

The complaint

Mr R complains that HSBC UK Bank Plc won't refund him all his money for a package holiday.

What happened

In April 2019 Mr R's HSBC UK Bank Plc credit card was used to pay a deposit on a package holiday of just under £5,000 for himself and six family members. Later in 2019 Mr R's wife paid a further amount of just under £14,200 towards the holiday which was due to take place in summer 2020. Due to the Pandemic it was repeatedly postponed by agreement between the parties. After a couple of years of postponements and debate with the holiday company Mr R sought to get his money back. But after he failed to do so from the holiday company he complained to HSBC.

HSBC looked into the matter and wouldn't make a full refund of what had been spent. Feeling that to be unfair Mr R brought his complaint to this service.

Our investigator looked into the matter. Overall, he felt that Mr R could make a claim under Section 75 of the Consumer Credit Act 1974 ('S75' and 'CCA' for short) to HSBC as a 'like claim' but could only claim for his portion of the costs. So the Investigator concluded that HSBC must pay the sum of £2,742.53 to Mr R plus 8% simple interest from when it declined his claim until when it settles it. HSBC agreed to this position but Mr R didn't agree. So the complaint has been passed to me to decide.

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 should make very clear that this decision is not about the holiday company here which isn't a financial services provider and doesn't fall within my remit regarding either chargeback or Section 75. Whatever the issues there maybe with the holiday company, and just because Mr R says he has lost out, it doesn't necessarily follow that HSBC has treated Mr R unfairly or that it should refund him the full amount. And this decision is solely about how HSBC treated Mr R. I hope this point is clear.

chargeback

There's no dispute that Mr R's HSBC card was used here. So I don't think HSBC did anything wrong by charging this transaction to his account at the point of purchase.

In certain circumstances, when a cardholder has a dispute regarding a transaction, as Mr R does here, HSBC (as the card issuer) can attempt to go through a chargeback process. Chargeback is a voluntary process which is decided simply on the terms of the dispute within the rules of the card scheme (not managed by HSBC). I don't think HSBC could've challenged the payment on the basis Mr R didn't properly authorise the transaction, given the conclusion on this issue that I've already set out.

The chargeback process is a straightforward dispute process which includes strict time limits. These time limits include a 'long-stop' time limit of 540 days from the date of the transaction. Mr R brought his complaint to HSBC outside of this time limit and thus a chargeback couldn't have been successful in these circumstances. So Mr R hasn't lost out due to HSBC not raising a chargeback.

The CCA

The CCA introduced a regime of connected lender liability under Section 75 that afforded consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "supplier"). S75 says:

"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."

A business such as HSBC can only be held responsible under S75 of the CCA if certain requirements are met *and* if there is breach of contract or misrepresentation of the contract *and* Mr R has lost out as a result. Here HSBC has agreed with our Investigator's analysis that it can be held responsible for a breach of contract here as it has agreed to pay the sum suggested-equating to Mr R's portion of the total amount paid. So implicitly it has also agreed that the Debtor-Creditor-Supplier Agreement requirement and financial limits requirements are also met. In essence that leaves the crux of the matter to be:

What is a 'like claim' in this case?

For a debtor to make a S75 claim against a creditor it must be a 'like claim', as S75 says, to that which he could make against the supplier. I do appreciate Mr R has funded the deposit here from his HSBC credit card. But simply funding a transaction doesn't make necessarily make someone a contractor to a contract or entitled to represent other parties in a claim on that contract. I note particularly the recent case of *Cooper v Freedom Travel Group Ltd and another (t/a Halifax)* [2022] EWCA Civ 1557 (25 November 2022) and particularly the comments of Davies LJ who concluded that *"the word 'debtor' in section 75 has a plain and unambiguous meaning, namely the contractual debtor"*.

So it is clear that Mr R can only make a like claim to HSBC here in the same manner as the contract allows him to make a claim against the holiday company. Here we have holiday company's terms and conditions along with the booking confirmation and receipts. Both the receipts and the booking confirmation refer to Mrs R being the lead booker or 'lead name.' Mr R is only noted in his capacity as a member of the party travelling.

Within the terms of most contracts of this type there are normally (and broadly) three ways of discerning which parties are contractors and what capacities and powers they have. These are the opening definitions of the parties, the booking and arranging powers of those

purchasing such services and the cancellation or claim powers of those purchasing such services.

In this particular case the opening definitions particularly under the 'formation of contract' section are unhelpful as they refer to the holiday company and "you" but doesn't go on to define "you" at that point. However the following section makes clear the parties by defining the role of 'lead name' and the responsibilities of that individual. The documentation available makes clear the 'lead name' is Mrs R. It makes Mrs R responsible for completing forms and ensuring the rest of the group adhere to the terms, she is also responsible for paying the holiday company the full amount and indemnifying the holiday company. So the terms are very clear the lead name is responsible for all members of the travelling party. It is also of note that only the lead name can cancel the contract. So it is clear that only from the contract terms that only the lead name can represent the other travellers on this contract. And that the other members travelling only have individual rights under the contract. So it can only be the case that the only claim Mr R could make under this contract is that in his own and sole right against the supplier. And as this is a 'like claim' he can only act alone and represent his sole claim in his claim against HSBC under S75. I've not seen any persuasive reasoning to see that the costs of the individuals travelling vary significantly so it seems fair to construe the costs to be equally shared across the group. Accordingly the maximum claim he can make here is one seventh of the total cost paid.

Mr R makes arguments of which I shall now address the key ones as I see them. Mr R has said "*The fact that each traveller is party to the single booking contract in no way implies that each member holds a distinct and separate financial contract with the supplier.*" I disagree because the contract makes clear that there is a difference between the lead name and their rights and obligations and the other travellers. It is clear from a construction of the contract that each traveller has rights under the contract and this differs between the lead name and the other travellers such as Mr R. And clearly it would be illogical to argue that the non 'lead name travellers' had no rights under the contract at all. If that were the case Mr R would be getting not even a limited refund.

Mr R makes points about 'consideration.' And for the reasons explained just because he paid towards this contract doesn't make him the lead name here or give him any power to set aside the contract terms that the lead name agreed to on his behalf.

Mr R says that there many holiday contracts with this as a standard term and that there are numerous decisions of this service which indicate such contractual distinctions aren't regularly made. Although there are many 'lead booker' type contracts in the holiday industry I'm not persuaded that they are standard wordings or that they are all the same as this particular contract at all. There is a wide degree of variation in the terms in my experience. And it is likely that in many such bookings where credit is used, it is the lead booker who often uses their credit card to pay as well. So this scenario is likely to be less common to my mind. And this service considers each case on its own individual merits, taking into account the individual circumstances of the dispute. Although I appreciate that this situation/outcome wouldn't have been envisaged by Mr R or Mrs R when booking this holiday.

I do appreciate that this isn't the decision Mr R wants to read. And that it leaves him significantly out of pocket despite the fact that I'm upholding this complaint. But that doesn't make it fair for HSBC to cover this entire loss. Clearly both Mr R and Mrs R have contractual relationship with the holiday company and I can only suggest taking independent legal advice on the matter in their dispute with the holiday company if they wish to take it further.

Putting things right

It is my decision that HSBC must pay the sum of £2,742.53 to Mr R plus 8% simple interest from when it declined his S75 claim until when it settles it.

My final decision

For the reasons set out above, I uphold the complaint against HSBC UK Bank Plc and it must remedy the matter as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 27 June 2024.

Rod Glyn-Thomas
Ombudsman