

Even if he had not worked out that this was a scam, it is likely that a warning would have alerted him to the common issues arising in relation to binary options and unregulated high risk investment dealers, which in turn would have revealed the truth behind his supposed broker's (mis)representations — i.e. that they were not really regulated UK investments but highly-risky bets more akin to a wager in which the broker must lose if he is to win. So, before Mr G's payments were actually processed, he would probably have stopped in his tracks. But for HSBC's failure to act on clear triggers of potential fraud or financial harm, Mr G would probably have not lost any money.

I therefore consider that HSBC should refund Mr G £43,304 which was his net loss from this part of the scam.

I make no deduction for contributory negligence here as I do not feel it would be appropriate, given the circumstances – the scam was complex, and Mr G was not an experienced investor – whereas HSBC would have had more knowledge and experience of the type of scam that Mr G fell victim to.

HSBC's response to my provisional decision regarding Ivory Option and 72 Option

HSBC responded to my provisional decision and raised the following points which I have summarised below;

- Mr G had been in contact with the scammer since late 2015, and so was likely to be under the scammers spell by this point
- HSBC does not think that my provisional decision explains what law, regulation or guidance apply when reaching the conclusion that Mr G should be refunded the

payments. It considers that it is unreasonable to apply the approach that I have to payments from 2016 as it can find no record of such an approach before 2021.

- IOSCO alerts would require an exact match in order for them to be picked up by its systems – and minor discrepancies would result in its systems not picking up the payments – for example some payments were made to ‘72Options’ and not 72 Option
- The sheer number of IOSCO alerts is unmanageable and the FCA didn’t release an alert about Ivory Option until July 2018.
- It also says that the FSA paper I have referred to suggests that ‘strong grounds’ for suspecting a payee is a fraudster need be required for the obligations I have referred to being applied – but I have said there were ‘reasonable grounds’ for suspecting Mr G was being scammed.

However, while I have considered what HSBC has said, the points it has raised haven’t changed my opinion. While Mr G may have been under the spell of the scammer, this doesn’t mean that this spell couldn’t have been broken by HSBC.

The 2012 paper which I have referred to is clear in that it expects banks to ‘regularly to share “timely and detailed intelligence” with other banks, UK and overseas regulators, the police, etc’. So even though the FCA didn’t update its own warning list until a later date, I would still expect a bank to pay attention to what other bodies are doing. And although HSBC says that it cannot find another decision from this date, all complaints are considered on their own merits. I think that a month is a reasonable amount of time to update internal systems.

I have noted that there would need to be an exact match in order for the payments to have been picked up – and recognise that fraud prevention systems are not infallible – but there was an exact match for the first payment Mr G made.

And finally, while HSBC have said that I have referred to ‘reasonable grounds’ for HSBC to have had concerns about the payments, there was already strong evidence of the scam which was available to HSBC. The reasonable grounds I refer to would have come in to play had HSBC intervened and questioned Mr G – which it did not do.

I therefore still consider that HSBC should refund Mr G £43,304 which was his net loss from this part of the scam.

I make no deduction for contributory negligence here as I do not feel it would be appropriate, given the circumstances – the scam was complex, and Mr G was not an experienced investor – whereas HSBC would have had more knowledge and experience of the type of scam that Mr G fell victim to.

I know that HSBC feels that a deduction of 50% should be made here. It says that the returns were too good to be true – and that the supposed investment was advertised as ‘risk free’ which should have prompted Mr G to question the legitimacy of the arrangement. It also says that Mr G mis-led it in taking out loans to fund the scam. But again – Mr G wasn’t experienced – and HSBC had the tools and knowledge from the outset to educate Mr G – but it missed this opportunity. And HSBC hasn’t provided anything to show that Mr G did mis-lead it when he took out the loans – one of which was taken out in June 2017, and another in May 2019.

Payment to Hong Kong Lishengha

Mr G has also made a payment of £10,000 to 'Hong Kong Lishengha' on 29 May 2019. He says that this payment was also part of the initial scam involving Ivory Option/72 Option. He says that he was contacted by another broker still affiliated with 72 Option who told him that he needed to bring his account over a certain threshold in order to access the funds that he had already paid.

