

The complaint

Mrs O is a sole trader- trading as C. She complains about misleading information she says was given to her by HSBC UK Bank Plc (HSBC) which caused financial loss

What happened

- In March 2023, Mrs O purchased membership to a business network that was being operated by a company, which I'll refer to as P. In return for her membership, Mrs O could advertise on the network and make connections with other professionals and potential customers.
- The membership term was 12 months, and the £1,440 membership fee was payable in three instalments of £480.
- On 4 April 2023, using her debit card, Mrs O made the first of these payments.
- But afterwards, Mrs O cancelled her card and on 3 May, using HSBC's Bill Payments system, essentially a bank transfer, Mrs O paid the second £480 instalment.
- A few days after completing the second payment, on 6 May 2023 Mrs O contacted HSBC and spoke to one of their employees. Mrs O explained she'd made two payments to P and, in advance of the third and final payment she wanted to know the level of protection available to her in case she became dissatisfied with the service being provided by P.
- According to Mrs O, HSBC gave her the assurance she needed. And on 5 June, she paid the third and final £480 instalment to P. Mrs O used the same method of payment that she did on 3 May, that being HSBC's Bill Payment system.
- Ultimately, Mrs O didn't think P had provided the service she'd signed up for. In particular, she didn't believe that the promise made regarding what P would be able to deliver in return for her membership materialised. And she said despite attempts to engage with P to get the most from the membership, there were no improvements. Furthermore, P refused to refund the payments she had made and threatened legal action against her in respect of comments she'd posted on-line.
- Against that background on 29 June 2023 Mrs O contacted HSBC to explore through a chargeback, the possibility of recovering the payments she'd made to P. But HSBC told her they couldn't help and that in effect what existed was a civil dispute between her, and P.
- In the belief she was mis-advised on 6 May, Mrs O complained formally to HSBC.

In response to the complaint, HSBC reminded Mrs O that she'd only asked for guidance in respect of one payment – the final one that was made on 5 June 2023. And HSBC believed that in substance the bank gave Mrs O correct information in response to her query. But they acknowledged that certain aspects of the information were unclear. On that basis the bank paid Mrs O £100 in compensation.

Mrs O didn't think the bank's payment went far enough. She said HSBC's staff gave her wrong information, the consequence of which was that she lost £1,440. She believed, therefore, that HSBC should refund the full amount.

HSBC didn't agree and since the complaint remained unresolved, Mrs O referred it to this service to consider.

Our investigator didn't uphold the complaint. He said – in summary:

- What HSBC told Mrs O was that if the services P provided were not as described, they would be able to dispute the payment. But the employee added that HSBC were unable to guarantee the funds would be returned.
- HSBC did provide some misleading information as they've acknowledged. But even if that wasn't the position, nonetheless, he couldn't say the funds would have been returned to Mrs O in any event. And since there was no guarantee of a return of Mrs O's funds, he didn't think he could hold HSBC responsible for her loss.

Mrs O didn't accept the investigator's conclusions and asked for an ombudsman's review of the case, saying - in summary:

- The investigator doesn't understand chargebacks. She should have had the chance to make a VISA chargeback claim.
- HSBC misled her and so she lost the opportunity to do so.
- Based on her experience of chargeback claims she'd made in the past, it's likely she'd have been successful because historically she had a 90% success rate.

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.

Where the evidence is incomplete or inconclusive (as indeed some of it is here) I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

But after considering this case, I agree with the investigator's conclusions and for broadly the same reasons.

I understand Mrs O's strength of feeling on this matter. And her disappointment at the conclusion reached by the investigator is clear. So, to begin with I'll briefly explain what a chargeback is.

Chargebacks

Chargeback is a process by which disputes are resolved between card issuers (here HSBC)

and the merchant. The process involves the card issuer, through a dispute resolution scheme which is operated by the relevant card network – in this case VISA - disputing on the card holder's behalf payments made on the card.

So, in a chargeback situation, Mrs O as the card holder can ask for a transaction to be refunded in circumstances where there's an issue with the goods or services, she's paid for using the card. There is, therefore an element of protection when payments are made using a card as Mrs O is aware since, as she's explained she's made similar claims in the past..

Were HSBC responsible for Mrs O's loss of £1,440 because of the response given to her query?

We would take the view that if a customer of HSBC asks them for information, the bank has an obligation to ensure the information it provides is clear and accurate.

At the heart of Mrs O's case is that HSBC gave her wrong information when she called them on 6 May, the effect of which is that she has lost the £1,440 payments that she made to P. HSBC denies the information was inaccurate but acknowledges it could have been clearer.

I've listened to the call. I've transcribed the part of the call that I regard as relevant to the outcome of this case - as follows:

Mrs O – "If there's a problem with the company not delivering what I've paid for, what protection have I, paying online as a transfer".

Employee – "We will raise for you a dispute request, you're going [to have to] fill out a dispute form regarding that and we'll put a request in for you regarding the amount for the goods that you didn't receive".

Mrs O – "If I do a transfer online, you can still back me like that yeah?"

Employee – "There will be some investigation, but I cannot guarantee it will return back. But there is some procedure we'll take you through if that happens."

But having listened to the call, I note the HSBC employee's response to Mrs O's question was that if she made the payment, she was about to do using the Bill Payment process then the bank could raise a dispute but could not guarantee being able to recover the funds.

I therefore, agree with the investigator's interpretation of the call in the sense that Mrs O was given no assurance the payment she intended to make was recoverable in the event of a dispute with P. Mrs O was contractually obliged to make that final payment in any event. And she was informed accurately that recovery of the payment couldn't be guaranteed.

More to the point, the information related to that final payment only. Mrs O made previous payments – including use of the Bill Payment process without any consultation with HSBC.

Bearing in mind Mrs O was asking about payment of the final subscription to P, I find it difficult to see how reasonably HSBC could be held responsible for Mrs O's loss of the £1,440. In particular, when the bank gave no assurance regarding that final payment let alone the ones made on 4 April and 3 May.

But I acknowledge in relation to the 5 June payment, which Mrs O enquired about, whilst offering no guarantees the employee did say, the bank could nonetheless, dispute the payment subject to Mrs O completing a form and an investigation being conducted.

I can see why the language used to describe the process might have been interpreted by Mrs O as presenting a chargeback possibility when in truth that never existed. But even if a chargeback had been possible, which it was not, here also, as Mrs O is aware, there is no guarantee her funds would have been recoverable regardless of her testimony concerning her chargeback success rate.

Summary.

The determining issue in this case is whether that part of the information HSBC gave to Mrs O that was wrong caused the loss of the £1,440 that was paid to P. For the reasons I have explained I have not been persuaded it did.

The information was not provided in respect of the payments made in April and May because at the time Mrs O had already made them. She approached HSBC on 6 May in the hope of receiving assurance in respect of the final payment. Based on what she was told I can see she may well have been given false hope, but for that I'm satisfied she's been reasonably compensated by HSBC's payment to her of £100.

Although I sympathize with Mrs O, I have not been persuaded HSBC should be held responsible for the loss of £1,440 paid to P. Therefore, I do not recommend that HSBC should refund the amount to her.

My final decision

For the reasons stated above, my final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 23 April 2024.

Asher Gordon
Ombudsman