

The complaint

Mr T is unhappy with HSBC UK Bank Plc's response to a claim he made against it under the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("section 75"), following payments he made to a third party using his credit card account.

Mr T is assisted in bringing his complaint by "C", a claims management company.

What happened

While attending a seminar Mr T signed up to a beginners' course in Forex trading through a company "L". Mr T paid an initial amount of just under £2,400 using his HSBC credit card. He also signed up for an ongoing monthly subscription to trading software.

Mr T said the courses he attended provided only a moderately useful introduction to trading, spending a significant proportion of time on upselling other courses and focusing on success stories. He committed to a contract for a further training programme which included one-to-one mentoring, workshops and access to online courses, at a stated cost of £7,000.

However, Mr T says he never got to grips with learning Forex trading and decided it was too complex and risky for him before commencing any live trading activity. He cancelled his subscription and sought to recover the money he paid L, referencing the sales techniques and practices L used to persuade him to enter into the contract, and to make further payments to it. Mr T calculates that in total he paid L around £10,000.

C made a section 75 claim on Mr T's behalf to HSBC, expressing the view that L's training and products were neither fit for purpose nor as described, lacking any genuine education or training to develop Mr T's trading abilities. C made reference to a previous fine L incurred from the Advertising Standards Authority ("ASA") in relation to promotional activity. C said the communications Mr T received from L also failed to meet the Committee of Advertising Practice ("CAP") Code, which sets out rules on (among other things) misleading statements and comparisons.

HSBC didn't accept Mr T's claim. It said that despite requests it had not received from Mr T any evidence to substantiate his claims of a breach of contract or misrepresentation by L. Mr T complained about HSBC's response to his claim, but the bank maintained its position and he referred matters to us.

Our investigator felt HSBC had taken a reasonable approach to considering Mr T's claim before declining to meet it. She wasn't persuaded that what Mr T had submitted provided sufficient evidence of misrepresentation, or included anything that would enable her to establish what was said at the seminar that led Mr T to enter into the initial purchase.

She noted that while Mr T had said L hadn't allowed any refund on cancellation or any cooling-off period, he had not attempted to cancel or withdraw from the arrangements until several months after purchase. The investigator also felt Mr T hadn't done enough to show L was in breach of contract due to its products and services not being of an acceptable standard or not as described.

Mr T didn't accept the investigator's assessment. Responding through C, he reiterated his belief that L's terms relating to cancellation were unfair, imposing a blanket refusal on refunds. He said that L's advertising and marketing techniques were misrepresentations that its products and services would enable novice traders to gain sufficient knowledge and experience so as to trade profitably on the Forex markets. And Mr T said that he hadn't received the services he'd paid for, or respond to his requests to resit the beginners' training.

Our investigator wasn't minded to change her view and so the dispute has been passed to me for review and determination.

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.

In certain circumstances, section 75 enables the debtor to bring a claim against their credit provider for a breach of contract or misrepresentation by the supplier of goods or services paid for with that credit. There are specific qualifying criteria, such as the connection between the contracting parties, and the cash price falling within set limits, which are met.

The general effect of section 75 is that if Mr T has a claim for misrepresentation or breach of contract against the course provider, then he has a like claim against HSBC. That doesn't mean HSBC carries responsibility for any and all concerns Mr T might have against L. While Mr T and C have sought to make a point about the fairness of contract terms in relation to cancellation without refunds, even if a court were to agree with them on that matter and deem those particular terms unenforceable, that doesn't in itself give rise to a section 75 liability on the bank's part. There's nothing in the complaint correspondence that indicates L has sought to rely on any such term in its dealings with Mr T.

I should be clear that in dealing with this complaint, I'm looking at the way in which HSBC has responded to Mr T's claims in misrepresentation and breach of contract. So there are, I believe, two key questions for me to address. They are: Did HSBC handle Mr T's section 75 claim appropriately, and has the bank's handling of matters caused unfairness to Mr T such that the bank should pay him compensation?

Did HSBC handle the claim appropriately?

It's apparent that HSBC understood its potential liability under section 75 when Mr T made his claim against it. The bank's correspondence shows it sought further evidence from Mr T to substantiate his allegations of misrepresentation and breach of contract. I can see why it did so. While Mr T's submissions to the bank demonstrate his genuine belief that L's sales practices and communications unfairly influenced his decision to purchase its products and services, that isn't enough to meet the definition of misrepresentation.

A misrepresentation is a false statement of fact (or law) inducing someone to enter into a contract. Mr T's submissions don't demonstrate that L made false statements of fact when he was persuaded to sign up to its initial offering at the seminar, or when he subsequently entered the agreement for the further training programme. C's own description of L's email correspondence, for example, says "*Most of what is written in the emails [to Mr T] are subjective expressions of opinion...*".

A statement of opinion is not enough to constitute a misrepresentation. Neither is mere 'sales puff', and the CAP Code recognises this in its rules relating to marketing and exaggerated claims. I'm not convinced what Mr T and C have described in his submissions

amounts to any more than this. The sales technique he's referenced is not an outlawed practice. And the fact L had, some years earlier, incurred a fine from the ASA is not persuasive evidence that a further breach of the CAP Code occurred in the course of L's dealings with Mr T.

Similarly, I don't consider that the case has been made out for a claim in breach of contract. Mr T might be right to be unhappy that L didn't respond to some of his correspondence, such as his request to resit the beginners' training. But poor customer service is not the same as a breach of contract. The products and services L made available to Mr T don't appear to have been materially different from what was described, and I think rather more evidence than has been submitted would be necessary to persuade a court these weren't fit for purpose.

Mr T has mentioned negative online reviews and social media exchanges about L with other customers. I don't discount the possibility that there have been other people who have had bad experiences with this particular provider. But the lack of any substantive evidence in relation to those other customers means I'm not persuaded that in this particular case they add much weight to Mr T's arguments.

It follows that I don't consider HSBC handled Mr T's claim inappropriately when it sought further evidence from him to support his claim, or to reject that claim on the basis it did. That's not to say Mr T is not capable of providing such evidence or persuading a court of the strength of his arguments. Rather, it is that I don't consider there's enough for me to say HSBC shouldn't be entitled to defend such a claim should Mr T seek to pursue legal action.

Did HSBC's handling of the claim cause unfairness to Mr T such that he should be compensated?

I'm conscious that Mr T has already received our opinion on the time HSBC took to respond to his claim, which was the subject of a separate complaint to us. So I'm not going to comment further on this aspect here. And in light of the findings I've reached regarding the bank's response to the claim, I can't properly say that Mr T has been caused unfairness or that he should receive compensation in respect of its decision to decline his claim.

Summary

Mr T's account of events makes clear that he was not only familiar with the 'straight line' sales technique employed by L and the individual leading the seminar, but that he recognised at the time that this technique was being used by L. He says he'd entered a stock market trading course run by a different provider a couple of years before, but had withdrawn from it after finding the training was beyond his level of ability.

Mr T's evidence doesn't strike me as that of someone unexpectedly 'swept up' by the excitement of promised riches, but of a person that was aware of the complexities of trading and the way in which the sale techniques were being applied, and with this knowledge made the decision to go ahead with the purchase. He might subsequently regret doing so, but that doesn't oblige HSBC to reimburse him.

I know Mr T feels strongly that he's provided evidence that L's actions were incorrect. I've carefully considered the evidence he's provided, and I can see why he views it that way. But for the reasons I've set out, I don't consider he's done enough to demonstrate HSBC has a liability to him either in misrepresentation or in breach of contract. So I can't fairly require the bank to pay him compensation or meet his claim.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 4 December 2024.

Niall Taylor
Ombudsman