

The complaint

Ms P complains about the way HSBC UK Bank Plc ('HSBC') handled a dispute in relation to a purchase she made on her debit card.

What happened

Ms P asked HSBC to help her get a refund for an £8,500 transaction she made on her debit card in January 2019. The transaction was to purchase a modelling package for her son.

In summary, Ms P says the supplier of the package ('Supplier A') didn't provide the product it had described and had misled her into parting with the money. In particular it had made false guarantees that Ms P's son would be provided with specific modelling contracts if she purchased the package. She says that it told her the money from the upcoming work would pay back the money she had spent on the package. She also says a promised website was only up for two hours and she didn't get the other services (such as 98 retouched pictures) which she was told would follow in six weeks.

When Ms P first approached HSBC it assisted her through the chargeback process. It raised a first and second (pre-arbitration) claim through the chargeback scheme, but these were defended by Supplier A's bank. HSBC says it was unable to assist further, but credited Ms P £100 for the '*inconvenience caused*'.

Ms P was not happy with this outcome so she complained to this service. Our investigator took an initial look at the case. In summary, the investigator said HSBC should have continued along the chargeback process. And had it done so it was more likely than not Ms P would have got her money back. They considered a refund of the amount paid on the card to be a fair and reasonable outcome.

HSBC disagreed with this. It said, in summary:

- during its investigation it found no evidence to show Ms P was scammed and she made the payment willingly
- Ms P didn't provide suitable evidence to challenge the transaction, yet it still initiated a dispute for her. It attempted to assist her on a best endeavors basis rather than refuse to consider the dispute and this does not equate to it admitting it was likely the chargeback would be a success
- chargeback is voluntary and not guaranteed – so it should not be liable for the loss
- chargeback arbitration decisions are strictly based on fulfilment of the card scheme requirements, so when a dispute is raised '*as an attempt, it is more or less confirmed that the dispute cannot be pushed to arbitration*'
- Ms P has legal recourse directly against Supplier A
- the correspondence from Supplier A is not enough to conclude that Ms P was to be provided with services beyond photographs
- Supplier A provided the signed contract to say photos had been received on a disc and in the absence of evidence to the contrary, that is sufficient to conclude Ms P received the services she signed and paid for
- it was unable to progress the dispute any further and although it is sympathetic to Ms P's complaint it doesn't agree it should be liable

I issued a provisional decision on this case on 1 June 2021. This said:

As Ms P paid for the goods and services using her debit card and wanted a refund, I've thought about whether HSBC dealt with her request fairly. The chargeback process is relevant in this case. This is a way in which payment settlement disputes are resolved between card issuers and merchants. They are dealt with under the relevant card scheme rules.

In certain circumstances the process provides a way for HSBC to ask for a payment Ms P made to be refunded. Those circumstances include where goods or services aren't supplied or as described/misrepresented by the company Ms P paid. A chargeback doesn't guarantee a refund. Supplier A's bank could put forward a defence to any chargeback claim. If the chargeback is defended, HSBC could pursue the chargeback further and ultimately ask the card scheme provider to arbitrate on the outcome.

HSBC pointed out that the chargeback process is a voluntary one (and that customers like Ms P have recourse against suppliers via the courts) so it was under no obligation to carry one out. However, it is a tool which is available as a means of resolving disputes. There will be times where it is not only fair and reasonable to use it to support a customer, but to pursue it in a particularly robust way, as dictated by the circumstances of the case.

I am encouraged to see HSBC did try and help Ms P with the transaction she made on her debit card by raising a chargeback and then carrying out a second presentment when the initial attempt was unsuccessful. But HSBC discontinued the chargeback without pushing it to the final stage of arbitration.

The key question as I see it is whether HSBC did enough here, or whether it should have reasonably pursued this matter further. And if it had done what is likely to have happened in any event. In order to decide this I have considered what I think is fair and reasonable in the particular circumstances of Ms P's case.

the information Ms P supplied HSBC about what happened

In the relevant card scheme rules there are a number of different chargeback categories or 'codes' that can be used depending on the nature of the dispute. Here it seems a relevant code was 'Goods or Services Were Either Not as Described or Defective' and also 'Misrepresentation' (in circumstances where it is alleged a merchant has falsely suggested that an income can be generated from business opportunities). Each chargeback code has its own set of requirements that need to be met in order for a chargeback right to exist and for it to have any prospect of success.

