

The complaint

Mr N complains about a claim he made to HSBC UK Bank Plc ("HSBC").

What happened

The parties are familiar with the background to this complaint so I will only summarise the details. This reflects my informal remit.

In October 2023, Mr N paid for a holiday rental booking for £1,320 for 48 people with his HSBC credit card.

Mr N complained to the supplier saying there were issues with the accommodation, namely:

- The sofas had been removed and replaced with tub chairs.
- The lounge accommodated no more than 18 people.
- The dining room chairs were plastic and uncomfortable, and the dining table shown in the advert was no longer there.
- The windows didn't close or lock properly.
- The heating was capped at 20 degrees and was set to be switched off around 9pm/10pm until the morning. Many of the guests couldn't sleep as a result and had to huddle round a cooker to keep warm.
- The supplier's website mentioned there was underfloor heating, but this wasn't present.

Mr N wasn't able to get a refund from the supplier and so he made a claim to HSBC.

HSBC considered raising a chargeback but didn't proceed with this. They said Mr N had made full use of the booking and the services provided by the supplier.

Mr N didn't agree and referred his complaint to our service. Our investigator didn't recommend that the complaint should be upheld. In summary, she said that it was reasonable for HSBC not to raise a chargeback because Mr N didn't cancel the booking and the group had stayed in the property for the duration of the booking. So, she felt that a chargeback wouldn't have been successful even if HSBC had raised it.

Our investigator said that HSBC should have considered whether Mr N had a viable route to claim a refund under section 75 of the Consumer Credit Act 1974 ("s.75"). But she felt that, even if they had done this, Mr N's claim wouldn't have been successful because there was insufficient evidence that the supplier had breached the contract or misrepresented anything to him.

Mr N didn't agree with our investigator and so his 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've considered the submissions by the parties, but I will only comment on what I think is key to deciding this complaint.

It's important to note here that HSBC isn't a supplier of accommodation services. So, when deciding if they acted fairly, I'm focusing on their role as a provider of financial services only.

As Mr N used his credit card to pay for the booking, I consider the chargeback scheme and s.75 are particularly relevant as they are avenues HSBC could reasonably have explored to recover a refund for him.

Chargeback

Chargeback isn't a legal right and is governed by the rules of the card schemes. In this case it appears the VISA card scheme applies so this is what I've considered.

HSBC aren't obligated to raise a chargeback but it's often good practice to raise one where there's a reasonable chance of success. It appears the most appropriate chargeback reason here would be for services being 'not as described or defective'.

HSBC says they didn't raise a chargeback under this reason code because they didn't think it would succeed. And this was because the service that Mr N paid for was fully utilised, because he stayed in the accommodation as scheduled and didn't cancel.

I'm not entirely persuaded that HSBC correctly interpreted the reason code. I say this because this set out that a chargeback was potentially viable if the cardholder either '*cancelled the services or requested a credit from the merchant*'. The latter part refers to scenarios where services weren't cancellable, and it appears that this was the case here as the supplier's terms and conditions set out that Mr N was liable for the full price of the booking after this was confirmed. And, from what I've seen, it seems that Mr N did contact the supplier to complain about the accommodation and to ask for his money back.

However, even if HSBC had raised a chargeback, I don't think it would have been successful. I say this because the reason code also set out that Mr N would only have been entitled to the 'unused portion' of the service. And, because Mr N and his group stayed in the accommodation for the duration of the booking, there wasn't any part of the service that was 'unused' as far as I can tell. Had HSBC attempted a chargeback, I think it more likely than not that the supplier would have used this as a reason to rebut the claim. Even if I'm wrong about that, the supplier had responded to Mr N agreeing to take on board his comments as feedback, rather than agreeing that he should receive the full cost of the booking back (or even a partial amount). And it's likely they would have maintained that stance had a chargeback been raised.

Overall, I don't think it was unfair for HSBC to assume the chargeback wouldn't have succeeded. So, I don't think they acted unfairly by not raising a claim.

s.75

This essentially sets out that, in certain circumstances, where Mr N paid for services, in part

or in whole, on his HSBC credit card, and there was a breach of contract or a misrepresentation by the supplier, HSBC can be held responsible.

