

## The complaint

Mr D complains that HSBC Bank UK Plc ("HSBC") has refused to refund several payments he made to a fraudulent company (Boss Capital). These payments were made using Mr D's HSBC Mastercard and Visa credit cards.

## What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

In short, from September 2015 to May 2016, Mr D made payments (using his HSBC Mastercard and Visa credit cards) to what he thought was his trading account with Boss Capital. At the time, he believed that they were a legitimate trading firm. However, he later discovered that Boss Capital were operating a scam.

The payments made using Mr D's Mastercard and Visa credit cards are as follows (credit is in italics):

Date	Merchant	Amount
12 September 2015	Bosscapital	£200
14 September 2015	Bosscapital.com	£800
7 October 2015	Bosscapital	£500
10 November 2015	Bosscapital	£500
10 November 2015	Bosscapital	£500
<i>15 December 2015</i>	<i>Bosscapital</i>	<i>£500 (credit)</i>
6 January 2016	Bosscapital	£1,000
7 February 2016	Bosscapital.com	£500
1 March 2016	Bosscapital.com	£500
7 April 2016	Bosscapital.com	£500
4 May 2016	Bosscapital.com	£540
	<b>Total amount debited:</b>	<b>£5,540</b>
	<b>Total less credits:</b>	<b>£5,040</b>

Mr D asked HSBC to try to recover his money. As this did not happen, he raised a complaint which he referred to our service.

One of our investigators considered the complaint and upheld it. He did not think HSBC had treated Mr D unfairly by not raising/pursing a chargeback. However, he held that Mr D did have a valid claim for misrepresentation and breach of contract under section 75 of the Consumer Credit Act 1974. Therefore, he suggested HSBC refund to Mr D the payments he made, less credits (totalling £5,040); and rework his account so that all interest and charges caused by those payments are refunded.

Mr D accepted the investigator's findings, but HSBC did not.

HSBC's position, broadly, is that it does not accept there has been a proper assessment of liability pursuant to section 75. It argues that there is not sufficient evidence – or explanation given in the investigator's findings – to establish a misrepresentation or breach of contract claim. Further, HSBC says, '*... it is particularly noteworthy that [Mr D's] relationship with Boss Capital continued for at least 8 months and then the complaint was not raised for around 4 years.*'

The investigator requested further information from Mr D, which he provided. This included deposit confirmation emails, login details, promotional offer emails, a trade agreement and terms and conditions. The investigator shared some of this with HSBC and added, '*He [Mr D] explained that when he found Boss Capital's website to no longer be in operation, he thought his funds had been lost and there was nothing more he could do. Some time later, he saw information in the press about binary options investment fraud and chargebacks, which prompted him to ask HSBC to pursue a chargeback claim for him. In any event, there are no timing issues in relation to his complaint to HSBC or claim under section 75.*'

In light of the above, the investigator told HSBC that his findings remained the same. As HSBC continued to disagree with the investigator, the complaint has been passed to me to make a decision.

**On 31 March 2022, I issued a provisional decision upholding this complaint. For completeness, I repeat my provisional findings below:**

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

*Having done so, I agree with the investigator that this complaint should be upheld on the basis that HSBC is liable to Mr D under section 75. However, I do not agree with the way in which the investigator dealt with redress in his findings. I will come back to this point at the end of my provisional decision after addressing liability under section 75.*

#### Chargeback

*I have first considered that Mr D had no valid chargeback rights under the Mastercard or Visa chargeback schemes. I say this because he did not have the evidence needed to satisfy the requirements of the scheme rules.*

#### Section 75 of the Consumer Credit Act 1974

*I am satisfied that HSBC is liable to Mr D for the payments concerned. I say this because, in very broad summary:*

- *There is a debtor-creditor-supplier agreement falling under section 75:*
  - *Mr D (the debtor);*
  - *HSBC (the creditor); and*
  - *Boss Capital (the supplier) – as shown on Mr D's paperwork and on HSBC's business file submissions.*
- *The transactions Mr D made were financed by his agreement with HSBC ("the deposit-transactions").*
- *Mr D's claim does not relate to a single item to which the seller has attached a cash price of less than £100 or more than £30,000.*

*I note that Mr D's payments were made to 'Bosscapital' and 'Bosscapital.com'. However, I am satisfied – despite the minor difference in name – these payees are one and the same. That is, the supplier in this case: Boss Capital.*