I have considered whether what Ms P supplied HSBC met the minimum requirements for it to effectively carry out a chargeback on her behalf. To do this I have had reference to the card scheme rules which I understand were in place at the time.

I have considered the processing requirements for a bank to progress a dispute under dispute condition 'Not as Described or Defective Merchandise/Services' or 'Misrepresentation'. In doing so I note that as required by the rules Ms P provided HSBC with an explanation of what was not described or defective along with evidence of when she requested a credit from Supplier A.

I also note this information was accompanied with a signed cardholder dispute declaration form detailing what was purchased and why the goods/services received so far did not match what was promised (including the guaranteed work opportunities to generate income). This form also contained a declaration that Ms P had attempted to resolve the dispute with Supplier A, accompanied by supporting evidence of the same.

After considering what I believe to be the relevant parts of the card scheme rules I am satisfied Ms P met the basic requirements in order that HSBC were able to carry out a chargeback on her behalf under either of the codes mentioned above.

I am unsure why HSBC indicated Ms P did not provide suitable evidence for it to challenge the transaction. I note she provided a letter to the disputes team dated 18 March 2019 (around two months after she initially purchased the package from Supplier A). The letter is extremely detailed, credible and compelling. In essence it details the sales process for the modelling package and confirms Supplier A:

- enticed her to attend the shoot by saying that companies were interested in her son as a model*
- informed her there was some kind of screening process and only 2-3% of people passed this*
- confirmed that her son was 'extremely successful' and a coach and retail company had confirmed they wanted him for a paid shoot in 2-3 weeks time*
- went through an 'exclusive' 'unlimited international' package costing £8,500 which would provide a year of assignments along with other benefits including:*
 - a web presence and e-portfolio*
 - 98 retouched photos*
 - regular contact and updates*
 - photo shoot with a coach*

Ms P continues to tell HSBC that she has not received what was described to her and she has not been able to get in contact with anyone from Supplier A despite trying in writing and by phone. To reinforce this point Ms P provides evidence of written communication she has made with Supplier A. The letters appear to be credible and I note she even provided photos of recorded special delivery envelopes used to send correspondence to Supplier A.

In this communication Ms P describes in detail how she even called the public house below the premises which were occupied by Supplier A. She says the occupants told her Supplier A had left the premises owing rent and were 'scammers', after which she was prompted to call Citizens Advice and Trading Standards.

For me this letter and supporting evidence, including the HSBC dispute form, make a strong and compelling case that Ms P had not received the product she was promised. In particular, she was told her son was guaranteed imminent and ongoing paid assignments/modelling contracts which had not transpired. I also find the statement and supporting evidence shows strongly that she had made reasonable and unsuccessful attempts to contact Supplier A to get the service promised.

I also note that what Ms P describes, and the language used in her letter should have alerted HSBC to the possibility that Supplier A was seemingly running a somewhat sophisticated scam.

I have also listened to Ms P's initial call with HSBC about the matter. Much of the content is similar to what she provided in writing. She mentions that she has not received the services, that she considers she has been scammed, that she has been in touch with Trading Standards and Citizens Advice and has attempted to contact Supplier A about the services numerous times but not had any recent communication back. During the call HSBC confirms it understands Ms P is saying the service included photos and assignments. Ms P also lists the other services that were meant to be provided including an e-portfolio, 98 photos, web address and a year of support with the modelling assignments. Ms P mentions the specific brand Supplier A promised a photo assignment with and that Supplier A then told her this was postponed for 3-4 weeks but never got back in touch about it.

