

The complaint

Mrs P complains that HSBC UK unfairly handled her claim for a refund of money she paid for a course.

What happened

Mrs P enrolled on a university course in August 2020, she used her HSBC credit card to make two payments for her tuition fees for £2,500 on 22 January 2021 and £1,700 on 15 April 2021.

Mrs P was unable to continue with her studies due to ill health. Unable to get a refund from the university, she contacted HSBC to ask it for help getting a refund and completed a transaction dispute form in April 2021. Mrs P incorrectly provided her debit card details for the transactions, but the transactions were made on her credit card. As the transactions couldn't be located HSBC closed the claim on 7 June 2021. Mrs P wasn't advised of this.

Mrs P continued to chase an update on her claim, in November 2021 the claim was passed to the disputes team. HSBC said it was unable to raise a chargeback because it was now more than 120 days since the payments were made. It sent Mrs P request for supporting evidence to see if she had any other valid dispute rights. HSBC said Mrs P hadn't provided sufficient evidence of a breach of contract or misrepresentation. And she was out of time for a chargeback, it declined her refund claim.

Mrs P complained to HSBC, she was unhappy that it didn't progress her dispute when she first raised it in April 2021. She thought it could have located the transactions or let her know earlier that it couldn't initially locate the transactions. HSBC didn't uphold the complaint. It said its disputes team were unable to locate credit card accounts from debit card details and it relied on the customer to provide accurate account information.

Mrs P wasn't happy with the response, she complained to our service.

Our investigator didn't think HSBC made a mistake when it declined Mrs P's dispute, as she didn't think there was a valid chargeback reason or any evidence of a breach of contract or misrepresentation, because Mrs P wasn't entitled to a refund under the university's terms and conditions. However, she didn't think HSBC had done a good job with handling Mrs P's claim. She thought this had caused Mrs P additional stress, so asked it to pay her £100 compensation to reflect this.

HSBC paid Mrs P £100 compensation, Mrs P doesn't think this goes far enough, she asked for an ombudsman to make a final decision.

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.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board, but because I don't think I need to comment on it in order to reach the right outcome. And our rules allow me to do this. This reflects the nature of our service as a free and informal alternative to the courts.

Generally, where a consumer raises a dispute about a transaction made on a credit card, the card provider can consider the dispute under two guises- chargeback and section 75 claim. I've set out my findings under the headings below.

chargeback

Chargeback is a process by which disputes are resolved between the card issuer and merchant, under the relevant card scheme. There is no right for a consumer to require that a chargeback claim be made. But if the right to make a chargeback claim exists under the applicable scheme rules – and if there is a reasonable prospect of success – I consider it to be good practice for a chargeback claim to be made.

In November 2021 HSBC considered Mrs P's dispute under the Visa scheme rules, it said it couldn't raise a chargeback as it was outside the 120-day time limit. However, Mrs P initially raised her dispute within the time limit, but HSBC were unable to locate the transaction at the time. I've considered the handling of the claim separately, below.

HSBC has said that even if the claim was considered in time, there was no valid chargeback reason to raise a chargeback.

I can see the visa chargeback reason *cancelled merchandise/service* is relevant here, however, to rely on this reason, the cardholder needs to be entitled to cancel and a refund under the merchants' terms and conditions. Having considered the university's terms, I can't see that Mrs P was entitled to a refund. So even if HSBC had submitted a chargeback under this reason within 120 days, I think it's likely the university would have successfully defended the claim and I don't think the chargeback would have been successful. In the circumstances, I don't think Mrs P lost out by HSBC not raising a chargeback in time.

section 75 claim

In certain circumstances section 75 of the Consumer Credit Act 1974 has the effect of allowing Mrs P to hold HSBC responsible for misrepresentations or breaches of contract by the university.

A misrepresentation is an untrue statement of fact made by a party, which induces another party to enter into a contract with it. And as Mrs P hasn't raised any issues about the university making false statements, I've only considered whether there is any evidence of a breach of contract by the university.

Mrs P enrolled on the course in August 2020 and cancelled due to ill health in April 2021. The university wouldn't refund her tuition fees. I can see that if Mrs P cancelled the course within 10 weeks of registration, she would have been entitled to a 50% refund, but Mrs P cancelled well outside this period, so I can't fairly say there was a breach of contract by the university.

Mrs P says that she applied to defer her exams in November 2020, due to difficulties with her internet connection, and not being able to prepare and the anxiety caused by this worry. However, she said the university failed to respond. So, I've looked at the university's terms on examination/assessment deferrals. Having considered these, I can see exam anxiety,

lack of preparation and technical difficulties are not considered to be sufficient grounds for a deferral.

According to the policy, it would consider the following valid reasons for a deferral; a debilitating illness, mental shock/trauma (like a bereavement) or being a victim of serious crime. And I can't see that Mrs P provided the university with evidence of any of these valid reasons, so I can't agree that the university were in breach of contract when it didn't approve her application to defer her exams.

Mrs P provided a copy of the university's student protection plan, but this relates to the university's risk assessment for the continuation of study for its students, it doesn't relate to Mrs P's right to cancel or defer the course. So, I don't think this evidences a breach of contract.

Mrs P is unhappy with the customer services received from the university, she doesn't feel they were supportive, and they didn't respond to her request for assistance. She has told us this has impacted her health. And whilst I do sympathise with Mrs P, we are unable to hold HSBC responsible for the university customer service issues she experienced. And as I don't think Mrs P has provided sufficient evidence of either a breach of contract or misrepresentation, I don't think HSBC unfairly declined her section 75 claim, so I won't be asking it to refund the transactions.

claim handling

The parties are familiar with what happened here, so I won't repeat this here, but I'll summarise the key points. Mrs P 's claim wasn't initially progressed in April 2021, because she used her debit card details on the form and the dispute team weren't able to locate the transactions. I can see Mrs P chased this up in May and August 2021, but I can't see that HSBC got back to her or let her know it couldn't locate the transactions. I think that if HSBC let her know it couldn't locate the transactions, Mrs P would have provided the correct card details and it would have been able to tell her earlier that it didn't think she had a valid chargeback or section 75 claim.

In addition, HSBC asked Mrs P on several occasions for further information, but she was returning the same information. I think it would have been helpful at this point if it could have explained why the information, she'd already provided wasn't sufficient and what it needed to see and why. So, whilst I don't think the outcome of Mrs P's dispute was affected by HSBC's poor handling, I do think this caused Mrs P unnecessary frustration.

Putting things right

I think the £100 compensation to reflect the poor claim handling, recommended by the investigator is fair. HSBC has already paid Mrs P £100 compensation to reflect this, and I'm not satisfied it would be fair or reasonable for me to require it to increase the compensation amount.

I appreciate Mrs P has been caused stress and worry about having to repay her student loan, but this is due to her not being entitled to a refund from the university and not caused by HSBC's handling of the claim. So, I won't be asking it to take any further action.

Whilst I know my decision is likely to be disappointing for Mrs P, I should point out that my decision is our last say on this complaint, should Mrs P choose not to accept it, this does not prevent her from pursuing the matter in the courts should she wish to do so.

My final decision

My final decision is I partly uphold the complaint and think the £100 compensation paid by HSBC UK is fair and reasonable settlement of the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 20 February 2023.

Karen Dennis
Ombudsman