

complaint

Mrs W and the estate of her late husband complain that HSBC Bank Plc declined to raise a chargeback dispute about a number of debit card payments they made to some timeshare companies.

background

Mr W made a number of payments to different timeshare companies between 2008 and 2015. Most of these payments were made using his debit card on a joint account he held with his wife. Some payments were made with a debit card for another account, and a couple were made by bank transfer.

In November 2016 Mr W asked HSBC to raise chargeback disputes about these payments, because he said he had never received the services he had paid for. He said the timeshare companies were fraudulent, and he provided links to websites supporting his case. He also said the timeshare companies had never told him about the 14 day cooling-off period, and had taken his payments during that period.

HSBC declined to raise any chargebacks. It said that all of the payments had been made more than 120 days earlier, being the usual time limit for Visa chargeback disputes. So Mr and Mrs W complained to our Service.

Our adjudicator did not uphold this complaint. He agreed with HSBC that the chargebacks had been raised too late under the 120 days deadline. He also referred to another time limit of 540 days, which is for cases where it is not immediately obvious that a chargeback reason applies. He said that most of the payments had still been made too long ago to come within this time limit. There had been one payment in October 2015 which was less than 540 days before November 2016, but he thought that if a chargeback had been raised then it would have failed, because Mr W had got what he had paid for: registration with the company.

Mr and Mrs W asked for an ombudsman's decision. They said they had been victims of fraud, and the Financial Ombudsman Service should help them instead of repeating the arguments used by the bank. That was in late 2017.

Unfortunately, the case was not referred to an ombudsman at the time. After Mr W died, his granddaughter contacted our Service in February 2019. As a result, this complaint was referred to me in April. Our Service paid Mrs W £150 in compensation for the delay.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I do not uphold it. I will explain why.

The payments on which Mr W wished to raise a chargeback were as follows:

- £1,974.50 4 November 2008
- £3,216.63 15 December 2008 (bank transfer)
- £253.39 24 June 2010
- £507.86 5 July 2010 (bank transfer)
- £517.67 30 November 2010
- £1,496.58 7 March 2011

- £1,454.96 8 March 2011
- £1,322.97 26 October 2012
- £481.89 21 January 2013
- £605.00 31 January 2014
- £1,148.13 19 February 2014
- £1,120.26 13 October 2015
- £395.00 27 January 2016

Chargeback is not available for bank transfers, only for card payments.

(I can see no evidence of a payment dated 7 March 2011, or for a payment of £1,454.96. However, the bank statements for the joint account do show a payment of £1,496.58 on 8 March 2011. In his letters to HSBC, Mr W described both payments on 7 and 8 March as payments of €1,690 to the same company, and so I think he has probably just counted the same payment twice, with different exchange rates on different dates.)

The usual time limit for a chargeback is 120 days from the date of the payment. That had clearly expired by November 2016. However, if it is not immediately apparent that the service paid for will not be provided, then there is a substituted time limit of 120 days from “the last date that the Cardholder expected to receive the merchandise or services or the date that the Cardholder was first made aware that the merchandise or services would not be provided.”¹ This is subject to an absolute and overriding time limit of 540 days from the date of the payment. That 540-day time limit expired for all but the last two payments.

(I have seen no evidence for the last two payments. I have seen the bank statements for the joint account, and they say that the account was closed in September 2014. I therefore infer that the payments were made from another HSBC account, presumably a sole account in Mr W’s name. However, HSBC has not disputed that these two payments were made from one of its accounts, and so I have not asked to see evidence of this.)

Those two payments were made not to timeshare companies, but to two companies which promised that they could obtain refunds of the money Mr W had paid to the timeshare companies. The refunds were never paid, and Mr and Mrs W realised that they had been defrauded again.

It is important to emphasize that the 540-day time limit does not mean that a chargeback can always be brought within 540 days of the relevant payment. Rather, a chargeback must still be brought within 120 days of whenever the cardholder was made aware that the service he had paid for would not be provided. The 540 days is just a maximum time limit, beyond which the 120 days cannot extend.

The questions I must therefore consider are (1) when did Mr W know that the services he paid for in 2015 and 2016 would not be provided to him, and (2) did he ask to raise a chargeback within 120 days of learning that?

The failure to tell Mr W about the 14 days cooling-off period is not a matter about which a chargeback can be raised, and so it does not make a difference when he realised that was something he should have been told.

¹ I am quoting from the edition of Visa’s rules which was in force in 2016.

As I have said, the two payments were made in October 2015 and January 2016, and Mr W asked to raise chargebacks in November 2016. There is almost no evidence about when Mr W realised that he was not going to receive the services he had paid for. In one of his letters to HSBC he said it was after “a considerable amount of time had passed” without having received any refunds. In another letter he said it was “after a while.” There is no evidence of how much time, if any, passed between realising that and writing to HSBC. But as long as he realised less than 120 days before he contacted HSBC, then he made his chargeback request in time.

I note that the rules say that the 120 days begins on the last date that the cardholder expected to receive the service, not when he should have expected it – or from the date when he was made aware that it would not be provided, not from the date when he should have worked it out. So it is not a defence to argue that Mr W ought to have realised he had been conned earlier than he did.

So on the balance of probabilities, I think that the last two payments were challenged within the chargeback time limits.

I must therefore go on to consider what the likely result would have been if HSBC had raised a chargeback dispute when Mr W asked it to.

I have read the terms and conditions which applied to the payment made on 13 October 2015. (I have not seen the terms relevant to the January 2016 payment, but I infer that they would have been similar.) They say that Mr and Mrs W were purchasing a lifetime membership of a holiday club. There is no mention in the agreement of seeking refunds of monies paid to other holiday clubs or timeshares. I therefore agree with what our adjudicator said: a chargeback would have failed, because Mr and Mrs W got what they paid for: membership.

my final decision

So my decision is that I do not 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 15 June 2019.

Richard Wood
ombudsman