

The complaint

Mr and Mrs V complained about the way HSBC UK Bank plc handled their request for a chargeback refund for a transaction which they disputed.

What happened

On 28 February 2023, Mr and Mrs V went to a bathroom merchant to buy a replacement shower screen. They explained to the salesman that their existing shower screen was 870mm wide, and the merchant told them the screens came in 800mm or 900mm. He didn't say the screens were adjustable, so 900mm would be too large, and Mr V ordered two 800mm screens. Mr V used his HSBC debit card to pay £1,853.38 from their HSBC account to the merchant.

When the order arrived and the fitter came to put up the first screen, he found that the width was only 757mm, though the packaging said it was 755-790mm. Mr V's order had specified 800mm. Mr V said the merchant should have recommended the 900mm screen, which was adjustable to 855-890 mm. Mr V complained to the merchant, but they would only take back one screen, not both, because the packaging had been opened. This meant Mr and Mrs V had a loss of £349.88 for the unused screen which the merchant wouldn't take back.

On 29 March, Mr V went to an HSBC branch to raise a dispute. He explained about problems with the shower screen. Mr V says the branch told him he had to put the full amount of the transaction on the form, not the £349.88 in dispute. He was sent a form by HSBC's disputes team the next day, and he completed, signed and returned it on 31 March, together with invoices and other information. On 5 April, HSBC credited Mr and Mrs V's account with a temporary credit of £1,853.38 while it investigated.

On 11 April, HSBC debited the temporary £1,853.38 credit. It didn't explain why it had done this, and in fact it sent Mr V a letter saying it had credited his account with that amount.

The same day, Mr V received an email from HSBC's disputes team, asking him to sign the dispute form. Mr V replied promptly that he'd already done so on 31 March, but he continued to receive daily emails saying the same thing for nine days.

Mr V complained to HSBC's chief executive on 13 April, in which he set out the situation about the bathroom screens, and the fact that the amount he was disputing was £349.88. He received an acknowledgement the next day, but he also continued to receive multiple emails asking him to sign the dispute form which he'd already signed on 31 March.

On 27 April, Mr V and an HSBC representative had a phone call. The HSBC adviser asked Mr V to re-submit the dispute form, saying he needed to add in the exact amount he was disputing, as the dispute team would need to raise a partial not full refund. Mr V told him that the disputes team already had that information, which he'd submitted with the signed form on 31 March. After the call, the adviser emailed Mr V, asking him to re-submit the dispute form with the exact amount he was disputing. The email said Mr V could include a covering letter with further supporting documentation, as well as an explanation of the refunds which the bathroom merchant had already supplied. The email said that when its dispute team

received the form with the correct information on it, it would review it and continue the investigation against the merchant. It went on to say that HSBC was very sorry for the poor service it had provided, and paid £50 into his account as compensation.

Mr V replied the same day, complying with the request and setting out the figures for the two shower screens they'd bought, and the amount that the bathroom merchant had refunded to them for one of the screens. The merchant hadn't refunded them for the second screen so the amount in dispute was £349.88.

By 15 May, Mr V hadn't heard back, so he chased HSBC.

HSBC replied on 17 May saying it had tried to phone Mr V, and asked him to phone. Mr V emailed that he'd given HSBC enough time to investigate, and asked what the dispute team was waiting for, and that the dispute team needed to write to him. He set out that the screen hadn't conformed to the description he'd been given, and that the merchant had given him incorrect advice about what to buy. He asked why he'd received repeated emails asking him to sign the form for about nine days, then another three days, when he'd already signed the form. He queried the £1,853.38 credit and debit to his account on 5 and 11 April, and said he wanted a response to all these points – not a phone conversation.

An HSBC adviser replied on 17 May saying *"Unfortunately I'm unable to confirm the progress of your dispute case as I don't work within our disputes team"*. The email went on to tell Mr V to phone the disputes team. It went on to say *"As no further action can be taken in regards to your complaint, and in the absence of any new information regarding the situation, HSBC will not be corresponding with you any further on these matters. I can confirm that this can be considered as the bank's final response on the matter."*

Mr and Mrs V contacted this service for help.

Our investigator didn't uphold Mr and Mrs V's complaint. He said that the first chargeback form didn't have the correct figure for the dispute, but he appreciated that HSBC didn't make that clear to Mr and Mrs V. The investigator told Mr and Mrs V that he was satisfied that HSBC had now taken the correct steps in raising the chargeback, but as the timescales for chargebacks are set by the card scheme, there was nothing HSBC could do but wait.