*For the reasons set out above, I am satisfied that section 75 does apply to the credit card deposit-transactions in this case.*

*I will now turn to whether Mr D has a valid claim for misrepresentation and/or breach of contract.*

### *Misrepresentation*

*Turning to Mr D's account. In short, he has told this service, amongst other things:*

- 'I fell victim to an online FRAUDULENT CRIMINAL company called Boss Capital ("the Company") – I was manipulated by a highly sophisticated scam artist and innocently lost 5,040 GBP of my hard-earned life-savings.'*
- He was initially making monthly payments to Boss Capital.*
- After about a year, he realised he was not making a profit, so he asked for his funds to be returned.*
- Boss Capital pressured him to make further payments, which he declined.*
- He was then unable to access Boss Capital's website.*
- He then did some research online and noticed that Boss Capital had stopped operating. Because of this, he thought his money was gone and that he could not do anything further. Until 2020, when he discovered he could raise a chargeback, so contacted HSBC.*

*There is a body of external information available through various regulators, law enforcement agencies, government agencies, press cuttings and the card schemes that repeat the tactics used by Boss Capital. This does lead me to seriously question whether any actual trades were being placed on the outcomes of financial markets or whether in fact Boss Capital offered little more than a video game or simulation.*

*There is further evidence in the form of warnings on the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"):*

- Australian Securities and Investments Commission (11 May 2017)*
- British Columbia Securities Commission (20 July 2017)*

*Although these warnings were placed on the Investor Alerts Portal post the payments concerned, the warnings suggest Boss Capital may not have been acting legitimately.*

*For the above reasons, I do not think it is likely Boss Capital were operating a legitimate enterprise. Therefore, I am persuaded they made misrepresentations to Mr D. That is, that they were running a genuine enterprise through which he could never have got back more than his deposits from the platform. I am also satisfied that if Mr D had known this, he would not have deposited any money, so he was induced into the contract on the basis of these misrepresentations.*

### *Breach of contract*

*Here, Mr D has deposited funds to open an account in exchange for being able to use those funds on an investment platform and being able to withdraw them as and when he wished. Given the exchange of money in return for certain contractual promises – I am satisfied there were transactions (the deposit-transactions) as defined by section 75.*

*It follows, I think, that Boss Capital had contractual obligations:*

- a) *To enable Mr D to use the funds from his deposits on an investment platform; and*
- b) *To enable Mr D to withdraw the funds deposited as and when he wished.*

*Mr D was not able to use the funds from his deposits on the investment platform. Further, he says Boss Capital prevented him from withdrawing funds from his trading account when he wanted to. Taking these points together, I am satisfied that Boss Capital breached the above contractual obligations.*

*It follows that as a breach of contract can be identified, Mr D's loss amounts to the full amount of each of his deposits.*

#### *In summary*

*I've established two grounds Mr D could have recovered his credit card deposit-transactions: misrepresentation and breach of contract. As a claim for misrepresentation gives the highest sum, HSBC should put the Mr D back into the position he would have been had the deposit-transactions not been entered into. So, he should receive refunds of these amounts.*

#### *Redress*

*As mentioned at the outset of my provisional findings, whilst I agree with the investigator that this complaint should be upheld – I do not agree with the way he dealt with redress.*

*I say this because the investigator asked HSBC to, amongst other things: 'Refund [Mr D] £5,040 and rework his account so that all interest and charges caused by those payments are refunded' (emphasis added). However, section 75 requires payment of the damages for which the supplier is liable, plus 8% interest from the date of Mr D's losses (i.e. the date the sum was repaid). In this instance, that's the deposit-transactions. Therefore, I have set out the correct approach to redress below.*

#### **Responses to my provisional decisions**

Neither Mr D nor HSBC responded to my provisional findings.

#### **What I have 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.

Given the fact neither party responded to my provisional findings – I see no reason to depart from them.

#### **My final decision**

For the reasons set out above, my final decision is that I uphold this complaint. I therefore direct that HSBC Bank UK Plc:

- Pay Mr D all the money he lost, less credits he received (that would mean £5,040) – within 28 days of receiving notification of his acceptance of my final decision; plus
- Pay 8% interest on this amount from the date it was debited from Mr D's account until the date of settlement.
- If HSBC Bank UK Plc deducts tax in relation to the interest element of this award, it should provide Mr D with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 May 2022.

Tony Massiah  
**Ombudsman**