

The complaint

Miss B has complained about the way HSBC UK Bank Plc dealt with her claim for money back.

What happened

To summarise, Miss B says she was abroad and the day before leaving the resort she was influenced to enter into a vacation membership with a firm I'll call "P". She paid about £2,000 to P using her debit card on 3 January 2023 for a membership. This was through two payments – \$1,990 USD and \$495USD. Miss B says she was told she'd bought a 10-week package that would enable her to book certain hotels and flights at a discounted rate. Miss B said she later found out this was misleading.

From what I've seen, P's contract set out that the purchase price of the membership was \$9,950USD and the schedule of payment was a cash payment of \$1,990USD followed by a payment of \$7,960USD through monthly instalments of around \$200USD. The contract also set out an annual payment of around \$230USD was required. The contract set out there was a five-day cancellation period. It said in the event the member didn't comply with their obligations P could terminate the membership, but it would keep the payments made to it as compensation. Miss B also signed a non-refundable subscription receipt for the \$495USD payment for costs in relation to registration, administration and operation of the membership.

I can see the payment of around \$200USD debited Miss B's account on 3 February 2023.

Miss B wrote to P on 20 February 2023 saying she was told she'd bought a 10-week package that would enable her to book certain hotels for up to 7 days for the deposit fee of £280. She says she found out this wasn't true and that she had one week to exchange, but there was an exchange fee. She said if she wanted to book a hotel, she'd need to pay the standard hotel cost. She said to P that she wanted to withdraw from the membership. She said the membership was mis-sold and it was more complicated than initially made out. She also said the flights were more costly than usual booking platforms, and she asked how she could cancel and obtain a refund.

I understand P wrote back to Miss B about a week later to explain she'd bought a vacation program to be used at certain hotels and resorts. It said Miss B was offered several resorts and destinations that she had access to by following the terms of the agreement. It said there were four ways to book and provided details of how to access the service.

Miss B wasn't happy and asked for a refund. But P didn't agree because it said there was no breach of contract.

As things weren't getting resolved, Miss B contacted HSBC to put in a claim for money back. HSBC raised chargebacks for the three transactions, but they were defended by P. HSBC said P showed the services were rendered, membership had properly been disclosed and that Miss B had signed to accept the terms. So it didn't ultimately uphold the claim. Miss B complained but HSBC didn't change its position.

Miss B decided to refer her complaint to the Financial Ombudsman. Our investigator looked into things but didn't uphold the complaint. She thought HSBC had acted fairly.

Miss B didn't agree. She said the services weren't provided until it was too late to cancel. She said P didn't send her the log in until 7 January 2023, whereas she signed the contract with P on 31 December 2022.

Our investigator said from what she'd seen, the first time Miss B had tried to cancel the membership was on 20 February 2023. She asked if Miss B had sought to cancel before this, and for details of what was submitted to HSBC for the chargeback.

Miss B explained she'd tried to cancel before the 20 February 2023 by phone but didn't keep a record. But she said the key issue is that the moment she gained access to the platform she was outside of the cancellation period. She said it was only after return from vacation and subsequent research that she decided to pursue the matter and request a refund.

Our investigator ultimately thought HSBC dealt with the chargeback fairly based on the evidence it had. Miss B didn't agree, so 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 Miss B 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 first want to say I'm sorry to hear Miss B felt misled and let down with regards to the membership purchase. I appreciate it cost a significant sum.

What I need to consider is whether HSBC – as a provider of financial services – has acted fairly and reasonably in the way it handled Miss B'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 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 raised the chargebacks for Miss B. I think this was fair of it. But the chargebacks were defended. I can't see Miss B supplied further information to support the claim so I think if HSBC had pursued the case to pre-arbitration the chargebacks would have been defended on the same basis. Therefore, I don't think HSBC acted unfairly by not pursuing things further.

I've also thought about whether there was anything else HSBC could have done. Miss B has indicated the service was misrepresented. And she's ultimately tried to cancel it. She says she did this at the first real opportunity. There are timeshare-specific reason codes in the chargeback rules which may have been relevant, but these are relevant where the customer cancels the service within 14 days, which Miss B didn't do. I appreciate she says P didn't send her the required information straight away, but I don't think this would extend the strict time limits that apply to chargeback. With regards to the misrepresentation claims it's not something that would likely have succeeded either because Miss B says the contract was misrepresented verbally, and so I don't think Miss B would have been able to supply the supporting information that would've been required for a claim to have had a reasonable prospect of success. HSBC couldn't consider the claim under section 75 of the Consumer Credit Act 1974 either because the payments were made by debit card.

In all the circumstances, once again, I'm very sorry to hear about what happened. I can't imagine how Miss B must feel. But I can only direct HSBC to refund Miss B where there's fair grounds to do so. It wouldn't be fair to hold it liable for the loss where it doesn't have liability. The chargeback process is strict. And its rules are set by the card scheme – not HSBC. HSBC did try to help Miss B, but the chargeback was defended. The merchant is relying on the paperwork Miss B signed that allowed it to debit her account. I don't think there was more that HSBC ought to have done. So I'm not making any directions.

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 Miss B to accept or reject my decision before 15 April 2024.

Simon Wingfield
Ombudsman