In summary, I am satisfied the information Ms P provided HSBC enabled it to meet the basic requirements of the card scheme rules. I also consider that the information she provided was clear and persuasive evidence to support her claim. So, based on the information I currently have, I don't agree with HSBC that the evidence was not suitable for it to challenge the transaction through the chargeback scheme.

the chargeback's raised, the defence and the wider evidence

I have looked at the initial chargeback defence submitted by Supplier A's bank and I don't find it particularly compelling. For example:

- it says Ms P signed the contract to confirm receipt of the services – however, this contract only appears to serve as confirmation of receipt of a disc of unedited images with an agreement that other services will follow*
- it makes a point of saying Supplier A is not an agency yet the contract is contradictory on this point – at one point stating Supplier A isn't an agency but also stating 'YES' in a box titled 'Agency' and a separate list confirming one of the services agreed is 'Agency List'*

I also note that Ms P provided a strong rebuttal to the initial chargeback defence, explaining why it was not correct and referring back to prior evidence she had provided. And while I acknowledge that HSBC pursued the chargeback for the customer, I don't find its initial submissions strongly capture what Ms P says she was promised – and the services she is still waiting for. Nor does its second presentment effectively clarify things. In fact the pre- arbitration submission is very similar to the first and is unclear in places.

I also note the defence to the second presentment once again rejects the chargeback based on the notion that the signed contract confirms that Ms P has received the photos, effectively ignoring the other services she says were promised including those clearly indicated on said contract.

I have also considered this dispute in the context of the wider evidence. I have already said that Ms P's letter strongly indicates she has been subject to some kind of scam (which should have alerted HSBC to the same). I note that the Action Fraud site has an article on fake modelling scams, the circumstances of which closely match what Ms P described to it. Not only that but the director of Supplier A appears in press articles linked to 'scam modelling firm' and on Companies House it is clear that he had been involved in previously dissolved modelling companies. So I think there was some compelling wider evidence supporting the individual case Ms P had described here. HSBC has said it investigated the dispute and found no evidence to show that Ms P was scammed. But I think the information this service has found would have been fairly discoverable by HSBC in light of the information Ms P had provided.

the contract

There has been much emphasis on the signed written contract as a reason for saying Ms P's chargeback would not succeed (and discontinuing it). Despite the presence of a signed written contract here, in my view this doesn't directly rule out what Ms P says she was promised in respect of guaranteed work contracts for her son. In fact, as I have said above, the contract is quite contradictory on the point about the agency element of the package. And considering Ms P's compelling testimony and the significant amount of money spent here (£8,500) it seems more likely than not that Ms P was promised more than just photos and a website.

In respect of the retouched photos and the website I am not entirely convinced the presence of a signed contract shows she received these services either. In fact I don't think it serves as confirmation that Ms P received anything more than an initial disc of unedited shots. It says that the 'goods' (presumably including the retouched pictures) will follow within 6 weeks of the order. It seems Ms P didn't get these. I also note that the website which was part of the promised service is not active either.

should HSBC have done more here?

In summary, I think there was a very strong indication here that Ms P had not received the goods and services described to her and had actively been misled into parting with a significant sum of money. Not only was there evidence that specifically relates to her case, but also wider evidence that supported her position at the time.

I think that HSBC were right to raise a chargeback here and take it to pre-arbitration, but I don't consider its representations or the defences from Supplier A's bank to be particularly compelling. Nor do I find the contract clearly shows Ms P got what was described and was not misled.

So while I acknowledge HSBC used the chargeback process, I consider that in these particular circumstances it should have robustly pursued the process right up to the final arbitration stage.

I note that HSBC says the matter couldn't have gone to arbitration. But I have considered the card scheme rules and what they say about arbitration and I don't see where Ms P's claim had clearly fallen foul of a particular rule/procedural matter that would have prevented it going any further. It is of course possible that HSBC has not complied with the specific requirements in order to take the matter to the final stage – but if that isn't attributable to the actions of Ms P I don't see how it is fair to penalise her for it. If HSBC can provide something more specific on this point I will of course consider it. However, at this point in time I don't see a good reason why HSBC could not take the matter to arbitration.

