

The complaint

Ms V complains that HSBC UK Bank Plc (“HSBC”) won’t refund over £12,000 she says she lost to an investment scam.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief summary, Ms V says she fell victim to an investment scam, where she made several international debit-card payments to a broker (“S”) from her HSBC account between 14 and 18 June 2021.

Ms V told HSBC she had been scammed, but it refused to refund the money she lost as she had authorised the transactions.

Our investigator didn’t uphold the complaint. He wasn’t satisfied there was enough evidence to suggest that S was operating a scam, as it is a regulated company. So, he didn’t think there was any need for HSBC to have suspected a scam or to have intervened. Ms V 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.

Having done so, I agree with the conclusions reached by the investigator and have decided not to uphold it for the following reasons:

- The relevant regulations, guidance and good industry practice make it clear that banks ought fairly and 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 Ms V.
- So, I would need to be satisfied that S was operating a scam when the disputed payments were made in June 2021 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 like S) 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 S at the time these payments were made. The broker is still regulated by the Cyprus Securities and Exchange Commission (CySEC). And while it may no longer be authorised by the FCA, at the time Ms V made the payments, it was authorised to operate in the UK under the Temporary Permission Regime (up until November 2022).

- So, overall I’m not persuaded the investment firm can be said to have been fraudulent or operating a scam. As a result, HSBC wouldn’t have been expected to intervene. There was the inevitable risk of Ms V’s investments 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. Therefore, I don’t consider HSBC acted unfairly by failing to intervene or question Ms V about these payments.
- Ms V has suggested that she may have been dealing with a clone of the authorised investment firm (although the screenshots of her trading platform seem to suggest it was the website of the legitimate investment company). But even if I were to accept that she was dealing with a clone, and that HSBC ought to have intervened and questioned her about the payments, there would have been very little to suggest that she was dealing with a clone or falling for a scam. I’ve seen no warnings about a potential clone company operating under the guise of S. So, any warning from HSBC for Ms V to carry out further research into the firm’s legitimacy would have been unlikely to yield any results that would have ultimately prevented the payments from being made, as she would have only likely found information about S as the legitimate and regulated firm.
- Given Ms V made the disputed payments via debit card, there is sometimes the possibility that she could have sought to recover her funds via a chargeback claim. However, Ms V didn’t dispute the transactions with HSBC within the relevant time period allowed (120 days) by Visa, so I don’t consider it acted unreasonably by failing to pursue a claim in these circumstances.

I appreciate this will likely come as a disappointment to Ms V, but in the circumstances I don’t think HSBC can fairly or reasonably be held liable for the money she had lost.

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 V to accept or reject my decision before 20 November 2023.

Jack Ferris
Ombudsman