

The complaint

Mr C complains that HSBC UK Bank Plc (“HSBC”) won’t refund over £60,000 he says he lost to an investment scam.

The details of this complaint are well known to both parties, so I won’t repeat everything again here. Instead, I will focus on giving the reasons for my 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 agree with the conclusions reached by the investigator for the following reasons:

- The relevant regulations and industry guidance makes it clear that banks ought reasonably to protect consumers from the risk of financial harm, including fraud and scams. But the expectation 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 Mr C.
- So, I would need to be satisfied that the merchant Mr C paid (“E”) was operating a scam when the disputed payments were made between January and July 2023 in order to expect HSBC to have reasonably done anything further here. When determining this, I’ve borne in mind that certain high-risk investment traders (such as CFD merchants like E) 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 E at the time these payments were made. The merchant is listed as a South African Investment firm that’s authorised and regulated by the Financial Sector Conduct Authority of South Africa.
- So, overall I’m not persuaded the investment firm can be said to have been fraudulent or operating a scam at the time in question. I understand there are anecdotal reviews of others online who feel they have been scammed by E as they have lost their money. However, as E’s website makes clear, it deals in CFD’s which “*involve significant risk and loss of capital*”. So the fact that people have lost their money trading CFD’s with E does not mean they have been scammed, and I’m not persuaded there’s enough

evidence in this case to suggest otherwise.

- As a result, HSBC wouldn't have reasonably been expected to intervene or prevent any of the payments being made. There was the inevitable risk of Mr C's investment returning a loss based on market performance. But HSBC isn't required to protect its consumers from the risk of financial loss due to investment advice or bad bargains. I appreciate that HSBC did speak to Mr C about some of the payments he was making, where he confirmed that he was happy to proceed and that the merchant was legitimate. But given there's not enough evidence to suggest that Mr C had fallen victim to a scam at the time, I don't consider HSBC can fairly be held responsible for failing to prevent his loss.
- Even if I were to accept that the merchant was operating a scam at the time and that HSBC should have asked further questions about the payments, there would have been very little to suggest that the investment firm was operating a scam, given it was regulated in South Africa at the relevant time. Indeed, Mr C told HSBC that the firm was genuine. So, any warning from HSBC to carry out further research on the investment firm's legitimacy would have been unlikely to yield any results that would have ultimately prevented the payments from being made.
- I note that Mr C's representatives have said he was vulnerable when making the payments and that HSBC failed to protect him. But as I've set out above, there's little to suggest that there was any scam that HSBC ought to have protected Mr C against. HSBC's duty first and foremost is to execute transactions at the request of its customers. And given there was also nothing to put it on notice that Mr C was vulnerable or lacked capacity to make his own financial decisions, I don't think it was under any obligation to have stopped the payments altogether.
- I've also seen little evidence to suggest that a chargeback claim would've had any prospect of succeeding for any of the disputed payments. I therefore do not consider HSBC has acted unfairly by failing to pursue such a claim 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 Mr C to accept or reject my decision before 7 June 2024.

Jack Ferris
Ombudsman