

The complaint

Ms N complains about a claim she made to HSBC UK Bank Plc in respect of a transaction she made on her credit card.

What happened

Ms N, using her credit card, paid a travel agent for a package holiday. However, she was refused permission to fly by the airline due to not being in receipt of an ETSA, this being necessary because she wasn't flying direct to her ultimate destination (Mexico) but via the USA.

Ms N wanted a refund so she got in touch with HSBC. However it declined her claim. Ms N wasn't happy with this so referred her complaint to our service.

One of our investigators looked at the complaint which Ms N raised about her claim. He didn't uphold it and said, in summary:

- although it wasn't clear whether HSBC had attempted a chargeback he wasn't persuaded one would have ever been successful
- he couldn't see that there had been a misrepresentation or a breach of contract that would make HSBC liable to Ms N under section 75 of the Consumer Credit Act 1974 ("section 75")
- HSBC's offer of £100 for its poor handling of Ms N's claim and complaint was, in all the circumstances, both fair and reasonable

Ms N didn't agree with the investigator's findings 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've read the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point or particular piece of evidence, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome. Our rules allow me to do this, reflecting the fact that we are an informal free service set up as an alternative to the courts.

I would also add that where the information I've got is incomplete, unclear or contradictory, as some of it is here, I've to base my decision on the balance of probabilities.

I'm sorry to hear that Ms N was refused permission to fly by the airline. However, my focus here is the role of HSBC in responding to the claim Ms N made to it for a refund of the cost of her holiday (including flights). HSBC didn't provide the holiday (including the flights), but it can provide assistance by looking into a chargeback and section 75 claim. So I will consider if HSBC acted fairly in light of this.

chargeback

Chargeback is a scheme which in some circumstances can be used to recover money paid using a card. It isn't guaranteed to recover money, but it will often be good practice to attempt a chargeback. In this case it appears HSBC didn't raise a chargeback for Ms N.

I've considered if HSBC could reasonably have done more here – and I don't think it could have. I say this because a chargeback can only be raised for certain reasons and there isn't a reason code that fits this situation particularly well (where someone has been refused travel). Because the flight (hotel and transfers) were available to use, I'm satisfied that a chargeback for a service not provided had no reasonable prospect of success. So in not raising a chargeback I don't think HSBC has made a mistake.

section 75

In certain circumstances, Ms N is able to make a 'like claim' against HSBC for a breach of contract or misrepresentation by a supplier of a goods or services paid for using her credit card. This is through section 75 – which I've gone on to consider.

In order for section 75 to apply certain criteria needs to be satisfied. One of those is that there is a valid agreement between the debtor, the supplier and the creditor.

The first thing for me to make clear is that Ms N has no claim in respect of the airline because her credit card payment wasn't made to it. However, Ms N did pay the travel agent with her credit card. So it's arguable she has a claim in respect of its actions.

However, I'm not persuaded that the travel agent breached its contract with Ms N. I say this because in its correspondence setting out the terms of the booking the travel agent made it clear that Ms N, and not it, was responsible for ensuring valid travel documents, such as any necessary visas, were held.

Now I accept I can't say for certain what was discussed between Ms N and the travel agent before or after the booking was made. But other than her testimony, Ms N has provided no evidence of a misrepresentation of the contract by the travel agent.

So I don't think there is a clear breach of an express term of the contract here by the travel agent, nor persuasive evidence that it made misrepresentations. I've considered the Consumer Rights Act 2015 here – specifically the requirement that services are performed with reasonable skill and care. But based on what I've seen here – including the paperwork and the reasonable expectations around the travel agent in booking travel – I think it's difficult to conclude that it acted below the expected reasonable standard in law.

All things considered I don't think that in not upholding Ms N's claim for a refund of her holiday cost under section 75 HSBC acted unfairly. And for the avoidance of doubt I'm satisfied that this is the decision HSBC reached even if Ms N says it hasn't been formally relayed to her.

customer service

I note Ms N has raised concerns about HSBC's handling of her claim and her subsequent complaint.

Now I appreciate Ms N will be disappointed but having considered everything the parties have said and submitted I'm satisfied that the £100 offered by HSBC in this respect is more than fair and reasonable. I would also add that just because HSBC might have advised Ms N, incorrectly, that she should and would be receiving a full refund of her holiday purchase price doesn't mean she is entitled to such a refund.

refund claim for ETSA purchase of £17.08.

It's not clear that this particular claim has been considered by HSBC. But Ms N has provided nothing to our service, such as evidence of a breach of contract by the relevant merchant, that would lead me to conclude that this sum should be refunded to her. But even if I wasn't of this view I think that HSBC's offer of £100 covers this refund, leaving £82.92 as its offer for poor poor claim and complaint handling rather than £100.

My final decision

My final decision is that HSBC UK Bank Plc must, to the extent it hasn't done so already, pay Ms N £100, but it need do nothing further.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it. However, I would point out that if Ms N doesn't accept my decision she will be free to pursue legal action against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 20 September 2024.

Peter Cook
Ombudsman