

complaint

Mr H complains that HSBC Bank Plc hasn't done a chargeback request for him.

background

Mr H said that between May and December 2016, he made a number of payments to a merchant that he then understood to be a binary options broker. The amounts he transferred totalled £41,850. He told us that he used that money to make what he thought were trades through the merchant's platform. Mr H then found out that the broker wasn't regulated, as it had claimed. Mr H says that he now doesn't think any of the trades were actually made, but the merchant was just running a simulation, like a video game. Mr H wanted HSBC to apply a chargeback request to get his money back.

HSBC agreed to request that the money be returned. As part of that, it put the amount that Mr H was disputing into his account. Mr H told us that he spent that money.

HSBC contacted the merchant, and it disputed the chargeback. Then HSBC said that it wouldn't proceed with the chargeback request. It told Mr H that it wouldn't make the request because the service provided was trading and didn't include withdrawals. HSBC took the money back out of Mr H's account.

Mr H said that he wanted his chargeback claim to go to arbitration. He complained to us.

When we asked HSBC, it said that the pre-arbitration request was out of time, but HSBC had tried it anyway. It was declined. HSBC said the pre-arbitration request was rejected as the transactions were authorised, and HSBC has no means to push the matter to full arbitration.

Our investigator didn't uphold this complaint. He said that he couldn't investigate the alleged broker that Mr H had paid, because it wasn't regulated. He looked at what HSBC had done.

Our investigator said that Mr H authorised transactions over a period of eight months. He thought that if Mr H wasn't getting real trading, it would've been apparent to Mr H much sooner. And HSBC had tried to make chargeback requests, despite being over the time limit. Our investigator thought that it was unlikely that the outcome would change during the arbitration stage.

Our investigator said that HSBC had credited Mr H's account when it tried the chargeback. It had explained to him that it might ask for this money back if the chargeback failed. He suggested that Mr H speak to his bank if he was in financial difficulties now. Our investigator didn't think that HSBC had made a mistake.

Mr H didn't agree with that. He said that there was no reason for him to have thought earlier that he wasn't getting real trading, and he wouldn't have continued to make payments to the alleged broker if he had realised sooner what was happening. And he said that HSBC shouldn't have rejected his chargeback on the basis that he'd authorised the transactions. The same thing happens every time someone is fooled into believing that a fraudster is genuine. If we accepted that the alleged broker was a fraudulent company, then Mr H thought his arbitration would succeed, and that was the only way to get his money back.

Our investigator said that HSBC isn't obliged to make a chargeback request, and in this case he didn't think that the outcome would've been different at the arbitration stage. And the chargebacks were over the time limit.

Mr H replied that the deadline for bringing a chargeback runs from the last day that services were expected to be provided. Mr H said he was well within the time limit when he contacted HSBC. And HSBC had never addressed the actual issues which were the basis of the dispute. He said that the alleged broker had made very clear claims about the services it provided. But Mr H said he'd proved that the alleged broker wasn't able to have provided the services that it described. So Mr H thought a chargeback request should've been made on the basis that services were not as described.

Because our investigator and Mr H didn't agree, the case was passed to me for a final decision.

my provisional decision

I issued a provisional decision on this complaint and explained why I didn't propose to uphold it. This is what I said then:

- I appreciated that Mr H feels very strongly about this issue. He has told us that the alleged broker claimed to be regulated, when it wasn't. And he's said that a number of financial authorities in different countries are now warning people against this alleged broker. But what I had to consider is what HSBC has done, and in particular whether Mr H's chargeback request was likely to succeed under the chargeback rules.
- The chargeback system is a dispute resolution mechanism run by the card scheme operator, whose symbol is on Mr H's card. Banks don't have to request a chargeback, but this service might expect them to if there's a reasonable chance that the chargeback would've succeeded. Banks pay to make chargeback requests though. And they don't pass that charge on to their customers. So this service won't usually ask a bank to make a chargeback request where there isn't much chance of that request succeeding.
- Mr H says that, because the alleged broker was certainly not registered and regulated as it claimed, and because he doesn't think that the alleged broker was actually trading at all, the services that were provided to him weren't as described. But it didn't look to me like Mr H was actually purchasing services when he paid money to the broker. It looked more like what he was doing was putting money into a trading account which was then used to finance his trades.
- Mr H has told us that he doesn't think any of the transactions that he did through the alleged broker were real. But there didn't seem to be any further evidence to support that view. Mr H says that the broker wasn't actually registered to trade in the country that it claimed to be registered and regulated in. So these trades couldn't have been real. But I didn't think we could be sure about that. We don't know whether the broker was required to have a registration (it now claims that no registration is required in the country it's incorporated in) or whether the alleged broker was using another service to place its trades. I didn't think I could reach a decision in this case on the basis that no trades were actually made.
- I hadn't seen any evidence which suggested to me that Mr H was actually purchasing services when he made these payments, rather than transferring his money into a

