

The complaint

Mrs S complains about the way HSBC UK Bank Plc ('HSBC') handled her request for help with a refund in respect of flights which did not go ahead.

What happened

In March 2020 Mrs S visited the website of a travel agent I'll call O and booked return flights for three members of her family. The flights cost £1,964.98 and were due to depart on 29 May 2020 and return on 5 June 2020. She paid for flights using her HSBC credit card.

Mrs S said the flights were cancelled by the airline on 12 May 2020. O sent an email to Mrs S (but addressed to one of the travelling party) in July 2020 saying it had '*obtained a flexible ticket as a refund*'. It said the family member could also click on a link if they wanted a cash refund.

Mrs S emailed O on 7 October 2020 and asked for a refund.

Having not received a refund Mrs S asked HSBC to step in and help. She submitted a claim for a refund on 2 November 2020.

Unhappy with how long things were taking Mrs S complained to HSBC in March 2021. It said it was experiencing delays with dispute claims and apologised.

In May 2021 HSBC told Mrs S it was looking into her dispute and credited her account with the cost of the flights pending the outcome of the investigation. It raised what is known as a chargeback claim with O's bank.

In August 2021 HSBC told Mrs S her dispute claim had been declined as O had defended the chargeback claim. It re-debited the cost of the flights from Mrs S's account.

HSBC raised another chargeback shortly after this and credited Mrs S's account with the cost of the flights again in January 2022. In May 2022 it re-debited her account. It has since explained the second chargeback was also defended by O.

Dissatisfied with HSBC's handling of matters Mrs S referred her complaint to this service.

Before an investigator here looked at the complaint, HSBC offered to pay Mrs S compensation of £100 for delays in looking at her dispute, and for not telling her sooner that her chargeback claim was in fact out of time under the chargeback scheme rules.

An investigator here thought HSBC had offered reasonable compensation for what had gone wrong. He said a chargeback was destined to fail if taken any further as it had been raised out of time. And he said the necessary conditions had not been met for a claim under Section 75 Consumer Credit Act 1974 ('Section 75').

Mrs S disagreed with the investigator and asked an ombudsman to review her complaint. She said, in summary, that:

- She thinks she visited a branch of HSBC to make it aware of her dispute within the time limit for a chargeback to be raised, but was told to try and resolve things with O.
- She booked and paid for the flights with O so must have had the necessary relationship with it for a claim under Section 75

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.

The Covid-19 pandemic brought with it many issues relating to travel which could not go ahead as planned, with lots of flights and holidays being cancelled.

In many instances in the early days of the pandemic, where the supplier hadn't refunded the cost of a service that didn't go ahead, the customer could look to their bank for a refund and commonly the banks refunded customers where the supplier had failed to, when appropriate.

But the right to a refund when a holiday or flight hasn't happened as expected because of Covid-19 isn't automatic. It is dependent on the individual circumstances of each case and the legal position, which can be complicated.

Here, I am looking at the actions of HSBC and whether it has acted fairly and reasonably in the way it handled Mrs S's request for help in getting her money back. This will take into account the circumstances of the failed trip and how the supplier has acted, but there are also other considerations, such as the scheme rules a bank has to follow and its own obligations.

There are two main ways a bank can help a customer to recover money paid to a supplier who hasn't provided what was promised. It can try to recover the money from the supplier through a process known as chargeback. Or it can assess whether its customer has a valid claim under Section 75.

Chargeback

In certain circumstances the chargeback process provides a way for a bank to ask for a payment a customer made to be refunded. Where applicable, the bank raises a dispute with the supplier and effectively asks for the payment to be returned to the customer. While it is good practice for a bank to attempt a chargeback where the right exists and there is some prospect of success, the circumstances of a dispute means it won't always be appropriate for the bank to raise a chargeback. There are grounds or dispute conditions set by the relevant card scheme and if these are not met a chargeback is unlikely to succeed.

Here HSBC raised a chargeback for Mrs S, but it was defended by O on the basis it had been brought out of time and because it said the flight tickets she bought were non-refundable. Looking at the scheme rules for the 'services not received' dispute condition, Mrs S had to raise a chargeback within 120 days of the last date she expected to receive the service from O. Even using the date of the return flight as the starting point, Mrs S submitted her dispute form to HSBC more than 120 days after this.

