

The complaint

Mr M complains about how HSBC UK Bank Plc (“HSBC”) handled a claim he made in relation to a transaction on his credit card.

What happened

Mr M purchased a new car, through a company I’ll refer to as “D” in July 2021. The total cost of the car was £47,500. This price included a set of four carbon fibre wheels at a cost of £12,000 including VAT. Mr M paid a deposit payment of £1,000 towards the purchase using his HSBC credit card.

In September 2021, Mr M complained to HSBC as he noticed the first aid kit and toolbox were missing and the car wasn’t taxed. He also paid for the brake discs to be replaced for around £800. Mr M raised a chargeback claim to recover the cost of the replacement brakes – this was successful.

In late November 2021, Mr M says he noticed one of the carbon fibre wheels was missing. He complained to HSBC but it said it couldn’t raise a further chargeback claim, as Mr M had already had a refund under the chargeback scheme for his previous claim.

Mr M was unhappy with how his claim was handled and so he complained to HSBC. HSBC issued its response to Mr M’s complaint but didn’t think it had provided poor service.

HSBC also said it couldn’t consider Mr M’s claim under section 75 of the Consumer Credit Act 1974 (“s75”) as the purchase price exceeded the limits under s75. Mr M disagreed and said the cost of the wheels was £12,000 and so, this was within the financial limits of s75.

Unhappy with this, Mr M referred his complaint to this service. He reiterated his complaint and said he wanted HSBC to pay around £7,300 for a new carbon fibre wheel. He also said he had made a number of phone calls and emails to resolve the issue and that he struggled with sleeping due to him worrying about the issue.

Following the complaint being referred to our service, HSBC offered £150 compensation to Mr M due to the delays in reviewing Mr M’s s75 claim.

Our investigator looked into the complaint. Whilst he thought HSBC had handled Mr M’s s75 claim fairly, he thought that HSBC should increase its offer to pay Mr M £150 to £250 due to the delays it caused and the lack of communication with Mr M.

HSBC responded and agreed to increase its offer of compensation to £250 as a gesture of goodwill.

Mr M disagreed and said:

- D was lying as the wheel was never supplied with the car.
- He didn’t want to accept the £250 HSBC had offered.
- The cost of the wheel had increased to around £11,500 since he had referred his complaint.
- He had a number of issues with the car and he was only able to resolve these after consistently chasing D.
- The car wasn’t used between July and November 2021 whilst it was stored in Mr M’s

garage. He only noticed the wheel was missing from its case when it was agreed the car's brakes would be replaced.

- D hasn't proved that the wheel was in the car at the time of supply to Mr M.

As Mr M remains in disagreement, 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've read and considered the whole file and acknowledge that Mr M has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

Generally, where a consumer raises a dispute about a transaction made on a credit card, the card provider can consider the dispute in two ways – s75 and chargeback.

Mr M raised a s75 claim. So I've considered whether HSBC fairly handled Mr M's s75 claim. Under s75, HSBC is jointly liable for any breaches of contract or misrepresentations made by the supplier of goods or services – which is D in this case.

In order for there to be a valid claim under s75, there needed to be a debtor-creditor-supplier ('DCS') agreement in place. Mr M made the purchase on his credit card which was supplied by HSBC. I can see the invoice from D is in Mr M's name. HSBC have shown the credit card transaction was in Mr M's name to D. So, I'm satisfied a valid DCS agreement exists here.

I've then considered the financial limits that apply to a valid s75 claim. Mr M needed to have purchased a single item with a cash price of over £100, but no more than £30,000. HSBC declined Mr M's s75 claim as it said the overall cash price of the car was more than £30,000.

I can see from the invoice that the total cost of the everything Mr M acquired was £47,500. This falls outside the financial limits. However, the invoice separates the cost for the carbon fibre wheels as £12,000 (including VAT). I've also noted on the invoice that there is a section for "OPTIONS", but the wheels are not listed here. Instead, they are listed separately under "ACCESSORIES". This leads me to believe the car could be purchased without the wheels and they are a separate item.

Given the car was already provided with standard wheels and the carbon fibre wheels were purchased separately by Mr M, I'm satisfied that the carbon fibre wheels were a single item and the car without the carbon fibre wheels, but with the optional extras selected, was a single item. This means that Mr M's claim for the carbon fibre wheels meets the financial limits for a valid claim under s75. However, this also means I can't consider a claim about any issues with the car, as the single item price of the car is more than £30,000 once VAT has been applied.

Overall, I'm satisfied Mr M only has a like claim against HSBC, as he does against D, for the purchase of the carbon fibre wheels. And that D were acting as an agent of HSBC.

Mr M paid for four carbon fibre wheels. Mr M complains that he only received three of these wheels and so, there has been a breach of contract as he didn't receive all the goods agreed.

