

The complaint

Mrs W complains that HSBC UK Bank Plc ('HSBC') unfairly rejected her claim for a credit card payment refund she made.

What happened

Mrs W booked a hotel room for her and her husband, payment of which was made with her HSBC credit card. Mrs W and her husband were holidaying with another couple who had booked and paid for a room, separately and independently, in the same hotel. For ease of reference, I'll only refer to Mrs W throughout this decision.

On 20 January 2023, Mrs W booked a large junior suite in a hotel based in Italy for two adults costing a total of £4,152 - the invoice showed this was a non-refundable rate, for a nine-night stay starting in late August 2023. Shortly after arriving at the hotel, Mrs W, expressed dissatisfaction about a number of things and took the decision to leave after just one night.

Included in the list of complaints Mrs W made about her room were: it had no iron, beach towels/bag, drinking glasses or coffee machine, and the minibar wasn't stocked; it looked nothing like the photographs shown on the hotel website; the safety deposit box wasn't fixed to anything (making it insecure); the room was big, but the bed was a standard double size; there was no wardrobe (only a clothes rail with five coat hangers); and the terrace (the 'room terrace') adjoined to her room was no more than a 'balcony', was dirty and full of leaves, had security cameras pointing towards it, was shared with another room and was in the shade.

In terms of the hotel facilities and surrounding area, Mrs W complained that: it wasn't a five-star hotel; there was no car park; there was no spa services; the pool was unusable as it was covered in algae and was dirty; the hotel had no lift; the beach wasn't within walking distance; the main city was advertised incorrectly as being only a 'few kilometres' from the hotel; there was no English-speaking staff; there was nothing nearby to visit; there was no shuttle service; there was no access to the roof top terrace (the 'roof terrace'); the hotel bar wasn't a real bar; there was significant noise levels; and the 'sea view' wasn't as described.

The hotel responded to Mrs W's complaint saying her request for a refund was "*absolutely unfounded*" as it had honoured its agreement with her. So, she contacted HSBC for assistance. However, HSBC declined Mrs W's request for a refund concluding that it wasn't liable to her under Section 75 of the Consumer Credit Act 1974 ('section 75') and her request for a refund had been made too late for it to raise, on her behalf, a chargeback claim against the merchant.

Unhappy with HSBC's decision not to refund her, Mrs W complained to our service. Mrs W's complaint was considered by one of our investigators who came to the view that it shouldn't be upheld. Mrs W disagreed with the investigator's view, so her complaint has been passed to me for review and 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.

I'm very aware that I've summarised this complaint in far less detail than the parties, and in my own words. I'm not going to respond to every single point made by all the parties involved. Instead, I've focussed on what I think are the key issues here. This simply reflects the informal nature of our service. I should also note at this stage that where the information is incomplete or contradictory, I'll make my decision based on a balance of probabilities.

It's important to note that HSBC isn't the supplier in this case. So, in order to decide if it has acted fairly, I need to consider its role as a provider of financial services only. Mrs W used her credit card to pay for the hotel room. And with this in mind I consider the card protections of chargeback and section 75 to be particularly relevant as to how HSBC could reasonably assist Mrs W. It's these I've focused on when determining what is fair and reasonable.

Section 75

I think Mrs W's claim met all the conditions for bringing such a claim under section 75 such as being within the relevant monetary limits. I don't agree with HSBC's finding that all of Mrs W's complaint points were subjective. But I also don't think HSBC acted unfairly in concluding it wasn't liable to her under section 75 on the grounds of insufficient evidence of a breach of contract or misrepresentation having been provided. I'll explain why.

In deciding what's a fair way to resolve Mrs W's complaint, I've to take into account relevant law. This includes relevant sections of the Consumer Rights Act 2015 (the 'CRA') which states that a business needs to provide its services with reasonable care and skill. It also sets out certain remedies that may apply for any breaches under this act and also breaches of contract more generally. This includes the right to repeat performance, or the right to a price reduction.

Most of what Mrs W complains about relates to a claim of breach of contract – i.e. what was promised wasn't delivered – I'll deal with this first. The booking was made directly with the hotel. Various descriptions of what could be expected from the stay at the hotel were available to Mrs W – she mainly relied on what was described through the hotel's website and its social media page. Amongst other things, the offering based on the room she booked included: a large bedroom, a living room and a furnished "*spacious*" private terrace with a "*spectacular sea view*". And: "*Wi-Fi, air conditioning, satellite TV, safe deposit box, beach bag with towels...tea and infusions, mini bar, shuttle service to the center (sic), personalised room service...*".

Mrs W was unhappy with the quality of her room. But comparing her photographic evidence with those photographs on the hotel's website, these don't appear to be significantly different. And by her own admission she got what she paid for, which was a large room with a sea view. I don't think her claim that the room terrace was no more than a balcony is borne out by her photographic evidence which shows an area big enough to accommodate three full sized sunlounges, a table, and chairs. And I don't consider the hotel can be held responsible for this area being in the shade, which simply could've been a result of the time of day Mrs W had taken her photographs. As for the position of the security cameras, I can't say it was unreasonable for the hotel to position them in the best way it saw fit in order to protect its property and guests. And I don't consider there's sufficient evidence to show the room terrace area wasn't for Mrs W's exclusive use.

In terms of the advertised 'roof terrace' I think if the hotel did deny Mrs W access this could amount to breach of contract. But as she left after one night, the hotel hadn't an opportunity to remedy this situation, and I don't consider there's sufficient evidence to conclude, for example, that a price reduction for a one-off incident is warranted here.