Mr and Mrs V asked for evidence that HSBC had now sent off their chargeback, and asked when they'd hear. The investigator asked HSBC, which said that Mr V hadn't phoned so it had never sent off the chargeback. The investigator apologised that he'd thought the chargeback had been raised, but told Mr V that he'd again have to submit a new chargeback and supporting documentation. The investigator acknowledged that HSBC's last letter had said HSBC wouldn't correspond further with Mr V about this, but said this just related to the complaints team, and Mr V should send the chargeback claim and documentation to the disputes team.

Mr and Mrs V didn't agree. They sent detailed reasons, and asked for an ombudsman's decision, and their complaint was passed to me.

My provisional findings

I issued a provisional decision on this complaint. This was because I'd come to a different conclusion to the investigator. Issuing a provisional decision gave both sides the opportunity to comment on it, by the date set, before I issued a final decision

Before issuing the provisional decision, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

In my provisional decision, I first explained that the decision was about what HSBC did and didn't do. This service doesn't decide the outcome of chargeback claims. Chargebacks are a voluntary scheme, run by the card scheme (the business that runs the payment network) not by the card issuers (here, HSBC). The chargeback scheme was one way which HSBC might have been able to recover funds for Mr and Mrs V. However, chargebacks are limited by the particular scheme rules that apply. I considered the relevant chargeback scheme rules to decide whether HSBC had acted fairly here.

Having looked carefully at the detailed information provided by both sides, I considered that HSBC provided poor service to Mr and Mrs V, making multiple errors.

- I accepted Mr V's evidence about what happened when he first went to a branch to raise the problem on 29 March. He explained the details, but wasn't given a copy of the complaint which branch staff recorded, and he wasn't asked to sign anything. He completed the form which was sent to him by HSBC's Disputes team on 31 March. Mr V said that the amount of the chargeback was decided by HSBC, and when he went back to the branch, he told them he was disputing one shower screen – but they told him they had to chargeback the full amount. I could tell from the detail and precision of Mr V's evidence that he is careful and thorough, so I thought it was unlikely that the error on the form he submitted on 31 March arose from any carelessness on Mr V's part. Nor did I think it was the result of any intention to claim more than the £349.88 which he believed was due, because he made the amount clear in his supporting documents which set out the dispute.
- It wasn't clear to me why, when HSBC received the 31 March form, it didn't immediately and clearly contact him to say that although the supporting documents were about £349.88, the box clicked on the covering form was for £1,853.88. The whole problem appeared to have arisen from this initial difference, which I considered was a minor administrative matter which could and should have been easily solved by a quick email or phone call to clarify. Instead, HSBC put a temporary credit for the full £1,853.88 onto Mr and Mrs V's account on 5 April.
- Further errors were made on 11 April. First, HSBC didn't tell Mr and Mrs V why it was taking back the temporary credit. It's reasonable that it should have told them the reason. I saw nothing to indicate that HSBC had raised the chargeback at that point, so it might be that someone had belatedly realised that the form and supporting documents were about different amounts. But if so, HSBC should have explained this, and sorted out the issue so the amounts matched.
- A further error on 11 April was that the letter which was sent to Mr and Mrs V said that £1,853.88 had been credited – when in fact it had been debited.
- I could understand why Mr and Mrs V were frustrated when, for nine days at that point and for three days later on, they received daily emails asking them to sign the dispute form. Mr V had already done this on 31 March. The emails didn't explain that the actual problem was that the supporting documents were for a lower amount than the click-box amount on the form. These daily emails asking for something which Mr and Mrs V had already done, would have been frustrating and upsetting.
- The phone call from HSBC on 27 April did at last tell Mr and Mrs V that the problem was that the figure on the form needed to be the £349.88 in dispute. The adviser

recognised that HSBC had provided poor service, and paid £50 compensation. I considered whether this was a fair and reasonable amount below, but in that call and follow-up email, HSBC asked Mr V to submit the form and supporting documents again – even though he'd already done so and the information was with the disputes team.