The car was supplied to Mr M in July 2021. Mr M says he didn't realise one of the carbon fibre wheels was missing until November 2021, because when the car was delivered to him, it had standard alloy wheels. Mr M says four boxes were supplied with the car which he assumed each had a wheel in. He said he purchased the carbon fibre wheels separately so

he could fit them to the car when he went to shows. This meant Mr M says he didn't look inside the boxes with the carbon wheels for several months.

D have said each of the four carbon fibre wheels were individually placed into cases that were zipped up. D said all four of the wheels were supplied with the car. D said they didn't take pictures of the carbon fibre wheels in the car at the time it was supplied. D also said they carried out a standard pre-delivery inspection of the car before it was supplied to Mr M.

I've thought about this carefully and having done so, I'm not persuaded that there has been a breach of contract, I'll explain why.

I've thought about the fact D couldn't give evidence to show the wheels were in the cases. But, I don't think it would be unusual for D to not take photos of the inside of the individual cases before it handed the car to Mr M. And just because D didn't take pictures of the wheels in the car, this doesn't mean that the car wasn't supplied with them.

Mr M didn't complain about one of the carbon fibre wheels missing until November 2021. This is four months after he took delivery of the car. Mr M has confirmed four boxes were supplied with the car and so, he assumed each box had one carbon fibre wheel in it. He said he didn't check the boxes and he took the boxes out of the car before the brakes were repaired. He said as he wasn't using the carbon fibre wheels, he didn't need to take them out of the boxes. Mr M later told us he himself replaced the brakes at his workplace. He said the detailing of the car started on that day and that is when he found the wheel to be missing.

The carbon fibre wheels were an expensive accessory that Mr M made a decision to purchase. They weren't standard or negligible fittings for the car that an individual may not have noticed. These were large items. Given the cost of the carbon fibre wheels was £12,000, it's reasonable to expect that Mr M would have inspected each carbon fibre wheel, or at least checked that they were all present at the point the car was delivered to him, or shortly after. However, four months passed before Mr M says he noticed one of the carbon fibre wheels was missing. D has said it put four boxes with the wheels in the car and Mr M has confirmed there were four boxes in the car. All parties also agree that three of the wheels were in the car and so having carefully considered this, I see no compelling reason why D wouldn't place the fourth wheel in the box Mr M has confirmed he received.

I've also considered Mr M and the car supplied here. This was a rare, specialist car where Mr M spent a large amount of money on some additional wheels. I think it's fair to say it's likely Mr M is a car enthusiast. Given this, even if I accept he wasn't planning on using them, or the car itself, for a time I think on balance it's most likely he would've wanted to see the wheels that he'd paid £12,000 for sooner than four months after he purchased them.

On balance, I think it's more likely than not that the car was supplied with all four of the carbon fibre wheels at the time it was delivered to Mr M. And so, I don't think there has been a breach of contract, or misrepresentation, considering s75. It follows that I don't think HSBC need to change its outcome in respect of the s75 claim.

Service provided to Mr M by HSBC

A chargeback is limited to the amount paid on a plastic card. In this case, Mr M paid £1,000 on his credit card and has already made a successful chargeback claim for around £800. Mr M's current claim is for more than £11,500. In light of the fact that Mr M would only be able to claim around £200 if his chargeback claim is successful, I don't think the circumstances of Mr M's claim are suited to the chargeback scheme.

However, HSBC raised a chargeback and told Mr M that in total, he couldn't claim more than the £1,000 he had paid on his credit card. This is because Mr M made a previous unconnected successful chargeback claim for around £800. However, Mr M had already told HSBC he was claiming for the cost of the missing carbon fibre wheel. As this was in excess of the amount Mr M could have claimed under the chargeback scheme, I don't think it was reasonable for HSBC to raise a chargeback claim. I note in April 2022, HSBC offered to

refund around £200 as the remaining amount of the chargeback available to Mr M, but he didn't accept this.

As a result of HSBC raising a chargeback claim rather than considering s75, this caused a number of delays and I can see that Mr M chased an outcome to his dispute on a number of occasions. I've seen internal HSBC emails from as late as April 2022 which confirm that HSBC didn't realise that Mr M had made two separate claims. I think this was poorly handled.

In light of this, I think HSBC caused avoidable delays of around four months which caused stress and inconvenience to Mr M. HSBC has already agreed to pay Mr M £250 recommended by our investigator. I think this is a fair and reasonable amount considering all the circumstances.

My final decision

My final decision is I uphold this complaint in part. I direct HSBC UK Bank Plc to pay Mr M £250 for any distress and inconvenience caused to him.*

* If HSBC does not pay this £250 compensation for distress and inconvenience within 28 days of the date on which we tell it Mr M accepts my final decision, then it must also pay 8% simple yearly interest on this, from the date of my final decision to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 August 2023.

Sonia Ahmed
Ombudsman