Considering the strength of evidence provided by Ms P, the lack of clear evidence that she got what was described, and the wider evidence from Action Fraud and the media I find it more likely than not the card scheme would have concluded Ms P did not get what was described by Supplier A and awarded her money back – had HSBC presented her claim in a reasonable and clear manner. Because I think the actions of HSBC in not pursuing the matter to arbitration has more likely than not caused Ms P to lose out I think it is fair and reasonable that it refunds her to reflect her likely loss.

I note the scheme rules limit the disputed amount to the unused portion of the cancelled service or value of the merchandise that the cardholder returned, or attempted to return. From the evidence I have I am not persuaded Ms P has received anything of value from the contract. Even if she had received a disc of unedited photos for reference in the initial consultation I don't consider this sufficient to say she has 'used' a portion of the cancelled service. I also note that she attempted to cancel the service and would likely have returned any initial disc if able to. So I don't think it would be fair to make a deduction from any refund in this instance. In this case I think it is fair and reasonable that HSBC repay her the amount she paid on her debit card plus interest. However, I do note she has already received £100 from HSBC so this should be deducted from that amount.

I provisionally upheld the complaint and directed HSBC UK Bank Plc to:

- refund the amount Ms P paid on her debit card less £100 (£8,400) for the transaction to Supplier A plus 8% simple yearly interest from the date the chargeback claim was stopped, which I consider to be 19 July 2019, to the date of settlement.

I asked the parties for their comments on my provisional decision.

Ms P agreed with the decision.

HSBC did not agree. In summary, it highlighted the following reasons for not refunding the disputed payment:

- the disputed transaction was a face to face transaction and was not funded by the bank (not a credit card payment);
- it should not be expected to accept liability 'for a Consumer Dispute that was voluntarily taken up as per the provisions in the Card Schemes and as interpreted and understood by it' and it has to assist with reasonable care but unless there was 'deliberate negligence with no recourse' it should not be held liable for the transaction but can be asked to issue compensation;
- the merchant can be found in the Companies House register and Ms P can file a case in the small claims court against it (if required it can compensate the court fees up to £200);

- the ‘*safeguard for such a payment is not merely the [card scheme name redacted] but the jurisdiction within which the Payee functions*’; and
- *this service has implied ‘there is no other recourse available but the merchant is found in ‘Companies House’ and a legal recourse should be available’.*

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.

HSBC’s response to the provisional decision appears to centre around points it has raised before. One being that chargeback is a voluntary process and the other being the existence of other means of Ms P pursuing the matter with Supplier A (such as court). I believe I have addressed these in my provisional decision (which I still consider to be fair and reasonable) but for clarity I will summarise my key thoughts here:

- despite chargeback being a voluntary process (as opposed to a legal right) it is still a tool available to the bank as a means of resolving disputes. There will be times where it is not only fair and reasonable to use it to support a customer, but to use the process to its fullest, as dictated by the circumstances of the case;
- the circumstances of this case (for the reasons outlined in my provisional decision) support the use of the chargeback process to its full extent;
- I have not been provided with persuasive evidence that the existence of other forms of dispute resolution such as court action means that chargeback should not be attempted or taken to the final stage of the process should the circumstances warrant it. Accepting this would in my view indicate no disputes actionable in court should be taken to the final stage of chargeback – as far as I am aware the chargeback rules don’t say this.

I am not saying Ms P had no other options than pursuing a chargeback through HSBC. However, it is worth noting she provided it with clear and compelling evidence that she had tried and failed to engage Supplier A in an attempt to informally resolve the dispute. Her main alternative to chargeback at that stage was a more formal process such as court, which is unlikely to have been quicker or more straightforward and would certainly have been more expensive. And while I accept Supplier A still remains searchable on Companies House, it was dissolved a few months after Ms P contacted HSBC about the matter. While HSBC wouldn’t have known about this at the time – it reinforces the potential benefits of robustly pursuing a chargeback in the right circumstances.

