

The complaint

Mr M complains that HSBC UK Bank Plc blocked a credit card payment to his investment account, causing him to lose his investment.

What happened

Mr M trades on the stock market, and until October 2022 he used to use his HSBC credit card to make payments into his online account with a third party. He says that time is often of the essence when making such payments, in order to avoid his positions being closed. However, in that month he tried to make a payment of £10,000 into his account, but his payment was declined. He called HSBC and explained the urgency of his situation, but was told that there was nothing they could do. He says that as a result he lost his investment, which was over £11,000, and he also lost the profit which he could have made but for that loss, which he says was £12,000. So he complained, first to HSBC and then to our service. He would like to be reimbursed around £23,000 – the lost investment, and the loss of profit.

HSBC gave two reasons why the payment had been declined. It had originally been declined because Mr M had entered the wrong CVC code (the security number on the back of the card). After he entered the right code, it had been declined because in September 2022 HSBC had changed its policy on processing what it calls “cash related payments” (the definition of which was enlarged at that time to include trading stocks and other securities), and there was a limit on the amount of such payments which can be made in any 24 hour period. Mr M had tried to exceed that limit (which was lower than his credit limit), so the payment had not gone through. However, as a gesture of good will HSBC offered Mr M £100 (which he did not accept, and which has therefore not been paid).

After Mr M brought this complaint to our service, HSBC added a third reason: its terms and conditions said (in clause 5.2) that it could refuse to process a transaction if it was for gambling. It said Mr M had been spread betting, so this was covered by that clause.

Our investigator accepted the explanation about the security code, but he did not accept the explanation concerning cash payment limits. He pointed out that there was nothing about this in the terms and conditions, and HSBC had never told Mr M about them (until he had complained). All that its customers had been told in September 2022 was that interest would be charged on cash related payments, and that was all. He also did not think that clause 5.2 applied to Mr M's case.

The investigator upheld this complaint, and recommended that HSBC refund Mr M's loss of around £11,000, and also pay him £400 for his distress. But he did not think HSBC should have to pay Mr M's alleged loss of profit, as that was too speculative. The investigator later referred this case for an ombudsman's decision.

I wrote a provisional decision which read as follows.

What I've provisionally 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.

Clause 5.2 begins with these words:

“We’ll refuse to authorise a transaction if we have a reason to believe it’s for gambling.”

Mr M was spread betting, so I think this clause applied to the relevant transactions. This was not a new rule introduced in September 2022; it was already part of the terms and conditions. So I’m satisfied that HSBC did not have to make the payments, and it had warned Mr M that it might not make them.

That does not change the fact that the actual reason why the payments were not processed was not because of clause 5.2, but because they exceeded the cash related payments limit, which was £5,000. And I don’t think that HSBC told Mr M about that limit in September 2022. I have read the September email, and it doesn’t say anything about limiting the amount of cash related payments. It just says that a fee of 2.99% of the payment amount will be charged on all such payments, when previously this fee had only been charged on some of them. There’s nothing about a transaction limit.

So the position is that HSBC stopped Mr M’s payment for a reason which it had not told him about, when instead it could have stopped the payment for another reason which it had told him about. I have to decide whether this matters.

On one hand, it could be argued that although HSBC could have blocked the payment under clause 5.2, it didn’t do that, so clause 5.2 is irrelevant in this case. On the other hand, Mr M was on notice that payments (of any amount) to his online spread betting account could be blocked by HSBC, and he still took the risk of that happening. (He might not have read clause 5.2, or he might not have remembered reading it, but HSBC had told him about it nevertheless, and he had agreed to this term of his contract.) For that reason, I do not think that clause 5.2 is irrelevant here, and so I think it would not be fair and reasonable to require HSBC to reimburse Mr M for his loss arising from the failure to make the payment.

So my provisional decision is that I do not intend to uphold this complaint.

I now invite Mr M and HSBC to let me have any further comments by 6 November 2023, after which I will issue my final decision.

Responses to my provisional decision

The above deadline was subsequently extended to 20 November and then to 27 November, but neither party provided a substantive response to my provisional decision. So there is no reason for me to depart from my provisional findings, and I confirm them here.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 28 December 2023. But part from that, this final decision brings to an end our service’s involvement in this case.

Richard Wood
Ombudsman