I can't see that the hotel promised certain items Mrs W complained about such as cushions for the sun loungers, iron/ironing board, a wardrobe or coffee machine. Similarly, the hotel's website didn't say it had a lift. Nonetheless, the hotel did seem to take steps to provide items it plausibly could do when Mrs W requested them such as an iron/ironing board and she did appear to have storage facilities for her clothes. Mrs W said the mini bar in her room wasn't stocked but from what I can see, the hotel remedied this within a reasonable amount of time after she complained. In terms of the safe deposit box being insecure, taken together with the fact Mrs W's room was likely to be lockable, I can't say the security risk to her personal property was such that the hotel failed to act with reasonable care and skill.

Mrs W wasn't satisfied with the hotel bar – for example, she said it didn't have drinks on display and didn't stock a particular branded beer. But I'm conscious of the fact this was described on the hotel's website as a 'lounge bar' which does suggest a bar on the smaller side. In my view, whilst Mrs W was expecting something more substantial, I think the information provided by the hotel meant it wasn't reasonable to make this assumption.

Whilst Mrs W said there was no shuttle service, the hotel disputed this giving a detailed description of the vehicle it used which it said it owned and was parked in its garage. Also, she said in her statement to HSBC: *"not that you had access to the beach we enquired how we get there after much discussion they agreed that [the hotel] would run us to the beach and back if so required..."*. This statement taken together with the detailed description of what the hotel said about the vehicle used, does seem to support that there was a shuttle service available if Mrs W requested it. In terms of the parking facilities, Mrs W was unhappy that the hotel only had on-street parking for guest vehicles. But I can't see anything more than this was promised as part of her booking.

Regarding the advertised 'sea view', I know Mrs W was disappointed that, amongst other things, there was what she described as, 'scrub land' visible in between the hotel and the sea view. But from her own photographic evidence, her room seems to show it benefited from a view of the sea as the hotel website promised. Whether this was a '*spectacular*' sea view as described by the hotel, is clearly a subjective matter. In terms of what Mrs W said about the hotel swimming pools being dirty and full of 'algae', I think if this were the case, she could've reasonably provided persuasive photographic evidence of this. But I don't think she has done so. Mrs W says the 'spa' was non-existent. The hotel website refers to various 'wellness treatments' available to guests such as a 'sea salt body scrub' and 'relaxing massage'. According to Mrs W's own statement a massage service was available. And given she only stayed for one night, I don't think there's any persuasive evidence that the other treatments as advertised, weren't available to her if she had requested them.

Mrs W complained about 'DIY' type noises coming from the neighbours next to the hotel and a train passing very close to the property every fifteen minutes. First, Mrs W hasn't provided any independent evidence such as a recording demonstrating the train noise being *"so loud you had to stop speaking"*. And second, in terms of any DIY type noises, I think it's fair to say many hotels will have some level of noise which isn't within its control, I can't reasonably say this would amount to a breach of contract.

Mrs W complained about there being no English-speaking staff on-site. But at the same time, she said a member of staff translated for her when she was speaking with the hotel manager who was speaking in Italian. So, I can't reasonably or fairly say any promise in this regard wasn't delivered. And as far as the claim about how long it took the hotel to respond to her complaint and the staff being rude to her, I can't fairly hold HSBC liable for what are essentially customer service issues even if proved to be true.

As well as the contractual issues, Mrs W claims that the hotel misrepresented various items and services on its website. But based on everything I've seen, I can't reasonably conclude that

she's provided persuasive evidence of this. A misrepresentation in this context is an untrue statement of fact and many of the issues raised by Mrs W relate to subjective matters. For example, the hotel website described the distance to a particular city as being a 'few' kilometres away. And Mrs W doesn't agree with this because the actual distance is 23 kilometres. However, I think whether '23' counts as a 'few' is subjective and not a matter of fact.

I know Mrs W said the hotel had no garden – which would be clearly misleading if proved to be true – but I can't fairly or reasonably say that she's provided any convincing evidence of this being the case and I note the hotel still advertises it has such a garden. And in terms of the five-star rating of the hotel, which Mrs W considers was untrue based on her experience, I don't think she's provided sufficient evidence of this being the case. She refers to a standardised classification system used by some European countries, but Italy has its own rating system decided upon by national and local government agencies. In my view, Mrs W hasn't provided persuasive evidence to refute that the hotel, which is still advertised as a five-star rated hotel, wasn't awarded this rating by the relevant regulatory bodies. I think as a 'five-star' boutique hotel, this may not have matched what Mrs W expected from say a larger, chain type hotel but I don't think this is evidence of it not being properly awarded its five-star rating as it advertises.

All in all, I don't think Mrs W has provided sufficient evidence to show HSBC should be held liable to her under section 75. So, I don't think it acted unfairly when it declined her claim in this respect.

Chargeback

In terms of any potential refund through the Mastercard chargeback scheme, I agree with the investigator that this was within the relevant chargeback timescales. But I don't think Mrs W's claim had a reasonable prospect of success. I say this because, as the hotel said in its response to her refund request: *"the decision to leave our facility was your free choice but the suites remained at your disposal for the entire period you booked"*. So, I don't think the reason code 'services not provided' applies here as the hotel room and facilities were available to use if Mrs W had chosen to stay. And I can't fairly or reasonably say there's sufficient evidence to support a chargeback under the reason code 'services weren't as described' as she hasn't been able to demonstrate she didn't get what she paid for.

Mrs W says the other couple who she was travelling with, were successful in obtaining a refund under the relevant chargeback scheme that applied to their (separate) payment. But I can only consider her case on its individual merits. Based on everything I've seen, I don't think, in Mrs W's case, there is sufficient evidence to show a chargeback would've had any reasonable prospect of success.

For all the reasons set out above, whilst I know Mrs W will be disappointed by this outcome, I'm not upholding her complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 9 May 2025.

Yolande Mcleod
Ombudsman