I do think that this payment should've stuck out as being an unusual transaction for Mr G – while it wasn't going to a business listed on the IOSCO website, it was an unusual payment for Mr G to be making. So, with this in mind, HSBC should reasonably have contacted Mr G to establish whether the transaction posed any possibility of placing him in financial harm before processing it. But it did not do so. Had HSBC done so, I would've expected it to have questioned Mr G about the payment – including what he was making the payment for and surrounding context and to proceed accordingly. The intention being to disrupt or uncover a potential fraud or scam.

By January 2019, HSBC should already have had a good understanding about how scams like the one Mr G fell victim to work – including that a consumer is often persuaded to pay more money in order to meet 'thresholds' in order to access previous payments.

I have no reason to think that Mr G would not have been honest with HSBC about what he was doing and why – so I think that HSBC would quickly have established what was going on.

Had HSBC given Mr G a meaningful warning that what he had told it bore all the hallmarks of a sophisticated scam – I think that he would've taken this warning seriously and not taken the risk of continuing with the payment.

Should Mr G bear some responsibility for this loss?

While I do consider that HSBC should have prevented this payment, I do also have to consider if Mr G should bear some responsibility for the loss here too, by way of contributory negligence.

Mr G had been having issues with 72 Option from 2017 and had threatened it with legal action. This resulted in Mr G having some payments made to him from 72 Option. But after this, he appears to not have heard from 72 Option for some time before making this further payment. As he had been having issues previously, then I think he should have applied more caution when he was contacted again almost two years later to make further payments.

Because of this, I think that a deduction of 50% would be appropriate here.

The first recovery scam

After Mr G realised that he had been scammed by Ivory Option and 72 Option, he then fell victim to the first of two recovery scams. This is not unusual – and it's very often linked to the initial part of the scam, the context of which is used to further persuade a consumer of the legitimacy of the recovery scam.

Mr G was persuaded to pay out £15,000 to a cryptocurrency exchange in order to pay the 'recovery' company in two payments of £5,000 and £10,000.

These payments were unusual for the way in which Mr G usually conducted his account – and they were going to a crypto exchange. I think that HSBC should have again contacted Mr G to discuss the payments, and surrounding context. Again, I haven't seen anything to

suggest that Mr G had been coached, or told to lie to HSBC, so I think that he would have been honest about what he was doing.

This should have been a red flag to HSBC, especially as by January 2019, HSBC should already have had a good understanding about how scams like the one Mr G fell victim to worked. I would have expected HSBC to provide a meaningful warning to Mr G about recovery scams – and I think that Mr G (who had already been scammed out of a significant amount of money) would not have made the payment. So, I think that it missed an opportunity here too.

I also think that had HSBC stopped the initial scam, then the recovery scam would not have taken place.

Therefore, I consider that HSBC should refund Mr G the £15,000 he lost to this first recovery scam. I do not think that a deduction for contributory negligence is appropriate in this situation as again this was a sophisticated scam, likely orchestrated by the individuals who began the initial scam Mr G lost money to. The scammers had convincing information on Mr G, who again was not as experienced in this area as HSBC.

The second recovery scam

Unfortunately, Mr G then fell victim to a second recover scam. This time he was persuaded to part with a total of £2,015.82 across two payments. £588.88 on 4 March 2020, and £1,426.94 on 2 November 2020.

However, I don't think that these payments should have triggered HSBC into an intervention at this time – they were not of a high value. And this was the second recovery scam that Mr G had fallen victim to, with very similar circumstances as the first – so I do think that he should have applied more caution here than he did.

It follows that I don't uphold this part of the complaint.

Putting things right

HSBC UK Bank Plc should make the following payments to Mr G.

£43,304 for the binary options scam,

£5,000 for the payment made to Hong Kong Lishengha, and;

£15,000 for the initial recovery scam

HSBC UK Bank Plc should also pay Mr G 8% simple interest from the dates the payments were made, until payment is made to Mr G (less any lawfully deductible tax).

HSBC do not agree with the 8% simple interest being applied from the time the payments were made – but Mr G has been deprived of this money since the dates of the payment, and 8% represents our standard award.

My final decision

I uphold this complaint in part. HSBC UK Bank Plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 13 March 2024.

Claire Pugh
Ombudsman