

The complaint

Mrs I complains that HSBC UK Bank Plc won't refund a payment made from her credit card account, which she says was taken without her agreement.

What happened

The payment in question relates to replacement flights Mrs I arranged with an airline "R", following R's cancellation of the original flights due to the Covid-19 pandemic. R told Mrs I she was entitled to a refund or to change her cancelled flights free of charge. She adds that when she used R's rebooking portal she had to provide card details but was told she wouldn't be charged. But R then did take payment of £1,107.48.

Mrs I sought to claim the money back from R but it told her that because the cancellation was due to extraordinary circumstances it was not obliged to compensate her. Mrs I explained the situation to HSBC, but hasn't been able to secure a refund. The bank says it considered whether it could raise a chargeback for the transaction, but that it didn't do so because it felt a claim was unlikely to be successful. It offered Mrs I £100 in respect of poor service it had provided to her. Mrs I was unhappy with HSBC's stance, and ultimately referred matters to us for review.

Our investigator recommended that HSBC refund the payment in light of Mrs I's evidence and her email exchanges with R. She wasn't satisfied that Mrs I had agreed to the payment, or that R had any authority to charge as it appeared to have misinterpreted the EU passenger rights on re-routing, set out in Article 8 of EC261/2004. The investigator also thought the way HSBC had approached the claim had added to Mrs I's distress, such that it should increase its compensation payment to £200.

HSBC disagreed with the investigator's conclusions, and has asked for an ombudsman to review matters.

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 approach to this complaint – and its response to the investigator's assessment – has focused on whether it was likely that a chargeback claim would have been successful. But Mrs I's position has been consistent throughout; she says R told her it would provide replacement flights without charge, and that R changed its position after she rebooked. Whether the money could be reclaimed via chargeback then, is somewhat secondary to the rather more fundamental issue of whether HSBC has suitable authority to debit Mrs I's account at all.

In this respect, I find the bank's evidence insufficient to support its position. I accept that Mrs I provided her card details to R. She says that was part of the rebooking process. She also provided details of the cancellation options R gave her, which explicitly state she was entitled to be rebooked on an alternative flight without charge. As previously explained, that

position is consistent with EC261/2004 Article 8 rights, which are unaffected by the extraordinary circumstances provisions relating to compensation in Article 7.

In such circumstances I would expect HSBC to have approached R to test what Mrs I said and obtain some evidence that might support that she agreed that it could charge her for the replacement flights. I've seen nothing to suggest that it did so. In the absence of submissions from the bank that might challenge Mrs I's compelling testimony, I find HSBC acted unfairly towards her both in debiting her account with the disputed sum, and in the way it dealt with her concerns when she sought a refund.

Putting things right

Overall, I'm satisfied that the fair way to resolve this complaint would be for HSBC to reimburse Mrs I's payment of £1,107.48. As I'm satisfied the money should not have been debited at all, it follows that Mrs I has been unfairly deprived of the use of her funds. HSBC should therefore pay interest on this sum, calculated annually at 8% simple from the date it debited Mrs I's account to the date it pays this settlement.

I also think the bank might have done rather a better job of making suitable enquiries. Had it done so, it would most likely have avoided unnecessary trouble and upset for Mrs I. I think it's right HSBC also recognises this by paying her £200 compensation, as our investigator proposed.

My final decision

My final decision is that I uphold this complaint.

To settle it, HSBC UK Bank Plc must, within 28 days of receiving Mrs I's acceptance, take the steps I've set out here. If HSBC UK Bank Plc deducts tax from the interest element of my award, it should provide Mrs I with an appropriate tax deduction certificate if she asks for it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or reject my decision before 25 August 2022.

Niall Taylor
Ombudsman