

The complaint

Mr H complains that HSBC UK Bank Plc did not deal fairly with his claim under section 75 of the Consumer Credit Act 1974 ("section 75"). The bank trades in this case under its First Direct brand.

What happened

Between early May and late June 2024 made credit card payments totalling nearly £9,000 to two investment platforms, which I'll refer to as "F" and "P". He paid £4,747.80 to F and £4,014.30 to P.

Part of the service which both F and P offer is a simulated trading environment for education and evaluation purposes. This enables those who are interested in trading in investments to carry out simulated trades without actually entering into a real trading environment. Mr H has explained that he registered with both businesses with a view to learning about investments so that he could then move into actual trading.

Mr H was not happy with the service which the providers made available to him. His payments were intended to give him access to simulated trading platforms, but he says they were frequently unavailable, either because of technical issues or because they were being unfairly manipulated. He says that the services he received were not fit for purpose.

Neither F nor P accepted Mr H's claims, so he contacted First Direct. He said that, because he had made payments to F and to P using his credit card, he could bring a claim under section 75. First Direct did not agree to meet Mr H's claim. It said that the payments had been made to fund investments, and so section 75 did not apply.

Mr H referred the matter to this service, where one of our investigators considered what had happened. She did not recommend that the complaint be upheld, in part at least because she did not consider that Mr H had shown there had been a breach of contract. Mr H did not accept the investigator's assessment and asked that an ombudsman review the case.

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.

Mr H has made quite extensive arguments in this case, and it is clear that he feels strongly about it. He has also referred to similar situations where he has made successful claims, including against First Direct.

My own comments will not be as detailed as Mr H's have been. I do not mean any discourtesy by that, but it is in keeping with this service's role as an informal dispute resolution service. I can assure both parties that I have considered very carefully all the available evidence and arguments.

And, whilst I note what Mr H has said about other similar claims, there may be a variety of reasons why they were resolved in his favour. The facts may have been slightly different, or the banks may have decided to settle them for commercial reasons. I have however focused on what I consider to be a fair resolution of this complaint.

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider. The necessary relationships between First Direct, F and P, and Mr H are present in this case, and the transaction falls within the relevant financial parameters. I have therefore considered Mr H's dealings with F and with P.

First Direct took the view that Mr H did not in fact have a contract with F or with P, as they are trading platforms. If he did have a contract, it was not financed by the card payments.

Had Mr H been using F and P as trading platforms, First Direct's position might well have been correct. Payments to investment firms are often transfers of funds to be invested, not payments for the provision of services. In this case, however, I accept that Mr H's funds were not being invested, since he was only "trading" in a simulated environment. Mr H's payments were made so that he could receive the services (including access to the platforms) which facilitated trading in that environment.

I am satisfied therefore that Mr H did have a contract with both F and with P. The terms of those contracts were set out in the respective sets of terms and conditions which they made available to Mr H.

I have therefore considered what Mr H has said about the provision of services under those contracts. Neither contract is, in my view, particularly specific about the services which F and P agree to provide, still less about what the customer can expect from the agreement. Neither is governed by English law.

At the same time, Mr H's claims about what he actually received (and how that compares with what he was told he would receive) lack specificity. He has said that he believes data was manipulated, but I don't believe he has been able to show that – perhaps for understandable reasons. He has said too that the technology was unreliable, and he has provided what he says are recordings of the website crashing. I cannot know for sure what was behind those recordings, but I do note – as did the investigator – that both sets of terms and conditions included terms which purported to exclude liability for technical failures.

It is not for me to say whether Mr H does in fact have a claim against either F or P, or both. Nor is it for me to decide whether he has a claim against First Direct under section 75. What I must do is decide what I consider to be a fair resolution of Mr H's complaint about First Direct's decision to decline his claim. In the circumstances, however, I think it was reasonable of First Direct to decline that claim.

Finally, I note that Mr H has more recently suggested that the bank should have intervened to warn him against making the credit card payments, or even to stop them. He says they were outside his usual spending pattern. I am afraid I do not agree. There is no suggestion that Mr H did not make the payments or that he did not intend to make them to the payees. Nor does it seem to me that they were particularly unusual for him – as he has said, he had made similar payments in the past and had made claims as a result of doing so. Even if I were to take a different view on that, I think it unlikely that any intervention would have prevented Mr H from making the payments. He believed he was paying for a service which would benefit him and would no doubt have instructed the bank to go ahead.

My final decision

For these reasons, my final decision is that I do not uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 April 2025.

Mike Ingram
Ombudsman