

The complaint

Mr K has complained about the way HSBC UK Bank Plc trading as first direct dealt with his request for money back.

What happened

In October 2023 Mr K paid around £1,600 for dental aligner treatment from a company I'll call "S" using his HSBC debit card. S went out of business in December 2023 and Mr K contacted HSBC to dispute the payment because he hadn't received all the treatment. I understand HSBC explained it would need to wait until it was confirmed what was happening with the administrators before attempting the dispute.

Mr K said he continued to wear the aligners as prescribed until June 2024 even though he wasn't given the ongoing dental support from S. He said he didn't receive the results he expected and wasn't going to be able to use the lifetime guarantee S provided. So he contacted HSBC to pursue the claim again. I understand HSBC indicated the chargeback might not be successful. Mr K supplied evidence and HSBC told him the chargeback was unsuccessful. Mr K complained but HSBC said the claim was rejected by the card scheme because Mr K had received the treatment. Mr K decided to refer his complaint to the Financial Ombudsman. He said he had to pay for treatment elsewhere.

One of our investigators considered the complaint but thought HSBC's answer was broadly fair, although she noted HSBC didn't raise the chargeback.

Mr K didn't agree. He said he was requesting a full refund because the service wasn't provided. The complaint was passed to me to decide.

I decided to write to HSBC and said as part of the contract Mr K paid for:

- A set of aligners
- Ongoing dental support
- A lifetime guarantee (with qualifying conditions)

I noted Mr K decided to continue with the core treatment but was unhappy he didn't receive the ongoing support and the lifetime guarantee. I said it doesn't seem to be in dispute there's an element of the service he paid for that wasn't supplied. I said Mr K was unhappy HSBC didn't pursue the chargeback and that he felt it misled him about the card scheme declining the claim. I also highlighted he said he'd paid for treatment elsewhere.

I appreciated there was an element of the unknown as to what would happen if a chargeback was raised. Particularly given it may have been defended by administrators or liquidators. And I couldn't know for certain what the card scheme would have said had it gone to arbitration.

I said there was an argument that had a chargeback been raised when Mr K was halfway through the core treatment and S went out of business, he could have had grounds to claim

either a pro-rata or full refund. But things moved on, and he continued with the core treatment.

I said it seems as though Mr K completed the core treatment, and the money paid was substantially for that treatment. But I thought there was at least a reasonable prospect of success for Mr K to have fairly been able to seek the monetary value for what S wasn't able to provide under the contract. It's not in dispute S could no longer provide the guarantee, and Mr K has said he would've sought further treatment. So I thought he may have lost out as a result of S going out of business.

Unfortunately, there's no contract available since S went out of business. Evidence hasn't been supplied for a breakdown of costs. I understand a lot of the information was held in an online application that's no longer available. But I thought it seemed reasonable to say that there would have been some sort of cost involved for the guarantee. Customers were able to seek 'touch up' treatment on a once a year basis if they met the qualifying conditions.

I noted other complaints had been dealt with where the finance company involved received information from S saying the financial value of a 'touch-up' treatment is £220. I said it was difficult to know for certain if that's accurate. But this represents a refund of over 10% of the cost of the treatment. I said considering we'll never know if Mr K would have continued to receive any benefits under the guarantee; taking into account he'd received the core treatment, it might be a fair compromise for HSBC to pay Mr K £220 in relation to what he may have been able to fairly claim through chargeback.

I also said it seems that Mr K was misled with regards to the claim being declined by the card scheme. I pointed out it must have been quite disappointing for him to find out later on that the claim wasn't raised. And I could understand why he felt misled. I asked if HSBC would consider paying £100 compensation in recognition of what went wrong.

HSBC responded and agreed with the proposal. I issued a provisional decision that said:

I considered whether HSBC acted fairly and reasonably in the way it handled Mr K's request for getting his money back. In situations like this, HSBC can consider raising a chargeback.

The chargeback process provides a way for a card issuer to ask for a payment to be refunded in certain circumstances. The chargeback process is subject to rules made by the relevant card scheme. It's not a guaranteed way of getting money back.

While it's good practice for a card issuer to attempt to chargeback where certain conditions are met and there's some prospect of success, there are grounds or dispute conditions set by the relevant card scheme that need to be considered. If these are not met, a chargeback is unlikely to succeed. And something going wrong with a merchant won't always lead to a successful claim.

HSBC didn't raise the chargeback, but it's now agreed to reimburse Mr K £220 and pay him £100 compensation. I think this offer is fair, and I'll explain why in a bit more detail.

For Mr K to have had a chargeback successful for a full refund I think there'd need to have been sufficient evidence supplied for what he'd lost out. The chargeback reason code that likely was most relevant was for defective services or services not provided. It's not in dispute he received some service from S, and so a full refund would be unlikely to have been agreed through chargeback. Moreover, there's a lack of supporting evidence for the claim to have been considered, in part because S went out of business.

For defective services, Mr K indicated he was unhappy with the results of the core treatment.

But he's not provided supporting evidence such as an independent, expert opinion that sets out the treatment he paid for was defective.

While I appreciate Mr K is put in a difficult position because some of the evidence isn't available, I can only consider how HSBC acted based on what was able to be supplied. In the absence of a specific signed contract, I looked at S's website from around the time Mr K entered into the contract. This says most treatment lasts between 4 to 6 months. It's not in dispute Mr K was due to receive a set of aligners when he entered into the contract in October 2023 and that he received and used them. I think the core contract was for that set of aligners that he was due to use for a few months.

S's website says if the customer hasn't achieved the results they want, and providing they've met certain conditions, they might be eligible for additional 'touch up' aligners. Further aligners seem to be part of S's aftercare offering for further refinement (subject to dentist approval).

