

The complaint

Mr K complains that a holiday product was misrepresented to him and that he was not provided with the service he paid for. Because he paid using his credit card, issued by HSBC UK Bank Plc, he says that it is responsible, along with the seller.

Mr K has been represented in bringing this complaint by a claims management business, which I'll refer to as "C". So, where I refer to Mr K's evidence and arguments, I include those made on his behalf.

What happened

In March 2021 C contacted HSBC to say that its client, Mr K, had bought a long-term holiday product in 2010. C said the product had been misrepresented to Mr K. He had been told that it would give him access to free holiday accommodation and other discounts. Mr K had however been unable to book accommodation of his choice. Because Mr K had paid for the product with his HSBC credit card, C said he had a claim against the bank in the same way as it did against the seller, The Travel Shop.

HSBC reviewed Mr K's claim and replied to C in June 2021. In doing so, it referred to a payment of £833.59 made on Mr K's credit card on 14 February 2017. It said however that Mr K had not shown that he had a valid claim for misrepresentation. It noted that the agreement with The Travel Shop specified that it acted as an agent and did not promise holidays any cheaper than any other retailer.

C referred the matter to this service, but our investigator indicated in a preliminary assessment that she broadly agreed with HSBC; there was insufficient evidence to support Mr K's claims. Mr K did not accept the investigator's assessment and asked that an ombudsman review the case. I did that and issued a provisional decision in which I said:

Mr K says that he has a claim under section 75 of the Consumer Credit Act 1974. The relevant parts of that piece of legislation include:

75 Liability of creditor for breaches by supplier

If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

12 Debtor-creditor supplier agreements.

A debtor-creditor-supplier agreement is a regulated consumer credit agreement being—

...

(b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier

...

11 Restricted-use credit and unrestricted-use credit.

(1) A restricted-use credit agreement is a regulated consumer credit agreement—

...

(b) to finance a transaction between the debtor and a person (the “supplier”) other than the creditor

...

A credit card payment can fall within section 12(b) of the Consumer Credit Act and will generally do so if payment is taken by the supplier of the goods or services paid for with the card.

A misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue and which induces the other party into the contract. Mr K says that he was misled about the service he was buying.

I think it is important at this point to put the February 2017 credit card payment into context. Although the bank’s response to Mr K’s claim, and the investigator’s assessment, focused on that payment, C’s initial letter to HSBC made reference to a purchase in 2010. The documents it submitted in support of Mr K’s claim include several renewal documents going back some years. It seems therefore that, rather than a single payment for a service, the February 2017 payment was a payment to renew a membership which Mr K already had bought many years earlier. That raises two potentially significant issues. They are:

- Any statement which led Mr K to purchase the membership may well have been made many years before the 2017 payment. It may well be therefore that any claim in misrepresentation against the seller would be out of time under the Limitation Act 1980. If so, that defence may well be available to HSBC if Mr K were to bring a claim against it in court.*
- Mr K appears to have been happy to renew his membership on a number of occasions. That calls into question the veracity of the statements now made that he was misled into buying the membership or that it was of no value to him.*

Mr K may of course be able to provide further information in response to this provisional decision, in order to clarify the position.

Notwithstanding these issues, I agree with both HSBC and the investigator that there is simply not enough evidence to demonstrate that Mr K has a claim against the supplier. The evidence submitted is primarily a series of renewal agreements and Mr K’s statements about some difficulties he has had in booking holidays – unsupported by documents.

The Financial Ombudsman Service does not operate in the same way as a court and is not bound by the same rules of evidence – including, for example, rules about the burden of proof. We can conduct our own investigation where we think it appropriate. Even so, I would expect Mr K to be able to provide rather more than he has done here to show he has a claim.

C has suggested too that Mr K has a claim under section 140A of the Consumer Credit Act. Under section 140A and section 140B a court has the power to consider whether a credit agreement creates an unfair relationship and, if it does, to make appropriate orders in respect of it. Those orders can include imposing different terms on the parties and refunding payments.

In considering whether a credit agreement creates an unfair relationship, a court can consider any connected agreement. In this case, that could include the agreement for the

purchase of the holiday product. As I have indicated, however, there is very little evidence to support Mr K's claims about that agreement.

I note too that this is not a case where Mr K took out a loan with HSBC as a result of buying the product, or in order to do so. He already had the credit card account and kept it and used it after the purchase. That is a matter I must take into account in considering what is fair and reasonable.

It is not for me to decide whether Mr K has a valid claim against the seller here, or whether the credit card agreement created an unfair relationship. Nor is it for me to say whether Mr K has a claim against the bank under section 75. They are however matters I must consider in deciding what's fair and reasonable. Having done that, however, I am not persuaded that HSBC has treated Mr K unfairly.

I indicated that I was not minded to uphold Mr K's complaint, but said that I would consider any further arguments and arguments before I issued a final decision. I gave both parties four weeks to provide further evidence. That deadline has passed, but neither Mr L nor the bank has provided anything further.

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.

As I have been provided with no further evidence or arguments to consider, I see no reason to reach a different conclusion from that set out in my provisional decision. I stress however that I have reviewed the entire case file before reaching that conclusion.

My final decision

For these reasons, my final decision is that I do not uphold Mr K's complaint and do not require HSBC UK Bank Plc to do anything further to resolve it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 12 February 2024.

Mike Ingram

Ombudsman