- It wasn't clear to me why HSBC repeatedly asked for the form, when Mr V had sent the supporting documents which were clear and self-explanatory. The most appropriate chargeback reason here appeared to have been "not as described", but the rules only require an explanation, not a form. A form helps the bank to gather all the relevant information, but isn't a pre-requisite for the chargeback, and it's for the bank's convenience. HSBC should have been able to submit Mr V and Mrs V's chargeback claim based on what they had.
- Although Mr V complied with the request and sent the form and documents again, the promise made to him on 27 April wasn't honoured. The 27 April letter said that *"once our disputes team receive this form with the correct information provided on it, they will be able to review it, and continue the investigation for your dispute with the retailer."* The email Mr V received on 17 May was unprofessional in tone - curtly saying that the author couldn't confirm the progress of the dispute because he worked in a different team, without saying why the correct team couldn't respond. Worse, it simply said, as I've quoted above, that *"As no further action can be taken in regards to your complaint, and in the absence of any new information regarding the situation, HSBC will not be corresponding with you any further on these matters. I can confirm that this can be considered as the bank's final response on the matter."* This went against the promise made on 27 April that the dispute would be investigated. It also didn't explain why HSBC wasn't willing to take any further action. I found that this response was unacceptable in the light of the 27 April promise to investigate. It was also unprofessional and unhelpful in tone. I noted that Mr V had been polite and co-operative throughout, despite the clear lack of progress when he repeatedly provided multiple copies of the same information when requested.
- I noted that it later came to light that HSBC hadn't actioned a chargeback, despite having promised to do so. I recognise that chargebacks aren't a right, and the card issuer (here, HSBC) doesn't have to submit one. But we think it's good practice to try if it has a reasonable prospect of success in the particular circumstances. And HSBC hadn't argued here that it told Mr and Mrs V that wouldn't raise a chargeback for any stated reason – it had simply never done so despite saying it would, then finally said it wouldn't correspond further.
- HSBC told this service that the reason it hadn't issued a chargeback was because Mr V never rang back at the end of the chain of events I've set out above. Mr V told us that *"when important discussions are involved, it has to be written down."* I found Mr V's comment entirely understandable, especially in the light of the very poor service which Mr and Mrs V had received. In any event, it shouldn't be the case that a customer's complaint isn't actioned because they prefer to deal by email than phone. So I didn't accept that Mr V preferring email was a valid reason for HSBC to refuse to progress the investigation of his complaint, or to refuse to progress the chargeback claim either.

Having identified multiple errors in HSBC's actions in relation to Mr and Mrs V's complaint, I went on to look at the chargeback claim, its prospect of success, and how this complaint should now be resolved.

In terms of the chargeback process, I didn't agree with our investigator that Mr and Mrs V should start again with another attempt to get HSBC to process a chargeback. For one thing, by the time of my provisional decision, it was more than 60 days from when HSBC learnt that there was a dispute on 29 March, and also outside 120 days from the 28 February transaction. This meant that raising a chargeback dispute now wouldn't be possible under the rules of the scheme.

I also quite understood why Mr and Mrs V told us that they don't want to go back to HSBC, in view of the poor service they've received, and the fact that HSBC put in writing that it wouldn't respond further to correspondence. It appeared to me that trust and confidence had been understandably lost, and this wouldn't be practicable in all the circumstances of this complaint.

Mr and Mrs V provided information right from the start which was enough to satisfy the requirements of the card scheme rules, which were to give a description of the dispute in enough detail so that the reader could understand the issues. Mr and Mrs V were meticulous and clear in what they provided. So I found that they had provided enough, and within the timescales, for HSBC to have raised the chargeback claim on their behalf within time. I found that HSBC was responsible for the failure to raise a chargeback.

I went on to look at the consequence of that failure by HSBC. HSBC had made no comment to suggest that a chargeback for merchandise not being as described would have had a poor prospect of success. And I was surprised that HSBC would have entertained the idea of submitting a chargeback in the first place if it thought there was no reasonable prospect of success. So I found that HSBC deprived Mr and Mrs V of the opportunity to find out what would have happened. In the absence of any compelling reasons to show why a chargeback would not have succeeded, on balance I thought it was more likely to have succeeded than not. So I considered that a fair answer here would be for HSBC to provide a refund of the amount it should have submitted as a chargeback ie £349.88, plus interest at 8% simple from the date it should have raised it, 31 March 2023, to the date of settlement.

I also looked at compensation for the distress and inconvenience which HSBC's errors and omissions caused Mr and Mrs V. It was evident from the facts I've set out above that they suffered a considerable amount of frustration, trouble and upset. Mr V repeatedly provided information requested, and time and again he met barriers and brick walls. As well as lack of progress with the actual complaint, HSBC sent repeated daily emails asking for what Mr V had already supplied, and it refused to deal with him other than by phone. I considered it was quite understandable that Mr V was unwilling to do so by that stage, and in any case he should have had an option as a consumer. Mr V acted calmly and reasonably throughout, despite a chain of bad service. And after an HSBC adviser admitted poor service and promised action on 27 April, this promise was not kept, and things worsened, culminating with HSBC's refusal to submit the chargeback or to investigate his complaint further.