trading account so he could use it in future trading. And if he wasn't purchasing services, then HSBC can't ask for his money back because some services weren't as described. So, even if Mr H's request to the bank was within the deadlines for a chargeback request, I didn't think that request was likely to have succeeded. Because it looked to me as if Mr H was just transferring funds to another account, I thought it was unlikely that his chargeback claim would've been approved by the card scheme operator if it had gone to arbitration.

- That meant that I didn't think that HSBC did anything wrong when it said it wouldn't pass these chargeback requests for arbitration.

I invited the parties to make any final points, if they wanted, before issuing my final decision. HSBC didn't reply. Mr H sent me detailed representations disagreeing with my provisional decision.

my findings

I've reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I haven't changed my mind.

Mr H said that I had reached my decision on four points. Those were that

- There was no actual purchase made by Mr H, the transactions were a mechanism to "fund" an investment/trading account.
- There is insufficient proof that no actual trades occurred.
- Since no actual services were purchased, a chargeback cannot be raised on the basis that services were not as described.
- The merchant claims that no licensing/registration is required in its country of incorporation.

Mr H said that he would address each of those points.

On whether his payment was for services, he said that the merchant itself said it provided services. And he made a comparison to a bank account, if a bank were to claim that it only provided depositing "services" which were completed once the deposit was paid in. He said that, just as a bank would have to keep providing further services once the deposit was done, so would this merchant need to provide its brokerage services once Mr H had paid money into his brokerage account.

I think that the comparison with a bank is a reasonable one to draw. Unfortunately, it's not a comparison that assists Mr H. When someone pays money into a bank account using a debit card, they may well be receiving services associated with this account. But that is not what that individual payment is paying for. That payment is just a way of funding an account. And a chargeback request only looks at the purpose of that particular payment. So a chargeback request on the basis that the services weren't as provided isn't possible for that kind of transfer either.

If Mr H was funding an account, rather than buying a service, then it seems to me that this complaint can't succeed. It wouldn't be fair and reasonable for me to tell HSBC that it should've made a chargeback request, and to ask it to compensate Mr H for not doing so, in circumstances where I don't think that request could've been successful. That means that my view on Mr H's further complaint points isn't likely to change the outcome. But, for completeness, I will consider them.

Mr H said that the firm couldn't or wouldn't provide any evidence of trading. He said that the merchant wasn't a brokerage or investment firm, and so it couldn't provide the access to markets that it had claimed. And it would be required to disclose if it was using a third party to make the trades. It hadn't done that, and he thought that the burden of proof should be on it to do that.

This argument rests on the assumption that Mr H was paying for services, which then weren't actually provided. As I've already said I don't agree that Mr H was paying for services, my views on whether the account he funded was actually used for trading or not wouldn't affect the outcome here. But, for completeness, I still don't think that I can assume that no trading was conducted, on the evidence I have. Mr H has asserted that no such services can be provided without a valid registration. The merchant has equally asserted that it doesn't require a registration in its country of incorporation. I appreciate that Mr H has sent us information which he says shows that the merchant had lied about its country of incorporation, and its registered status. That must certainly cast doubt on whether the merchant is reputable. But I simply don't know whether any trades were actually completed.

I've reviewed the evidence in this case, and considered Mr H's further submissions. And I don't think that HSBC could reasonably have expected that there was any prospect of Mr H succeeding with a chargeback request on the basis that the services he received were not as described. But this case has involved a large amount of money, and I appreciate that this has had a significant impact on Mr H. So I have also considered if this problem might fit within another reason for which chargeback requests can be made. I'm sorry to have to tell Mr H that I can't see another reason which seems to me to fit the circumstances of this case. Because of that, I don't think that HSBC made a mistake when it didn't push this chargeback request to full arbitration.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 July 2018.

Esther Absalom-Gough
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