

The complaint

Mr B complains that HSBC UK Bank PLC (“HSBC”) failed to help him recover money he paid for a pilot training course following the liquidation of the supplier.

What happened

Between 9 January 2021 and 8 September 2021, Mr B made nine separate transactions totalling £47,962.53 using his HSBC credit card to pay for his daughter’s pilot training course.

Mr B says the supplier (who I’ll call “F”) provided poor quality online training and his daughter was only provided with 18 hours of flight lessons and her full six-month ground school training. He says there were problems with aircraft availability and management inefficiencies which caused significant delays to the training.

F went into liquidation in May 2023 which meant they were no longer able to provide the training to Mr B’s daughter and left him with no recourse to recover funds directly from them. He asked HSBC for help in reclaiming the money he’d paid.

HSBC said that Mr B was out of time to raise a chargeback. They also said he wasn’t able to make a claim under section 75 of the Consumer Credit Act 1974 (“s.75”) because the price of F’s contract exceeded the applicable financial limits for this, and because the necessary debtor-creditor-supplier link wasn’t in place as the services were being provided to Mr B’s daughter, not to him.

Mr B didn’t agree and referred his complaint to us. Our investigator felt that HSBC’s reasons for declining Mr B’s request for a refund were correct and didn’t recommend that the complaint should be upheld.

Mr B agreed that the total claim exceeded the financial limits for s.75 but said he wasn’t asking for a full refund. He was asking for the cost of the remaining flying hours that F didn’t provide which totalled around £29,000. Mr B said the ground school and the flying hours elements of the training were provided under separate invoices. And he said that his daughter didn’t have a credit card so couldn’t pay for the training, which is why he did so.

As the complaint remains unresolved, it’s been passed to me for a decision at Mr B’s request.

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 want to acknowledge that I’ve summarised the events of this complaint. I don’t intend any discourtesy by this – it just reflects the informal nature of our service. I’m required to decide matters quickly and with minimum formality. But I want to assure Mr B and HSBC that I’ve reviewed everything on file. And if I don’t comment on something, it’s not because I haven’t

considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

There are typically two avenues here that HSBC as the provider of credit could have considered.

Chargeback

In certain circumstances, when a cardholder has a dispute with a merchant, as Mr B does here, HSBC (as the card issuer) can attempt a chargeback. The process involves the card issuer disputing payments made on the card through a dispute resolution scheme operated by the company which runs the card network.

There first must be a right to apply for a chargeback under the card scheme rules. And I'd consider it to be good practice for HSBC to raise a chargeback if it has a good chance of being successful.

This means that for me to conclude HSBC did something wrong, I'd need to find that it didn't raise a chargeback in circumstances when it should have. This could be, for example, because Mr B's dispute looked to have fit within the card scheme rules. I'd also need to find that Mr B lost out as a result, for example, because it's likely the chargeback would have been successful and he would have recovered the money.

Here, the relevant rules for the kind of dispute Mr B was raising set out that a chargeback had to be raised within 120 days of the last date F was expected to provide the service, as long as this didn't exceed 540 days from the date he paid for it.

Mr B though got in touch with HSBC on 14 June 2023, which was more than 540 days since he made the last payment to F on 8 September 2021.

HSBC could have attempted to raise a chargeback still, but it was very unlikely to have succeeded. It's likely it would have been defended by F's liquidators or F's bank on the basis Mr B hadn't complied with the necessary conditions for the dispute he was raising, in that he hadn't met the necessary conditions about time limits.

So, on that basis, I find that HSBC didn't treat Mr B unfairly by not raising a chargeback.

S.75

This sets out that, in certain circumstances, if Mr B paid for goods and/or services, in part or in whole, on his HSBC credit card, and there was a breach of contract or misrepresentation by the supplier, HSBC can be held responsible.

However, there are certain technical criteria that must be met for a s.75 claim to be valid. These criteria relate to the cost of the goods or services, the parties to the transaction, and the way the payment was made. One of those is for a 'debtor-creditor-supplier' ("DCS") agreement to be in place between the parties to the transaction.

Mr B had the credit relationship with HSBC because he used his credit card with them to pay F, so he was the 'debtor'. HSBC was the 'creditor'. The 'supplier' was F. For there to be a valid 'DCS' agreement though, I would need to be satisfied that Mr B contracted with F for the pilot training course.

However, I don't think Mr B was contracting with F. The contractual paperwork I've seen appears to be in the name of his daughter. So, the contractual position is clear that she was the client of F and Mr B wasn't. I don't think there is anything in the contract or otherwise to make me think that Mr B was solely or jointly contracting here.

So, in conclusion I don't think there is the correct 'DCS' agreement for Mr B to have a valid s.75 claim against HSBC in respect of any breach of contract or misrepresentation by the supplier. As a result, I don't think that HSBC acted unfairly by not considering the merits of his claim. I know this will disappoint Mr B, but I must consider the specific s.75 criteria when determining if HSBC should do anything here.

I note our investigator said that the necessary financial limits for a s.75 claim weren't met. I don't need to comment on this though bearing in mind my findings on the contractual position between the parties.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 November 2024.

Daniel Picken
Ombudsman