

## **The complaint**

Mr S complains that HSBC UK Bank Plc hasn't refunded a payment he made using his credit card.

## **What happened**

In March 2023, Mr S purchased return airline tickets for four of his relatives using his HSBC credit card. The flights were due to take place in September 2023. He also paid for new passports for those same relatives in April 2023. Due to delays with processing and delivery of the passports for three of the relatives, Mr S had to cancel the flights as the passports had not arrived in time. The airline refused to provide a full refund as the tickets that had been purchased were non-refundable and the flights were still operating as scheduled.

Mr S approached HSBC for assistance in getting his money back. HSBC reviewed Mr S' claim but said that it couldn't assist him with a refund. This was because the tickets were non-refundable and the reason the tickets couldn't be used wasn't anything to do with the airline's actions.

Our investigator didn't recommend the complaint be upheld. She didn't think HSBC had acted unfairly in declining to pursue Mr S' claim. She said that a chargeback would have had no reasonable prospect of success and there was no evidence of a breach of contract or misrepresentation by the airline for which HSBC might be jointly liable under section 75 of the Consumer Credit Act 1974 ("section 75").

Mr S didn't agree so the complaint has been passed to me for a 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.

As Mr S made the payment to the airline using his HSBC credit card, I've thought about whether HSBC acted fairly and reasonably in trying to obtain a refund for him. It could have done this in one of two ways. Either as a chargeback through the relevant card scheme or in considering whether it had joint liability under section 75.

A chargeback is a way to resolve payment settlement disputes between card issuers (such as HSBC) and merchants (such as the airline). Specific rules govern when a chargeback can be made and these rules are set by the relevant card scheme, who are independent of the issuer and merchant. Examples of when a chargeback might be able to be initiated include where goods or services are not received or as described, the wrong amount has been debited or a refund hasn't been processed correctly.

There is no obligation on HSBC to raise a chargeback if a consumer asks for a refund of a payment that has been made. However, I would consider it good practice for a chargeback to be attempted where the right exists and there is some prospect of success. When Mr S approached HSBC for assistance with his refund I can see it considered his claim but did not

process a chargeback through the card scheme. This was because HSBC did not consider there to be any reasonable prospect of success. Having thought about the circumstances here, I agree with that conclusion.

I say this because the reason the airline tickets could not be used was not down to anything the airline did or didn't do. The flights still went ahead and Mr S' relatives could have boarded so long as they had the correct documentation – which they didn't. The airline played no part in the passengers not having the correct documentation. Further, the airline tickets were purchased as non-refundable, so Mr S was not contractually entitled to any refund. It follows that any chargeback that might have been made was always likely to fail. I therefore don't think HSBC acted unfairly or unreasonably in not processing a chargeback.

I've also thought about HSBC's potential liability under section 75. The general effect of section 75 is that if Mr S has a claim for breach of contract or misrepresentation against the airline, he can bring a like claim against HSBC as the provider of credit. That is provided that certain conditions are met.

It is debatable whether Mr S' claim meets the relevant criteria for a section 75 claim to be made. This is because it is possible that the required debtor-creditor-supplier agreement is not present. I say this as it is possible Mr S may not be the contracting party as the airline tickets were not purchased for him. But I don't think I need to analyse that particular element in any detail as I'm satisfied it makes no difference to the overall outcome. This is because I've not seen anything to persuade me that there was a breach of contract or misrepresentation by the airline for which HSBC might be jointly liable.

As I've set out above, the flights still went ahead and were available to Mr S' relatives. However, the reason they could not travel had nothing to do with the airline's actions. While Mr S has made a number of points about the passport office and known delays in processing applications at the time, the failure to have the appropriate documentation in time for the flights had nothing to do with the airline. The airline did nothing to prevent Mr S' relatives from flying and therefore it did not breach its contract.

I acknowledge the airline did not provide Mr S with a full refund when he cancelled the tickets. However, contractually he wasn't entitled to any refund in these circumstances. I understand he did receive a very small proportion back from the airline and it's not entirely clear why this was, but that does not mean he was entitled to the full amount. Overall, I've not seen anything to persuade me there was a breach of contract or misrepresentation by the airline. Therefore, I don't think HSBC acted unfairly or unreasonably in not refunding the payment Mr S made.

I realise this will be very disappointing to Mr S and I accept that he has paid for something he didn't receive, and the fact he didn't receive it was not his fault. But just as it isn't Mr S' fault, it isn't the airline or HSBC's fault either. And that is ultimately why HSBC hasn't acted unfairly or unreasonably in refusing to refund him.

### **My final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 August 2024.

Tero Hiltunen  
**Ombudsman**