

## **The complaint**

Mr R has complained about how HSBC UK Bank Plc dealt with a claim for money back in relation to flights he'd paid for using his credit card.

## **What happened**

The circumstances of the complaint are well known to the parties so I'm not going to go over everything again in detail. But to summarise, in December 2022 Mr R bought return flights for his family for around £4,000. I understand the outbound flights departed on 24 December 2022. Mr R said he arrived at the airport for the outbound flight and was told his wife wasn't allowed on the flight because she didn't have a transit visa that was required. Mr R said he wasn't told this information before booking. He went to a helpdesk at the airport and said an airline representative told him he'd be able to cancel all the flights and receive a refund.

Mr R said he emailed the airline but didn't hear anything back. I understand he eventually received a refund of taxes, but he wanted a full refund. Mr R asked HSBC to help him claim his money back.

HSBC raised a chargeback for Mr R, but it says it was defended by the airline at the pre-arbitration stage because the ticket type he'd bought was non-refundable, and the flight left as planned. HSBC didn't uphold the claim and Mr R complained. HSBC didn't change its overall position, so Mr R referred his complaint to the Financial Ombudsman.

HSBC explained to the Financial Ombudsman it couldn't pursue the chargeback further and it said as the airline evidenced the flights were non-refundable there was no breach of contract. But as it didn't refer the claim to its section 75 team it offered £100 compensation.

Our investigator looked into things and said that he didn't think the chargeback would have had a reasonable prospect of success had HSBC pursued it further. And he ultimately didn't think there was a breach of contract or misrepresentation that HSBC would have been liable for under section 75 of the Consumer Credit Act 1974. He thought HSBC's £100 offer was broadly fair but appreciated this didn't go anywhere near what Mr R was claiming for.

Mr R didn't agree with the assessment. He said he was told by an airline representative at the airport the flights would be fully refundable.

As things weren't resolved, the 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 want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr R and HSBC that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't

considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I also want to say I'm very sorry to hear about the problems Mr R had with the trip. I appreciate it cost a significant sum, and I can't imagine how he must've felt.

What I first need to consider is whether HSBC – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr R's request for getting money back. It's important to note HSBC isn't the supplier. I've gone on to think about the specific card protections that are available. In situations like this, HSBC can consider assessing a claim under section 75 or 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.

It looks as though the terms and conditions for the flights Mr R booked said it was his responsibility to adhere to the entry regulations of all countries he was visiting. And the airline has explained that the airfare Mr R bought was non-refundable. It's shown where Mr R would have been told that during the booking process. Moreover, I understand the flights were operated as planned. Therefore, I don't think there were grounds for HSBC to pursue the chargeback further for dispute conditions relating to services not provided, defective or not as described. And given there were no cancellation rights I don't think HSBC could have pursued a chargeback for cancelled services either.

I think Mr R's main argument is that he was told by an airline representative that he'd be able to cancel the tickets and receive a refund. I've not been given supporting information of that, so I don't think there was a reasonable prospect of success for the chargeback to succeed on that basis either. I therefore don't think HSBC's answer to the chargeback claim was unfair.

Section 75 is a statutory protection that enables Mr R to make a like claim against HSBC for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it had with him for the provision of goods or services. But for similar reasons to what I've said above, the flights were operated and non-cancellable so I can't see there's been a breach of contract. And like our investigator pointed out to Mr R, a misrepresentation is a false statement that induced him into the contract. So even if I were to find an airline representative misinformed him, this was after he'd already bought the tickets.

It seems like the main issue here is that the airline representative may have misinformed Mr R at the airport, but I don't think this gives rise to a valid claim that HSBC is liable for. It's not a misrepresentation and I don't have sufficient evidence the contract was amended to allow cancellation. While I'm very sorry about the situation, I don't have the grounds to direct HSBC to refund Mr R the cost of the flights.

HSBC did offer £100 for not referring the claim to its section 75 team. While I don't think that's caused any significant detriment to Mr R given what I've set out above, I think the offer is fair. Although I appreciate it's not what Mr R has asked for.

**My final decision**

HSBC UK Bank Plc offered Mr R £100 compensation. In all the circumstances I think this is a fair offer.

My decision is that HSBC UK Bank Plc should pay Mr R £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 11 March 2024.

Simon Wingfield  
**Ombudsman**