I note here that HSBC didn't consider whether Mr N had a viable claim under s.75, and I think they should have done so. I don't think it was incumbent on Mr N to tell HSBC that he wanted to make such a claim once HSBC had considered its position in respect of raising a chargeback. HSBC should have gone on to consider a s.75 claim for him.

I'm satisfied the necessary criteria for Mr N to make a s.75 claim was met. So, I've gone on to consider whether a claim likely would have been successful; had HSBC considered this. To do this, I'll consider each of Mr N's points about the accommodation in turn.

The sofas had been removed and replaced with tub chairs.

I agree that it's likely that what was advertised to Mr N about this on the supplier's website was different to what was then provided. I say this noting that the supplier said they'd removed some of the 'old and tatty settees' because they were no longer fit for purpose. The supplier also told Mr N that they hadn't updated the photos on their website in respect of this until after he'd made the booking.

However, it does seem that the supplier arranged to have some temporary seating in place, which presumably were the tub chairs that Mr N has referred to. I appreciate this wasn't what was advertised to him. But the supplier did arrange for seating to be present in the accommodation and I haven't seen enough evidence that these were either inappropriate or unsuitable replacements.

The lounge accommodated no more than 18 people.

Mr N mentioned to the supplier that the lounge only accommodated 18 people at best. From what I've seen, the advert for the accommodation makes no mention of how many people could be accommodated in the lounge. It mentions that it sleeps up to 48 people and provides seating in the dining room for the same amount of people. It also mentions that the lounge is suitable for use as a breakout area for a 'smaller group of guests'. So, I don't find that there was an express term in the contract setting out that the lounge accommodated guests of up to 48 people or that the position on this was misrepresented to Mr N.

The dining room chairs were plastic and uncomfortable, and the dining table shown in the advert was no longer there

I've not seen sufficient evidence that the dining room chairs were described incorrectly and the comfort level of these are subjective to each person who uses them. So, I don't find that the supplier breached its contract or misrepresented these. And I've not seen enough evidence that the dining room table was different to what was advertised or that the group weren't able to use a dining room table that was appropriate during their stay.

The supplier's website mentioned there was underfloor heating, but this wasn't present in the lodge.

I've not seen any mention on the website that the specific lodge that Mr N booked had underfloor heating. It appears that some of the other lodges available for booking had underfloor heating, but I've not seen sufficient evidence that this applied to Mr N's one. So, I've not seen sufficient evidence to show that this was misrepresented to him.

The windows didn't close or lock properly which allowed a lot of cold air in.

I've not been persuaded that there was a defect with the windows, and I would have needed more evidence to reach such a conclusion. Mr N has sent a photo of one of the windows but in my view this only shows that the window was open when the photo was taken, not that there was a fault with it. According to the supplier, no other guests complained about this being an issue. That doesn't of course mean that there wasn't a fault with the windows, as this could have happened at some point before Mr N and his party arrived at the lodge. But as I don't really have much compelling evidence of a fault with the windows, I can't discount the possibility that these might have just been a bit tricky to close (but were able to be closed) or that the caretaker of the property could have fixed the issue quite quickly to minimise the inconvenience of this.

The heating was capped at 20 degrees and was set to be switched off around 9pm/10pm.

I'm sorry to hear that this meant that some of the guests experienced a lot of discomfort because of how the heating was set. However, it doesn't seem the heating was broken, more that it was set at a particular level and at certain times of the day. I gather that the caretaker of the accommodation was able to adjust this heating to stay on once this was raised with him. That seems reasonable to me bearing in mind that not everyone experiences cold or coldish temperatures in the same way. And having this capped at 20 degrees doesn't seem unreasonable either as I'm not persuaded that having it at such a level was insufficient to warm up the accommodation reasonably.

Overall, I'm not persuaded there are sufficient grounds for me to say the supplier breached the contract or misrepresented the accommodation to Mr N to entitle him to claim a full or partial cost of the booking. So, I don't think there were grounds for Mr N to make a successful s.75 claim even if HSBC had considered this.

Finally, I note that Mr N has complained about how HSBC handled his claim. They've paid him £250 in respect of this and I think that's a fair amount having considered Mr N's comments about how this was handled.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 7 February 2025.

Daniel Picken
Ombudsman