Mrs S has said she visited a branch of HSBC and told it about her dispute within what she thinks was 120 days of the date of the return flights. She said this was sometime in October 2020 – around the time of her email to O on 7 October 2020.

There is no record of this visit in HSBC's contact notes. But in any event, the last day HSBC could have raised the chargeback within the time limit looks to have been 5 October 2020. Mrs S's recollections as to exactly when she made the branch aware of her dispute aren't entirely clear. I keep in mind also that HSBC would have needed some time to put the chargeback claim together and raise it. On balance, I've still not seen enough to find that HSBC would have been in a position to raise the chargeback within the necessary time limit.

Mrs S made us aware that O had confirmed to her in 2022 that the airline would provide a refund, but this never materialised. There is a dispute condition for where a credit has not been processed that might have been relevant here. Under the relevant card scheme rules however, a new chargeback raised for the same transaction under a different dispute condition was unlikely to succeed as only one attempt was permitted per transaction. And of course, HSBC had already attempted one in 2020.

It seems therefore that even if HSBC had continued to pursue the chargeback, (perhaps to the final stage where the card scheme made the ultimate decision about who got to keep the money), it was always destined to fail as it did not meet the necessary conditions of the card scheme rules.

Nevertheless, HSBC still handled the chargeback poorly. It took more than six months after Mrs S asked for its help to raise the chargeback and then another two months after O defended it tell Mrs S. Although it was reasonable for HSBC to at least attempt a chargeback it should have been clear from the start with Mrs S that it was very unlikely to succeed because it was being raised outside the relevant time limit. And it never properly explained to Mrs S why it had re-credited and re-debited her account a second time in 2021.

This undoubtedly caused Mrs S distress and inconvenience while she wondered what was happening with her refund request. HSBC paid Mrs S compensation of £100 for this. But I assess it at £200. The worry of not knowing whether Mrs S would get her money was prolonged over 18 months and I think this warrants a little more compensation than HSBC offered.

Section 75

HSBC didn't look at Mrs S's claim under S75 initially and only appears to have considered this after becoming aware of our involvement in the complaint. I'd expect HSBC to have considered both ways it could have helped Mrs S when she made it aware of her dispute. So, I've considered its potential liability to her under Section 75 when deciding what is fair and reasonable in this complaint.

Section 75 provides that subject to certain criteria the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services. One of these criteria is that there must be a debtor, creditor, supplier ('DCS') agreement.

This means the credit provided by HSBC to Mrs S had to finance a transaction between her and O.

Mrs S said she booked and paid for the flights with O so there was a DCS agreement in place. It's not as simple as that however and I need to think about whether Mrs S was a party to the contract with O for the supply of its booking services.

Looking first at the booking confirmation, O identified its 'customer' as one of the travelling party and not Mrs S. And it continued to address communications to that person after the booking was made – albeit via Mrs S's email address.

On that point, I know Mrs S has said she told O that it should address communications to her and it looks like Mrs S must have asked O to send communications to her email address when she completed the booking on O's website. Again however, this doesn't mean she was a party to the contract with O.

Looking also at O's terms and conditions, I've not seen anything that makes me think someone that wouldn't be using the travel services being booked by O became a party to the contract with it.

Overall, the available evidence suggests to me that in this case, Mrs S as a non-travelling party simply completed the booking information on O's website on behalf of her family members that would be travelling and made payment. But that doesn't look in this case to have made her a party to the contract with O. On balance it seems O's contract was most likely with the person it identified as its customer.

This means a DCS agreement was most likely not in place and Mrs S did not have a valid claim for the cost of the flights under Section 75.

So, while HSBC should have considered its liability to Mrs S under Section 75, she's not lost out as a result of this.

Overall therefore, I don't find that HSBC has treated Mrs S unfairly by not paying her the cost of the flights. I do find however that it should pay her more compensation for the way it handled her request for help.

I know this will be incredibly disappointing for Mrs S and I really do sympathise with her given the flights appear to have not gone ahead through no fault of her own.

My final decision

My final decision is that I uphold Mrs S's complaint in part. HSBC UK Bank Plc must pay Mrs S £200 for the distress and inconvenience it caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 9 February 2023.

Michael Ball
Ombudsman