With regards to the lifetime guarantee, on S's website from the time, the frequently asked questions ("FAQ") page has a section for further treatment under the guarantee. This suggests customers can request further aligner 'touch ups' after the core treatment at no cost on an ongoing once a year basis. From what I can see the availability of a 'touch up' isn't the same as saying that particular results will be achieved. It seems like it's intended for refinement if possible. What the guarantee offered was the possibility of having further aligners provided that during treatment Mr K took certain steps. And that, after treatment, Mr K bought retainers every 6 months and wore them as prescribed. A dentist also had to approve the treatment. My understanding is that a dentist would only do so if they assessed that further progress to straighten the teeth would be possible. I'm conscious HSBC didn't have evidence Mr K met the conditions for the guarantee. Although his reasons for not being able to provide that evidence are of course understandable given S went out of business, and its online application stopped working.

Mr K thinks he should be provided with a full refund of the treatment costs. Even accepting services can't be supplied under the guarantee, given the stage of treatment he was at, the guarantee would never have given him the option of a refund of the core treatment costs. From what I've seen, a full refund was only available for the first 30 days after Mr K began the treatment around October 2023, and only if Mr K had not opened or used the aligners. I don't think it would be fair or reasonable for me to tell HSBC that it should now provide Mr K with a full refund to compensate him for a potential loss through chargeback based on the very limited evidence available. I don't think it was unreasonable for HSBC to not offer to pursue the refund for the value of what was provided under the core contract.

There are many ways in which the guarantee could have ceased to be of use to Mr K. He may not have done what was required in terms of buying retainers every six months. S may not have approved further aligners. The guarantee only gave the possibility of annual touch-up aligners – not the certainty that they would actually be provided.

Even if I were to accept there's a potential loss, it wouldn't be straight-forward to establish the value of the perceived loss. And, as I said, I'm required to resolve the complaint quickly and with minimum formality. I don't think HSBC is required to remedy a failure in relation to the core treatment or results Mr K received. Even if Mr K may have been able to further utilise the guarantee, I'm conscious HSBC has now offered Mr K £220. Mr K didn't supply sufficient evidence that the service he felt he lost out on was worth more than that – which I think may have been required for a successful chargeback. Considering we'll never know if Mr K would have continued to receive any benefits under the guarantee; taking into account he's received the core treatment, I think the offer puts him in broadly a fair position. As I said to HSBC, it seems like a fair compromise given I think the total amount paid was substantially for the core treatment.

I appreciate Mr K may feel he lost out because HSBC didn't pursue things when he first contacted it. HSBC sent its first final response letter with referral rights to our service in December 2023. Mr K could have referred his complaint if he was unhappy. As it turned out, he decided to continue the treatment. So I can't ignore that things have moved on. The treatment was largely self-directed, and Mr K chose to continue without support. He could have discontinued. He's not supplied sufficient evidence he was disadvantaged by not being able to contact S.

Moreover, while he's paid for treatment elsewhere, chargeback only covers the amount paid using the HSBC card. He's unable to claim consequential losses through chargeback. I have to consider what portion of the payment made using the HSBC debit card is fair to consider. And that's what I've done for the reasons given above.

Finally, with regards to the overall way HSBC handled the claim, I've explained above why I thought it could have been handled better. And I agree the £100 compensation seems fair in the circumstances.

I can't see we received anything further from HSBC. Mr K responded to say, in summary:

- He first became aware S went out of business on 18 December 2023 and immediately contacted HSBC. He said his plan was to stop using the aligners altogether and find an alternative supplier.
- Regular check ins and monitoring were crucial, and completing treatment without was not safe.
- HSBC initially told him a chargeback couldn't be raised because it needed further information which put him in a difficult position – unable to recover funds and forced to continue an unsafe treatment.
- He chose to complete his aligner set before escalating the claim in case this strengthened his position.
- He's paid £945 elsewhere to complete treatment.
- Had HSBC raised a chargeback when he first contacted it, he could have been entitled to a pro-rata refund of around £1,200. He thinks HSBC's actions resulted in him losing out.
- The current offer doesn't reflect his financial loss. He requested around £1,300.

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'd like to thank Mr K for this further response. I do appreciate what he's saying and can understand why he thinks a more substantial refund is due – particularly given he's paid for treatment elsewhere.

As I explained in my provisional decision, chargeback only covers the amount paid on the card and not any consequential losses. I don't know what would have happened had HSBC raised the chargeback when Mr K first contacted it. It may have been defended, or Mr K may have been able to recover more than I've now recommended. But I can't ignore that things moved on from then. Mr K could have decided to stop the treatment. He's said it wasn't safe to continue without the ongoing support. But I have to bear in mind he did continue with the treatment – as did many other customers. So, from a chargeback perspective, which is limited as I've already set out, I didn't think it likely Mr K could claim for the service he'd used – the core treatment.

Overall, while I'm sympathetic to the situation, I've tried to reach a fair compromise in the circumstances. I found that (while not certain) there was a good chance that had S not gone out of business, Mr K may have been able to ask for further treatment. And I've recommended HSBC refund him what I think was broadly a fair sum to reflect that. I've also recommended it pay £100 compensation on top of that to reflect the impact of the way things were handled, which I thought could've been better. I still think this is a fair way to resolve matters quickly and informally. Mr K doesn't have to accept the decision. He's free to pursue the complaint by more formal means, such as through the courts if he wishes.

My final decision

My final decision is that I uphold this complaint and direct HSBC UK Bank Plc trading as first direct to pay Mr K £320.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 21 April 2025.

Simon Wingfield
Ombudsman