

complaint

Miss D complains that HSBC Bank Plc won't refund two transactions she made with her credit card to a binary trading company. She says she was the victim of a scam and the service provided by the binary trading company was misrepresented.

background

In 2016, Miss D received a phone call from a third party, which I'll call B, which operated a binary options trading company. She registered a declaration of interest and was then persuaded to set up a trading account and invest.

In August 2016, Miss D made two payments into the trading account totalling £1,736.92 using her HSBC credit card. Miss D says B gave her an account manager. And says the account manager told her that the money she deposited into the trading account would always be refunded, even if Miss D made losses. And she'd receive bonuses.

Miss D began to suspect she was being scammed by B. So she asked B for her money back and to close her trading account. Miss D says B wouldn't let her close her trading account. And instead it told her that her deposit was secure and refundable. Miss D then tried again to withdraw the balance, but B wouldn't let her.

Miss D then complained to HSBC and asked HSBC to return the money she'd paid using her credit card under section 75 of the Consumer Credit Act 1974 (section 75). She also asked HSBC to refund her money via chargeback. But HSBC didn't agree. It said it hadn't seen any evidence that the services B provided Miss D were misrepresented. However, HSBC did acknowledge that its chargeback team had caused some delays when looking into Miss D's chargeback claim and offered her £150 compensation. Miss D wasn't happy. So she brought her complaint to us.

Our investigator didn't uphold Miss D's complaint. She said the arrangement Miss D had with B didn't meet the criteria needed to make a claim under section 75. And she didn't think Miss D would've been able to make a successful chargeback even if there hadn't been any delays.

Miss D didn't accept the investigator's findings. She provided us detailed submissions that she feels she's been defrauded. She also gave us copies of emails between her and B. And referred to a copy of the terms and conditions as evidence B misrepresented the service it provided to her.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It may well be the case that Miss D has been the victim of fraud. If B was operating as a regulated financial services provider within the United Kingdom, I'd be able to look into its sale activity. Unfortunately, I can't do that here, because B operates from an overseas territory and because binary trading isn't regulated.

does HSBC have liability to Miss D under section 75?

Whilst I've sympathy for the situation Miss D finds herself in, I have to decide whether there's a basis I could fairly require HSBC to be liable for the money she's been unable to recover.

One effect of section 75 is that an individual who pays for something with a credit card may be able to make a claim against the card issuer if things go wrong. But there are certain conditions. They include that the individual has a claim for breach of contract or misrepresentation against the party that took the payment; and that the transaction giving rise to the claim was financed by the card payment. Miss D says she has such a claim. And that section 75 means HSBC should meet that claim.

Section 75 says: "*If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor*".

In these circumstances, Miss D is the debtor; HSBC is the creditor; and the binary options company would be the supplier. However, looking at the way Miss D's arrangements with the binary options company were structured, I'm satisfied the criteria for a claim against HSBC under section 75 weren't met.

The trading account was already set up and running when Miss D made a payment with her HSBC credit card. It therefore seems that payment was made with the intention of simply giving her a deposit on the trading account. This would mean that section 75 doesn't apply because the payment wasn't paying for any goods or services from the binary options company – so nothing was being supplied in return for the money.

I say this because everything I've seen suggests the money she paid on her HSBC credit card actually just gave her that amount of credit which could then be used to trade. Because of this, I'm not persuaded this arrangement fell under section 75. So I haven't gone on to consider whether there was a misrepresentation or breach of contract on B's part because the payment was a deposit only to fund trades.

chargeback

Chargeback isn't a guarantee of a customer getting their money back. When a bank raises a chargeback, the claim may be successfully defended. That doesn't mean the bank agrees with the merchant or that it favours one party over another. It simply means the claim has been defended in line with the card scheme rules.

We'd generally expect a bank to process a chargeback for its customer. But as HSBC did, a bank can ask for evidence to help show why this claim should be successful. I've seen evidence that Miss D sent HSBC all the paperwork relating to her claim. And I've seen correspondence from HSBC to Miss D asking for more information in April 2017.

HSBC has acknowledged that there were delays in dealing with Miss D's chargeback claim. But even if there were no delays, unfortunately for Miss D, I don't think it would've made a difference to the outcome of her chargeback claim. I say this because like the investigator, I've reviewed the terms and conditions for trading binary options with B. These are clear. Miss D was warned that she may lose her money. I know Miss D says she was told over the phone that she'd get her money back but there's nothing else to show this was likely to be the case.

I completely understand why Miss D is upset, because she can't see any way of getting her money back from B. But for the reasons I've explained I find that Miss D hasn't met the specific requirements for a refund under the framework of the options available to her for a claim against HSBC. So I don't think HSBC have done anything wrong.

HSBC accept that it could've provided Miss D a better service when it looked at her chargeback claim. And it has acknowledged there were delays. I understand HSBC has offered Miss D £150 compensation, which I think is fair and reasonable. So I'm not going to ask HSBC to do anything more.

my decision

I'm aware HSBC Bank Plc has made an offer to pay Miss D £150. I believe this offer is fair and reasonable in the circumstances. So my decision is that they should pay Miss D £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 23 November 2017.

Sharon Kerrison
ombudsman