

The complaint

Mr A complains about how HSBC UK Bank Plc, trading as John Lewis Financial Services Limited (“JLFS”), dealt with his claim under section 75 of the Consumer Credit Act 1974 for a refund of his lifetime membership of an online investors’ service.

What happened

In December 2019 Mr A used his JLFS credit card to pay for a lifetime membership of an online service provider for investors, run by a third party which I will call X. He also paid the first annual membership fee. Together, those two payments came to over £3,000 (in another currency).

At the time he signed up, X offered a guarantee that if it failed to find him 50 successful trading leads in the first year then it would waive his second annual fee. It is not in dispute that X did not honour that guarantee. X only delivered 41 successful leads (out of 69 altogether), and yet it still charged him his annual fee in December 2020. In sterling, that came to £151:49; there was also a non-sterling transaction fee of £4:17. (These were also charged to his JLFS credit card.) Mr A challenged this annual fee with X, but X was uncooperative, so he asked JLFS for a refund of everything he’d paid.

At first, JLFS did not agree to refund Mr A anything. But in July 2021, JFLS agreed to refund Mr X £151:49 for the second annual membership fee. And it later offered him another £150, in recognition of the time Mr A had spent on pursuing his claim. But it did not agree to repay the lifetime membership fee, or the original annual fee, as he was still receiving the service X had undertaken to provide.

Being dissatisfied with that offer, Mr A declined it and brought this complaint to our service. But our investigator did not uphold it. He thought that JLFS’s offers, taken together, were fair.

Mr A did not accept that opinion. He said that there had been misrepresentation by X, as well as a breach of contract. He criticised JLFS for not having accepted that he had a valid section 75 claim in the first place.¹ He said he should be refunded everything, including the £4:17 fee. He also provided an email from X (dated 5 January 2023) which said that X had waived the annual fees in December 2021 and 2022 (after he had complained to X a second time).

The investigator agreed that JFLS should refund the £4:17 fee, but he did not agree that X had misrepresented its service. Rather, he thought that X had just failed to fulfil its guarantee, and that the right remedy for that would be to put Mr A in the position he’d have been in if this had been fulfilled – namely, to refund the second annual fee – so it was enough for JLFS to do that.

Mr A did not agree that it was right to distinguish between the guarantee and the contract as a whole. He said that while it cannot be known if X had intended to mislead from the outset,

¹ Initially JLFS had not accepted that section 75 applied to his claim, but it had later revised its stance.

the fact that it had taken a year to put things right strongly suggested that it had not simply made a mistake. The fact that X's service was still available for him was irrelevant, because he had lost confidence in X. He said that JLFS had failed to properly investigate whether X had misrepresented its service to him in 2019 (at least as far as he knew).

The investigator did not change his mind, and so he referred this case for an ombudsman's 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 think that JLFS's offer is fair. I will explain why.

As I come to the case at this final stage, with all the available evidence already gathered and put before me, I can clearly see that Mr A's credit card payment was one to which section 75 does apply, and that X had failed to deliver on its promise to waive the 2020 annual fee. However, that might not have been immediately apparent to JLFS when Mr A first raised this matter, so I think it was reasonable of it to ask him for further information in the early stages of his claim. That may have been frustrating for him at the time, but lenders are entitled to investigate and challenge claims before deciding what to do with them. Nevertheless, I also accept that it did take JLFS a long time to make its offer to refund the 2020 annual fee. However, I think its offer of £150 (on top of the refund) is adequate to reflect that.

Turning to how much of Mr A's payments to X should be refunded, I think that the annual fee of £151.49 in 2020 is enough. I am satisfied that X breached its contract with Mr A by not waiving that fee, and that JLFS is liable to him for that under section 75. But I am not satisfied that this is proof that X misrepresented its service to Mr A in 2019. I think that it is equally explainable as just an error it made in failing to waive a fee that should have been waived; it does not prove that X was lying all along. I have considered Mr A's argument that X's subsequent refusal to refund the fee after it was collected is evidence of bad faith. I can see his point, but that could also just be the result of poor complaint-handling and an over-zealous application of its general "no refunds" policy. (I am reinforced in that opinion by the fact that when Mr A renewed his efforts with X, it responded by belatedly waiving the annual fees for 2021 and 2022.)

For these reasons I think that refunding the annual fee, rather than refunding everything, was and still is a fair way of resolving this complaint. But I also agree with the investigator that this refund should have included the associated non-sterling transaction fee of £4.17.

My final decision

My decision is that I do not uphold this complaint. I leave it to Mr A to decide whether he now wishes to accept HSBC UK Bank Plc's offer of £301.49 (to which HSBC should also add the £4.17 non-sterling transaction fee).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 30 May 2024. But apart from that, this final decision brings our involvement in this matter to a close.

Richard Wood
Ombudsman