

The complaint

Mrs S complains about HSBC UK Bank Plc's response to her attempts to recover money she'd paid using her debit card for a holiday that didn't go ahead due to the insolvency of her holiday provider.

Background to this decision

I recently issued a provisional decision setting out the events leading up to this complaint and how I thought the dispute should be resolved. I've reproduced the content of that provisional decision below, and it forms part of this final decision.

My provisional decision

Mrs S was looking forward to a cruise holiday she'd booked in May 2021. The booking was made through a third party travel company "A". The balance was due approximately three months before the holiday was due to start in September 2022. Mrs S paid this sum – £1,081.05 – on 14 June 2022 using her HSBC debit card.

Unfortunately, in mid-September A was placed into administration, leaving Mrs S with no holiday. Mrs S made efforts to recover her money. She raised a claim with "T", the company that according to the paperwork she received when she made her booking, had arranged insurance for her deposit and balance payment. T told Mrs S it couldn't help.

Mrs S turned to HSBC to see if it could assist in recovering her money. The bank lodged a chargeback dispute from Mrs S in December and asked her to provide information in support of her claim. In January 2023 Mrs S visited her branch to submit the documentation. She heard nothing further, and so she contacted HSBC on 9 March for an update. HSBC gave Mrs S a temporary refund on 10 March pending its investigation of the chargeback claim.

However, in May HSBC reversed the refund. It said it did so because the Visa card scheme rules stated that in the event of retailer insolvency, where travel services were covered by a bonding authority, the customer had to contact that authority for reimbursement, or demonstrate how they found out the retailer wasn't bonded.

Mrs S was unhappy with the bank's response. She complained, saying that if HSBC had explained this to her she would have provided this information. But HSBC wasn't minded to change its stance, and she referred the matter to us.

Following that referral HSBC said it was willing to pay Mrs S £200 in an attempt to resolve the complaint. Our investigator didn't think HSBC had dealt with Mrs S's claim unfairly, for broadly similar reasons as the bank had set out. He noted that Mrs S had since obtained further evidence from A's administrators, which had referred her back to her bank. HSBC responded to say it was now out of time to pursue the chargeback claim. The investigator considered the bank's settlement proposal fair.

Mrs S remains dissatisfied and has asked for this review, as she's entitled to under our rules.

What I've provisionally 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. Having done so, I'm not currently persuaded that HSBC dealt with Mrs S's claim correctly. I'll explain why.

It's not in dispute that Mrs S hasn't received what she paid for. Under the card scheme rules, it was open to HSBC to assist her by pursuing a chargeback claim on the basis that goods or services weren't provided¹. Mrs S appears to have contacted HSBC within 120 days of becoming aware of A entering administration, at which point it was apparent that the holiday would not be forthcoming.

I recognise that HSBC's branch staff did what they could to assist Mrs S in submitting her claim. But once that claim was made, the bank's level of service was rather less impressive. It's unclear whether anything was done to progress Mrs S's claim between early January and 10 March. That's a matter of some concern because by that point the 120-day window in which to proceed with the claim had passed.

HSBC hasn't submitted anything that might suggest it raised the chargeback but that the claim was successfully defended by A (or the merchant acquirer). Rather, the bank's submissions are that it didn't proceed with the claim due to the card scheme requirements relating to the involvement of a bonding authority.

I think in light of the reasoning given by the bank, it would be helpful for me to provide the relevant extract from the card scheme rules. This rule applies to transactions within Europe (as was the case with Mrs S's payment), and says:

*"For a Dispute related to non-receipt of travel services from a provider that is insolvent or bankrupt, if the services are covered by a bonding authority/insurance scheme, **the Issuer** must attempt to obtain reimbursement from the relevant bonding authority/insurance scheme, unless the bond or insurance scheme is insufficient. If the bond or insurance scheme is insufficient, **the Issuer** may use information in the public domain to initiate the Dispute."* [my emphasis in bold]

HSBC's position was that Mrs S needed to contact any bonding authority for reimbursement, or otherwise to demonstrate how she found out the retailer wasn't bonded. But the rule in question clearly said it is for the Issuer – that is, the card issuer – to attempt this.

