

## **The complaint**

Mr B complains that HSBC UK Bank Plc won't refund the money he lost when he was the victim of what he feels was a scam.

## **What happened**

In April 2022, Mr B made a payment of £6,000 from his HSBC account to pay for an online training course. He understood the course would provide him with a series of lessons, training materials and advice about starting an online business – and that it came with a money-back guarantee if his business revenue did not exceed the course fees after six months.

Unfortunately, the business Mr B attempted to start was not successful, and so he applied to the training company for a refund under the money-back guarantee. But the company disagreed that he had met the conditions of the guarantee, and so didn't agree to refund the payment Mr B had made. Mr B then complained to HSBC and asked it to refund the payment.

HSBC investigated but said Mr B had raised the dispute more than 120 days after the payment he made, so it was unable to raise a chargeback claim. And so it didn't agree to refund the payment Mr B had made. Mr B then later complained that the training company had breached its contract with him by removing his ongoing access to the training materials. But HSBC said it couldn't dispute the same transaction twice, so there wasn't anything further it could do.

Mr B wasn't satisfied with HSBC's response, so referred a complaint to our service. One of our investigators looked at the complaint. They said Mr B had received the training course, so they didn't think the company was a scam. And they thought HSBC had acted reasonably in not carrying out a chargeback or refunding the payment Mr B had made. Mr B disagreed with our investigator, so the complaint has been passed to me.

## **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.

Banks are expected to make payments in line with their customers' instructions. And Mr B accepts he made the payment here. So while I recognise he now feels he has been the victim of a scam and the company has breached its contract with him, he did authorise the payment. And so the starting position in law is that HSBC was obliged to follow his instructions and make the payment. So Mr B isn't automatically entitled to a refund.

### *Has Mr B been the victim of a scam?*

There are certain activities banks are expected to carry out to try to protect their customers from falling victim to scams, and certain protections in place for customers who do fall victim to scams. But, before looking at whether HSBC has done what we'd expect it to do or

whether these protections apply, I must first be satisfied that Mr B has been the victim of a scam.

The relevant test for whether someone has been the victim of a scam comes from the FCA handbook. This defines a scam as where a customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

So in order to determine whether Mr B has been the victim of a scam, I need to consider whether the purpose he intended for the payment was legitimate, whether the purposes he and the training company intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the company.

From what I've seen and what he's told us, I'm satisfied Mr B made the payment here with the intention of receiving a training course to help him start an online business. And I haven't seen anything to suggest that Mr B didn't think this was legitimate.

But I'm not satisfied the evidence I've seen shows that the training company intended a different purpose for the payment, or that Mr B's and the training company's purposes for the payment weren't broadly aligned.

From his communication with the training company it appears Mr B accepts that he completed at least the initial part of the training course, was provided with access to at least some training materials and received at least some advice about starting an online business. So it appears the training company did provide a significant amount of content and support to Mr B – which I think suggests it was, at least at this stage, attempting to operate as a legitimate business and provide the services it had offered and Mr B had paid for.

The training company also continued to communicate with Mr B for a number of months after the initial payment he made to it, and after he initially asked it for a refund. But I wouldn't expect a company that always intended to scam its customers to continue communicating in this way and for so long after receiving payment. So I think this also suggests the company was attempting to operate as a legitimate business.

I appreciate Mr B has raised concerns about the company breaching its contract with him after he asked for a refund and about the actions of the director of the company when the company suffered financial difficulties. But I don't think these issues suggest the company intended to operate a scam from the point it took his initial payment.

So I'm not persuaded that the available evidence is sufficient to safely conclude that the purpose the training company intended for this payment was different than the purpose Mr B intended. I think the evidence suggests both Mr B and the training company intended the same purpose – to pay for a training course. And so I don't think the circumstances here meet the definition of a scam, or that HSBC has acted unreasonably in not agreeing to refund the money Mr B lost from this payment as a result.

In any event, even if I was satisfied the company had set out with the intention of scamming Mr B, I'm not satisfied anything I would reasonably have expected HSBC to have done would have prevented the payment being made. Even if HSBC had identified a risk when Mr B was making the payment and contacted him about it, I don't think anything about the circumstances of the payment or the company at the time would have caused it significant concern. And so I don't think anything I would reasonably have expected it to have done at that time would have prevented Mr B making the payment.

*Should HSBC have carried out a chargeback?*

A chargeback is a voluntary process by which a bank can dispute a card payment made by one of its customers to a merchant. But the rules about the reasons why a payment can be disputed and the time limits for raising any dispute are set out in the chargeback scheme rules – which the bank must follow. And we'd only expect a bank to carry out a chargeback where there was a reasonable chance of it being successful.

From the correspondence he's sent us between himself and the training company, when Mr B first complained to the training company in January 2023 he requested a refund on the basis that he had completed the program but it had not led to any paying customers for his new business. He said he had completed the lessons and been meeting the coaches regularly, but had not had any success and was unable to put any more time, energy or money into the venture. So he requested a refund of the payment he had made under the company's money-back guarantee.

When the company said he hadn't met the conditions of the guarantee, Mr B then asked HSBC to raise a chargeback. The dispute form he filled in gave the reason for the dispute as 'goods not as described'. And based on his communication with the training company, what he appears to have told HSBC at the time and the available dispute reasons from the relevant chargeback scheme rules, I think this was the most appropriate dispute reason.

But the chargeback scheme rules state that the time limit for raising a dispute for this reason is 120 days from either the date the payment was made or the date the goods or services were received. Mr B first contacted HSBC and asked it to raise a dispute in June 2023 – which is more than 120 days from the date of the payment in April 2022. And Mr B's communication with the training company in January 2023 says he had completed the program, so I think it is reasonable to say that he had received the services by that point. And so, as the date he first asked HSBC to raise a dispute was more than 120 days after this date as well, I think he was outside the time limit for raising this dispute and HSBC acted reasonably in not carrying out a chargeback.

Mr B later complained to HSBC again in March 2024 that the training company had breached its contract with him by removing his ongoing access to the training materials. But the chargeback scheme rules say that a bank may not raise a dispute for the same transaction more than once. So I don't think HSBC acted unreasonably in not carrying out a chargeback at this point either.

In any event, even if Mr B's chargeback claim had been within the time limit and could be raised again, his communication with the training company in January 2023 showed that he asked for a refund on what he had paid, was unable to invest any more time or money and asked to cancel his ongoing subscription so he was not charged anymore. And, in these circumstances, I don't think it would have been unreasonable for the training company to remove his access to the training materials. So I think it's unlikely any potential chargeback would have had a reasonable chance of being successful.

I therefore don't think HSBC acted unreasonably in not carrying out a chargeback for this payment Mr B made to the training company.

I sympathise with the position Mr B has found himself in. I appreciate that my decision will come as a disappointment to him and I'm in no way saying he did anything wrong or that he doesn't have a legitimate grievance against the training company. But I can only look at HSBC's responsibilities and, for the reasons I've explained above, I don't think it would be fair to require HSBC to refund the payment he made here.

**My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 February 2025.

Alan Millward  
**Ombudsman**