Taking all these factors into account, I considered that a fair and reasonable figure for compensation for distress would be £300. HSBC paid Mr and Mrs V £50, which would leave £250 still to pay.

So my provisional decision was that I intended, subject to responses from the parties, to uphold this complaint. I said that I intended to order HSBC UK Bank plc to pay Mr and Mrs V:

- £349.88, which was the amount it should have submitted as a chargeback;
- Interest at 8% simple from the date it should have raised it, 31 March 2023, to the date of settlement;

- If HSBC deducts tax from the interest on the award, it should provide Mr and Mrs V with a tax deduction certificate to show how much it has deducted, in order to allow them to reclaim the tax from HMRC if appropriate to their personal circumstances;
- £300 compensation for the distress and inconvenience which it caused Mr and Mrs V. As HSBC has already paid £50, this would leave £250 still to pay.

Responses to my provisional decision

Mr and Mrs V accepted the provisional decision. They corrected a factual point in the chronology, which I've reflected in the facts above. Mr and Mrs V also said that they would require a certificate of interest.

HSBC didn't accept the provisional decision. It raised the following points.

- It commented on my statement that a form isn't a pre-requisite for a chargeback, and that HSBC should have been able to submit Mr and Mrs V's chargeback claim based on what it had. HSBC said that the form was part of its policy for raising chargebacks and should be an accurate reflection of the claim. It said that as Mr and Mrs V hadn't completed it, HSBC hadn't raised a chargeback.
- HSBC agreed that its service hadn't been to the standards it would expect. It agreed that compensation was warranted, but said that £200 would be more appropriate, reduced by the £50 already paid making £150.
- The retailer's returns policy had said that opened products wouldn't be refunded. So HSBC said the likelihood of Mr and Mrs V's chargeback being successful was very low. So it didn't feel it should be held responsible for the claim.
- HSBC said that chargebacks aren't a legal right. Where HSBC agreed to raise a chargeback, it didn't suggest or guarantee the chance of it being successful.

So HSBC's position was that it shouldn't refund Mr and Mrs V for the disputed amount, and compensation should be £200 (less £50 already paid) and not £300 (less £50 already paid).

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.

In particular, I have considered the responses to my provisional decision.

I've incorporated Mr and Mrs V's factual comment in the facts set out above, and I note that Mr and Mrs V require a certificate of interest.

Looking at HSBC's comments:

- I still consider that HSBC had enough information to have been able to submit Mr and Mrs V's chargeback claim. And I'm satisfied that Mr and Mrs V acted promptly and honestly in their repeated attempts to comply with HSBC's requirements. HSBC staff failed to provide necessary communication and assistance in relation to its form, and a form isn't a pre-requisite for a chargeback. I find that it would have been fair and reasonable for HSBC to have raised the chargeback in all the circumstances of this complaint, and it repeatedly failed to do so.

- I find that the service provided by HSBC to Mr and Mrs V was very poor, as I've set out above. I consider that a fair and reasonable amount for the distress and inconvenience it caused them would be £300, not £200 as HSBC suggests. This makes £250 still to pay as HSBC has already paid Mr and Mrs V £50.
- I note that HSBC is now saying that the likelihood of Mr and Mrs V's chargeback being successful was very low, so it shouldn't be held responsible for the claim. As HSBC says, chargebacks aren't a legal right. But I've seen nothing in the previous history of this complaint that indicates that HSBC ever previously said that the reason it didn't raise a chargeback was down to the prospect of success. HSBC based its failure to raise a chargeback solely on its internal form. I'm not persuaded by HSBC's change of mind, to say at this stage that it had no reasonable prospect of success, when it had not said this before. I consider that if HSBC really thought a chargeback here had no reasonable prospect of success, it would have said so before. So I still find that HSBC should provide a refund for the amount it should have submitted as a chargeback ie £349.88, plus interest at 8% simple from the date it should have raised it, 31 March 2023, to the date of payment.

My final decision

My final decision is that I uphold this complaint. I order HSBC UK Bank plc to pay Mr and Mrs V:

- £349.88, which was the amount it should have submitted as a chargeback;
- Interest at 8% simple from the date it should have raised it, 31 March 2023, to the date of settlement;
- If HSBC deducts tax from the interest on the award, it must provide Mr and Mrs V with a tax deduction certificate to show how much it has deducted, in order to allow them to reclaim the tax from HMRC if appropriate to their personal circumstances;
- £300 compensation for the distress and inconvenience which it caused Mr and Mrs V. As HSBC has already paid £50, this leaves £250 still to pay.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V and Mrs V to accept or reject my decision before 11 October 2023.

Belinda Knight
Ombudsman