

The complaint

Mrs C complains about HSBC UK Bank Plc's ("HSBC") refusal to refund the money she has requested.

What happened

Mrs C is represented in her complaint but for ease of reading I'll refer to all submissions and responses as if they came from Mrs C directly.

Mrs C's daughter instructed a firm of solicitors, I'll call the solicitors "R". Mrs C gave her permission for her credit card to be used to make several payments to R to pay for this work. The credit card that was used was provided by HSBC.

Mrs C's daughter became dissatisfied with the quality of the work the solicitors provided and she withdrew her instructions. Mrs C complained to HSBC, she indicated that she wanted it to help her to get a refund of the money she'd paid to R or refund her directly itself.

HSBC looked into Mrs C's complaint. It considered two routes for getting Mrs C's money back, chargeback and a claim under Section 75 of the Consumer Credit Act 1974 ("Section 75").

Chargeback is a process which in certain circumstances allows customers to ask their bank for a transaction to be reversed if there is a problem with goods or services that they have paid for. There is no automatic right to a chargeback. But we consider it is good practice for a financial business to consider carrying out a chargeback if its customer asked it to do this provided that there is fair chance the chargeback will be successful. There are certain deadlines that apply under the chargeback rules. HSBC indicates it could not instigate chargebacks in relation to the payments Mrs C had made to R as the deadlines had been missed.

In relation to Mrs C's claim under Section 75 HSBC considered that she was not entitled to the protection of this provision. Therefore, it declined to take her claim any further.

Dissatisfied Mrs C complained to our service.

When the complaint came to us HSBC offered £50 for the level of service it provided whilst investigating Mrs C's claim and complaint.

One of our investigators looked into Mrs C's complaint. Our investigator concluded that HSBC had not provided the level of service Mrs C was entitled to expect. She also concluded that this was likely to have caused Mrs C to experience distress and inconvenience. On this basis our investigator recommended that HSBC ought to pay Mrs C £100 for distress and inconvenience.

HSBC accepted this recommendation, Mrs C did not. In summary, Mrs C indicated she rejected the recommendation for the following reasons. Our investigator concluded that Mrs C's request for chargebacks may not have been out of time in relation to all of her transactions. However, on balance it made no difference that HSBC had not raised chargebacks for all of the transactions this was because the chargebacks would most likely have failed. But Mrs C did not agree this was the most likely outcome because she said there had been a first chargeback which had resulted in the money being refunded to her

account. It followed therefore, in her opinion, that any subsequent chargeback attempts would likely have been successful too.

Moreover, Mrs C mentioned that our investigator had not talked directly to her about her dealings with R. Instead our investigator had only spoken to Mrs C's representative. Mrs C suggested that our investigator had made a mistake in taking this approach. Specifically, Mrs C indicated that if our investigator had spoken to her then she would have been informed that:

1) Mrs C *"had to speak with [R] and inform them that the payments were made using her credit card, to purchase services from R, as a gift to.., her daughter, this meant that..[Mrs C] benefited from the services provided by [R] and a contract between them had been entered into following the principles of contract law – an offer was made, it was accepted, a consideration was paid.*

2) *law firms cannot take payments from any person/credit card, they have to check the name on the card and ask to speak with the cardholder, the cardholder has to confirm that s/he authorise payments to be taken from his/her credit card;*

3) *since there was a contract and direct relationship between [Mrs C] and [R] by failing to provide services to a reasonable standard and misrepresenting the service, [R] breached the contract it had with [Mrs C], it breached the Consumer Credit Act 2015 and there had been misrepresentation, under such circumstances, a valid D-C-S link was established".*

Mrs C indicated that she wanted an ombudsman to take a fresh look at her complaint.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

HSBC declined to carry out chargebacks because it said the request came too late. But looking at the date of the transactions, the date Mrs C contacted HSBC and the relevant rules, I am not satisfied that Mrs C had missed the relevant deadlines in relation to all the transactions although she had for some.

