

complaint

Mr D complains that HSBC Bank Plc ("HSBC") did not properly explain that a deposit he had paid into his account could be recalled. He says that this has left him with an overdraft of just under £3,000. He wants the bank to refund any charges – which it promised to do when he complained - and cancel the debt. Mr D is represented by his father.

background

Mr D sold his car and agreed that the buyer could send him a bankers draft for the purchase price plus an additional £3,000 to cover the cost of shipping the car abroad. Mr D paid the draft into his account and later withdrew the full value as cash. He paid £3,000 into another bank (for the shipping costs). The remaining money he paid back into his bank account once he was told that the draft had been recalled.

The adjudicator did not recommend that this complaint should be upheld. She concluded that, as Mr D had been advised when he withdrew the money that the deposit could still be recalled, he was aware that he was taking a risk by withdrawing cash and paying some of it into a third party account at another bank. Mr D has responded to say that he believed that by taking the money as cash he was preventing the person who was making the deposit from recalling the credit. He says that the bank should be responsible for at least half of the debt.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mr D seems to have been the unfortunate victim of a fairly common scam, whereby he withdrew money from his account before it was cleared and paid it to a third party – only to find that the deposit has failed, the third party cannot be traced and he has been left with a debt.

When looking at such complaints, I would always consider whether the customer had been misinformed by the bank that a payment had cleared. That is because there are several important parts to the bank clearing cycle, two of which are "cleared for value" and "cleared for fate", and these are often confused. It is normal practice for a bank to allow a customer to draw money against a deposit that is cleared for value – and in this case the bank told Mr D that this would be after seven days. However, there remains a risk that a deposit can be recalled until it is cleared for fate – in this case after ten days. Mr D withdrew the value of the deposit after eight days – so after the deposit was cleared for value but before it was cleared for fate.

Both Mr D and the bank agree that he was told that, when he went to withdraw cash, the deposit could still be recalled for another couple of days. I am, therefore, satisfied that he was warned that he was taking a risk by withdrawing the cash when he did – so I do not find that the bank made an error.

Mr D says that he withdrew cash as he believed that this would prevent the payer recalling the deposit. There is no evidence that shows that the bank told him this – in fact, it warned him that the payment could still be recalled – so Mr D seems to have assumed, wrongly, that a cash withdrawal prevented a recall. But that is not the bank's error, so I do not find it fair or

reasonable that the bank should stand all or part of the loss. I am also satisfied that the bank is entitled to ask Mr D to repay the debt and to take further action if this does not happen. I would, however, expect the bank to agree a repayment plan that Mr D can afford.

The bank has also explained why it cannot attempt to recover the £3,000 that Mr D paid to another account. That is because, as he made a cash deposit to an account at another bank – and made it at the other bank's branch – there is no direct link between Mr D's account with HSBC and the person he paid. So I agree with HSBC that it can do little to help trace the money.

HSBC did say that it would refund any charges and fees accruing on the overdraft whilst this complaint was being decided and it should do so if this has not already happened. I am sorry that Mr D has been the victim of a scam, but I would urge him to contact the bank about arranging a way for him to repay the debt.

my final decision

My decision is that I do not uphold this complaint and simply leave it with Mr D to decide whether he accepts the £50 offered.

Susan Peters
ombudsman