As I have said in my provisional decision. In my view:

- Ms P approached HSBC with compelling testimony to indicate she had not got the modelling package described to her at the time of sale (and that she had in fact been victim to a scam)
- Ms P’s actions afterwards were consistent with what she said happened
- despite a signed contract there is a lack of persuasive evidence from Supplier A that Ms P had received the service as described in that contract – including the retouched pictures and e-portfolio/website
- the contractual paperwork, while contradictory in places, does indicate Ms P had also been promised a package for her son including ongoing agency services - there is no persuasive evidence she got these

- Ms P's testimony, elements of the written contract, and other circumstantial and supporting evidence (including the price paid and evidence found on anti fraud websites / the media) persuasively indicate that Ms P signed up because the service was misleadingly described as including other services beyond the initial consultation and photoshoot

As I have said in my provisional decision, while chargeback is not a compulsory process the particular circumstances here warranted a robust pursuit until the final stage in order to give Ms P the opportunity to have her case considered at arbitration.

HSBC has pointed out that the transaction was carried out face to face and not using a credit card. It has not really provided a lot more detail about this but appears to be indicating that the evidential requirements for a chargeback are more limited than say a claim under Section 75 of the Consumer Credit Act 1974 and depend on the particular nature of the transaction. For example, I note that depending on the circumstances of the sale and the reason code used it might be that the card scheme places limited or no weight on verbal / other circumstantial evidence as opposed to documentary evidence from the point of sale.

I have thought about this point. However, even if I accepted the scheme would not take into account certain wider information about the actions of Supplier A I still consider the documentary record from the time of sale supports Mrs P's dispute in line with the particular chargeback reason code that HSBC used here. The written contract we have shows there were several things Mrs P was promised the package would include for her son – yet there is no persuasive evidence from Supplier A that she got the service as described in this document.

Importantly, HSBC has not responded to my provisional decision with clear evidence of why an arbitration was not possible / why it would not have succeeded. In the absence of further detail from HSBC I have to go on the evidence I do have. Which indicates Ms P had chargeback rights and a compelling case.

While it isn't possible to know exactly what would have happened at arbitration I make my decision on the balance of probabilities. For the reasons given here and in my provisional findings I consider it more likely than not the card scheme would have concluded Ms P did not get what was described by Supplier A and awarded her money back – had HSBC presented her claim in a reasonable and clear manner.

HSBC appear to be suggesting that as it has not acted negligently and because Ms P had access to other means of recovering the money then the correct remedy here is a compensation payment rather than a refund of the funds which Ms P paid. In assessing a fair remedy I have thought about the relevant circumstances and I don't agree here.

As I have said in my provisional decision, because I think HSBC not pursuing the matter to arbitration has more likely than not caused Ms P to lose out, it is fair and reasonable that it refunds her to reflect her likely loss. Which in these particular circumstances I consider to be the amount she paid on her debit card less the £100 she has already received back.

In considering the fairness of making HSBC liable for the amount Ms P paid I have also considered the other avenues she might have to recoup her loss. But as I have already indicated, court action is not without its difficulties and uncertainties. Supplier A is now dissolved, but even if it were not I am not persuaded it would necessarily have complied with any order of the court. It is also questionable as to why the onus should be put on Ms P to pursue the matter through court because HSBC did not continue the chargeback process when it should have.

Furthermore, as I have already explained in my provisional findings, the evidence does not indicate that Ms P had any tangible benefit from the package – so I don't think it would be

fair and reasonable to make any other deduction from the refund here.

Putting things right

Overall, for the reasons already given I think it fair and reasonable that Ms P gets all the money back she paid for the modelling package with a £100 deduction for what she had received back already. She also shouldn't be out of pocket as a result of HSBC's failure to continue the chargeback so I consider it fair to also make an award of 8% simple yearly interest on the refund.

My final decision

I uphold this complaint and direct HSBC UK Bank Plc to:

- refund the amount Ms P paid on her debit card less £100 (£8,400) for the transaction to Supplier A plus 8% simple yearly interest from the date the chargeback claim was stopped, which I consider to be 19 July 2019, to the date of settlement.

If HSBC considers tax should be deducted from any interest award it should provide Ms P with a certificate of tax deduction, so she can reclaim this if applicable. Ms P should refer back to HSBC if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 28 October 2021.

Mark Lancod
Ombudsman