I'm conscious that the card scheme rules were updated on 15 April 2023 and that this rule now includes the card holder as well as the Issuer. But the rule at the time HSBC should have dealt with Mrs S's claim included no such provision about the card holder². So in my view HSBC was wrong to reject Mrs S's claim on the basis that it did.

I also note that the submissions Mrs S made in January 2023 through her branch included the information she held about the way in which her deposit and balance were insured, as well as the response from T. I've not seen anything from HSBC as the Issuer to show that it attempted to obtain reimbursement through the insurance scheme, despite this being a key requirement of the relevant dispute condition.

¹ Visa Core Rules and Visa Product and Service Rules (23 April 2022) – Dispute Condition 13.1: Merchandise/Services Not Received – Dispute Rights

² Even if this amended rule had been in force at the material time, it simply says that the card holder or the Issuer on behalf of the card holder must make the attempt. It might still be unfair for an Issuer to place the entire burden on the card holder and more so if this requirement isn't explained

A debit card issuer doesn't automatically adopt liability for the failings of a merchant. But it should take care when asked to assist with a chargeback to ensure all necessary information is submitted. And it should be able to demonstrate that any steps it does take accord with the grounds set out in the card scheme rules.

I don't think Mrs S should be expected to know what steps might need to be taken in order to submit a claim. But I would expect HSBC to know these, given its role as a card issuer, and to make them clear to Mrs S. If HSBC needed more information from Mrs S to deal with the claim – and I'm not at this point persuaded that it did – it should have asked for this promptly, and certainly within the chargeback timescale.

Taking all of this into account, my provisional finding is that HSBC could – and should – have done more to assist Mrs S in recovering the money she was clearly entitled to be refunded. The position the bank did adopt doesn't appear to be supported by the relevant card scheme rules. I see no obvious reason why, had the bank handled matters in line with the card scheme rules, a successful claim could not have been progressed and a full refund of the £1,081.05 payment³ obtained.

The indications from the administrator are that Mrs S will instead be treated as an unsecured creditor of A and that there will be no funds for distribution. A successful chargeback claim would of course have been the responsibility of the merchant acquiring bank, rather than dependent on funds in A's insolvency.

It follows that I'm minded to conclude that the deficiencies in the way HSBC approached Mrs S's claim have led to her being treated unfairly and to incur a loss that she would otherwise have been able to recover through chargeback. That suggests it would be appropriate for HSBC to address her financial loss, and to pay her compensation for the unnecessary distress and inconvenience she's been caused by its handling of the claim.

To settle matters I proposed that HSBC refund Mrs S in full – with interest – and pay her £300 compensation. I invited Mrs S and the bank to let me have any further comments they wished to make in response to my provisional conclusions before I reached my final determination.

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.

Both parties indicated their acceptance of my proposed conclusions. In light of this, I see no reason to depart from the findings I reached in my provisional decision, and I adopt them – and my proposed resolution – in full in this final decision.

My final decision

My final decision is that to settle this complaint, HSBC UK Bank Plc must take the following steps:

1. pay Mrs S £1,081.05, representing a full refund of the debit card payment she made in June 2022

³ Mrs S may have paid further monies; it isn't clear to me whether she paid a deposit when she made her initial booking. However, that transaction would be outside the timeframe for recovery through chargeback as there is a 540-day 'long stop' that runs from the date of that transaction

2. pay Mrs S interest on the amount in 1., calculated at 8% simple annually from 23 May 2023 (I understand this to be the date on which HSBC wrongly reversed the credit applied to her account) until the date it pays this settlement. If HSBC deducts tax from the interest element of my award, it should confirm to Mrs S that it has done so and provide her with the relevant tax deduction certificate
3. pay Mrs S £300 in recognition of the distress and inconvenience she's been caused due to the way it handled her claim

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 24 April 2024.

Niall Taylor
Ombudsman