

The complaint

Mr C complains that HSBC UK Bank Plc hasn't paid back money to his credit card account which was lost to a scam.

What happened

Mr C wanted to book some flights and found what appeared to be a reputable merchant online. He discussed details with the merchant and was given a price that appealed and so decided to book. But Mr C had actually been dealing with a scammer.

The scammer took Mr C's card details and put through a payment. Mr C expected that to happen, and the value was correct. But the scammer had used Mr C's details to make a payment via a money transfer service, rather than for any flight booking.

Mr C reported the scam to HSBC when he realised what had happened. The bank attempted a chargeback via the relevant card scheme. The claim was initially rejected, and so HSBC pushed it through to arbitration. But the card scheme still found in favour of the merchant.

HSBC had credited Mr C's account with the disputed funds whilst the chargeback process was ongoing. When the arbitration result was received it then re-debited Mr C's account. This was several months after the claim had been raised.

Mr C was surprised and concerned the money had been taken from his account again and he's said he didn't receive the bank's notification that this was due to happen.

He's complained to our service about the chargeback outcome and process. He's also complained that HSBC hasn't refunded him under the provisions of section 75 of the Consumer Credit Act. As the victim of a scam he feels he should be reimbursed by HSBC.

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.

I'm sorry to disappoint Mr C but I'm not able to uphold his complaint. I'll explain why.

Mr C authorised the payment that debited his account and so the starting point at law is that he is responsible for it. This position is confirmed in the Payment Service Regulations (2017), alongside the account terms and conditions. That remains true even though Mr C was deceived as part of a scam, and where the payment didn't go where he expected it to.

But there are some potential avenues to reimbursement. These include the possibility of a chargeback and the consideration of Mr C's right to a refund under section 75 of the Consumer Credit Act.

The chargeback claim

Each card scheme has a chargeback process for which it sets its own rules. A chargeback isn't a legal right for customers, but something voluntarily offered by each scheme. Not all claims submitted by a customer to their bank will be raised as a chargeback. There must be a reasonable prospect of success.

I can see HSBC did raise a chargeback for Mr C. If it hadn't my finding would more likely than not have been that was fair and reasonable as I don't think the claim would ever have succeeded. If nothing else, the payee had performed the action it was contracted to in sending on Mr C's funds, even though Mr C was unaware of that happening.

Such a finding becomes moot on examination of the facts though. The chargeback was raised and was successfully defended by the merchant. HSBC took the additional – and uncommon – step of pushing the case to arbitration. But it was still successfully defended.

This service can't comment on a card scheme's findings on – or the outcome of – a chargeback. Instead, we look to see whether HSBC has acted fairly and reasonably in raising (or declining to raise) the chargeback. Here, HSBC did all it fairly and reasonably could to put Mr C's claim through the process.

I know this process took a long time and Mr C is unhappy with that. I can see almost all the time taken for HSBC to deliver the outcome – and re-debit the money from Mr C's account – was because of the card scheme's consideration of the claim. There was nothing HSBC could do to speed this process up and so I can't say it's been at fault.

When HSBC did receive the outcome, it passed this on to Mr C promptly. Mr C doesn't appear to have received the notification that the claim had been unsuccessful and that his account would be re-debited. But, from the evidence I've seen, I'm satisfied HSBC did send it using the correct contact details. I can't say why Mr C didn't receive it, but I'm unable to say HSBC hasn't acted fairly and reasonably.

Section 75 of the Consumer Credit Act

Unfortunately, the transaction made by Mr C doesn't benefit from the protection offered by section 75. I can understand why Mr C would think it should, and he may have even deliberately made the payment by credit card with such protection in mind.

The issue lies in the relationship between the parties involved. For there to be a valid claim under section 75 there must be an unbroken debtor-creditor-supplier relationship and any breach of contract or misrepresentation must be linked to that relationship.

Mr C is the debtor and HSBC is the creditor. They clearly have a pre-existing relationship in the form of customer and credit supplier.

But the supplier that has been contracted with here is the money transfer service. That is the party that has been paid, and that's what establishes the relationship. There is no connection to the supposed travel agent here.

Mr C might have entered into an agreement for the purchase of flights, but HSBC can't be said to be a party to that agreement in respect of the debtor-creditor-supplier relationship. And so the requirements aren't met.

In terms of the debtor-creditor-supplier relationship that *might* be said to exist – between Mr C, HSBC, and the money transfer service – the contract can only be said to have been fulfilled. The money transfer service received an instruction to send on funds and it did so. And so any section 75 claim against it for breach of contract would fail. And I say *might* here because it could be argued that Mr C never actually contracted with the money transfer service, and so doesn't have a relationship with it. Whichever way the money transfer service's involvement is viewed, there isn't a valid section 75 claim.

I know Mr C was unaware of the money transfer service's involvement. And so it will no doubt feel unfair that is the relevant relationship to be considered. But this is an essential consideration on the application of section 75. And Mr C's not knowing of the merchant's involvement doesn't overcome the lack of required relationship.

Are there any other grounds on which HSBC should refund?

The only other potential reason HSBC might fairly and reasonably reimburse Mr C is if there were clear signs he was at risk of financial harm through fraud at the time he made the payment. If there were such signs, then it might be fair and reasonable to say HSBC ought to have stopped the payment and questioned Mr C about it to try and ensure he wasn't falling victim to a scam.

Such a scam risk might be identified in considering the nature and characteristics of a payment (through account monitoring), and whether it stood out as unusual or suspicious. I can't say that it would be fair and reasonable to have treated Mr C's payment as such. Whilst it is a significant sum of money to lose to a scam, the payment wasn't so unusual or of such value that I believe HSBC ought to have identified a scam risk. There was no need for it to stop the payment and it made no error in processing it. So I can't say it ought now reimburse Mr C or compensate him for his loss.

My final decision

I don't uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 April 2024.

Ben Murray
Ombudsman