

## **The complaint**

Mr M complains about comments made in HSBC UK Bank Plc trading as first direct's final response after he raised a card dispute.

## **What happened**

Mr M attempted to raise a card dispute in relation to food orders he made but first direct didn't take it forward. Mr M went on to raise a complaint and first direct issued a final response on 3 October 2023. In its final response, first direct explained that card disputes for food were difficult to prove and that the onus would be on Mr M to provide evidence like photos. First direct's final response said:

*The onus would be on you to prove that the food/service was not as described. You would need to provide evidence, photographic and screenshots. This is understandable otherwise many people would take advantage of getting free food. The success rate on these types of disputes is very low.*

First direct's final response agreed to refund the payments Mr M had attempted to dispute as a gesture of goodwill.

Mr M responded to first direct and complained that the comments made in the final response were claiming he was attempting to obtain free food were libellous. First direct issued another final response on 28 November 2023 and said the comments made previously were intended to explain why card disputes for food deliveries were difficult to prove so would likely fail. First direct accepted the previous final response could've been phrased better but said if there were concerns that his claim wasn't genuine it wouldn't have refunded the disputed payments.

Mr M referred his complaint to this service and it was passed to an investigator. They thought first direct had dealt with Mr M's card dispute fairly and that by agreeing to refund the payments he'd made had shown it accepted his concerns were genuine. The investigator recommended that first direct pay Mr M £75 for the distress and inconvenience caused by the comment made in its final response dated 3 October 2023. First direct accepted but Mr M asked to appeal.

Mr M said he wanted first direct to publish a public apology on its website and social media channels. Mr M also said he felt the level of compensation should be increased. As Mr M asked to appeal, his complaint has been passed to me to make a 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.

I've been reasonably brief in setting out the timeline for Mr M's complaint above as all parties broadly agree about the overall circumstances of this complaint. I'd like to add that I'm aware that Mr M's complaint is made in part on the basis that he feels the comments made in first

direct's final response amount to libel. But that's a legal argument that isn't something the Financial Ombudsman Service can decide on. We are an informal dispute resolution that was set up as an alternative to the courts. We decide complaints on a fair and reasonable basis which is the approach I've taken when looking at Mr M's case.

I understand that when Mr M first raised the card dispute with first direct, it wasn't taken forward on the basis there was a lack of evidence. But first direct later refunded the disputed payments when responding to Mr M's complaint on 3 October 2023. As the payments have been refunded to Mr M, I'm satisfied first direct has taken reasonable steps to resolve the card dispute issues and that he hasn't suffered a financial loss.

In my view, the final response issued by first direct on 3 October 2023 contained information that the author should've realised could be taken in more than one way. I accept first direct's argument that the complaint handler who issued the final response was trying to provide a wider explanation concerning why card disputes of the type Mr M tried to make were generally not successful. But I can understand why Mr M found offence in the way the comments were made and accept he was caused some distress.

I've considered how to fairly resolve Mr M's complaint. In my view, it's fair for first direct to make a payment to Mr M in recognition of the upset caused by the contents of its final response dated 3 October 2023. And, having considered all the available information and evidence, I'm satisfied that a settlement of £75 reasonably reflects the level of distress and inconvenience caused to Mr M and is a fair way to resolve his complaint. I'm sorry to disappoint Mr M but I haven't been persuaded to increase the settlement. I understand Mr M has asked for a public apology to be published online but I'm satisfied a payment in recognition of the distress and inconvenience caused is a fair way to resolve his case. As I'm satisfied a payment of £75 for the distress and inconvenience caused is fair and reasonable in all the circumstances, I'm going to proceed on that basis and uphold Mr M's complaint.

### **My final decision**

My decision is that I uphold Mr M's complaint and direct HSBC UK Bank Plc trading as first direct to settle by paying him £75 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 October 2024.

Marco Manente  
**Ombudsman**