That said, a chargeback can only succeed if there is a valid chargeback reason. I can't see that under the rules there was a relevant chargeback reason. Moreover, chargeback isn't a mechanism for determining the underlying dispute between the merchant and the cardholder. But this was what Mrs C was asking HSBC to use the chargeback process for. Moreover, I also think R would have defended its position given what I've seen about its stance. Based on what I've seen it is unlikely an arbitration which would have been the next

stage, would have been successful. In these circumstances, it follows I think it is likely that any chargeback would have failed.

I recognise that Mrs C indicates that a successful chargeback was made on her behalf. But HSBC suggests otherwise. From the information I have seen a third party had made a successful chargeback claim against R not Mrs C. It is not clear on what basis that claim succeeded. In any event, Mrs C made a number of points about the failings of R in her chargeback request indeed she describes the dispute as “*complex*”. Given the number of issues in dispute, it is possible that with the successful chargeback R conceded on one limited ground and not on all the other issues. But each chargeback request would have had to have to be looked at on its individual merits. Therefore, it does not follow that because a chargeback request by a third party may have been successful any chargebacks initiated on Mrs C’s behalf would, on balance, have succeeded too.

For all these reasons I don’t agree I have any proper basis for saying HSBC acted inappropriately in relation to Mrs C’s chargeback requests.

I’ll turn now to Mrs C’s point about the rights she suggests she has under Section 75 against HSBC. I think it’s important to set out my role here. In considering a complaint about a financial services provider, I’m not determining the outcome of a claim that a party might have under Section 75. In deciding what’s a fair way to resolve Mrs C’s complaint, I’ve taken Section 75 into account. But that doesn’t mean I’m obliged to reach the same outcome as, for example, a court might reach if Mrs C pursued a claim for breach of contract or misrepresentation. This service is an informal alternative to the courts.

The general effect of section 75 is that if Mrs C has a claim for misrepresentation or breach of contract against the supplier, she can also bring a like claim against HSBC provided certain conditions are met.

One of these conditions is that there must be a very specific relationship in place that is a valid debtor-creditor-supplier relationship. For this to be in place Mrs C must be the debtor, HSBC the creditor and R the supplier. It follows therefore there needs to be a contractual relationship between Mrs C and R.

I’ve seen contractual documents between Mrs C’s daughter and R. But I’ve seen no contractual documents that demonstrate that Mrs C and R entered into a contractual relationship, which I might have expected to see in the circumstances if they were contracting parties.

Moreover, Mrs C’s complaint form makes it clear that only Mrs C’s daughter instructed R. She says in that document “*My daughter....instructed [R] to represent her on a contentious legal matter.*”

I note Mrs C suggests our investigator should have talked directly to her about her relationship with R. But where a consumer asks us to deal with their representative that is what we do, rather than talk to them directly. In any event, I am satisfied that when Mrs C paid R she was merely discharging her daughter’s obligation to pay R she was not instructing R in her own right. I don’t agree that because Mrs C discharged her daughter’s obligation to pay R this made her contracting party. Neither do I find that simply because Mrs C authorised R to take payment from her credit card for this purpose this made her a contracting party. Nor would Mrs C have become a party to the contract if she benefited from it.

Moreover, I am satisfied that if R’s fees had remained unpaid. R would have pursued Mrs C’s daughter for payment not Mrs C. Which underlines who are the contracting parties.

For all of these reasons, I cannot fairly or reasonably say that HSBC has acted incorrectly in relation to this part of Mrs C’s complaint.

The thrust of Mrs C's complaint is not about the level of customer service she received. However, HSBC accepts it did not always provide the level of customer of service she was entitled to whilst dealing with this matter. On this basis it has already accepted that it should pay Mrs C £100 for the distress and inconvenience this most likely caused her to experience.

My final decision

My final decision is that HSBC UK Bank Plc must pay Mrs C £100 for distress and inconvenience as it has already accepted it must do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 6 September 2022.

Joyce Gordon
Ombudsman