

## **The complaint**

Mrs P says HSBC UK Bank Plc, has treated her unfairly in relation to transactions on her credit card which paid for installation of bi-fold doors and surrounding works.

## **What happened**

In October 2022 Mrs P used her HSBC credit card to make payments the installation of bi-fold doors and surrounding works ('the works'). She paid over £13400 for this installation to a firm (which I'll call the "Installers") using a mix of her HSBC credit card and other funding sources to pay the full amount.

Mrs P raised issues with the works to the Installers soon after the installation. And she complained to the Installers about how it treated her and about the Installation. The Installers offered to do some remedial work, but relations between parties worsened. So she complained to HSBC.

HSBC says it considered the matter and it raised a chargeback which was defended by the Installers. The Installers defended the chargeback on the grounds that it was willing to remedy the issues with the Installation. So HSBC didn't pursue the chargeback. It started to consider a Section 75 claim under the Consumer Credit Act 1974 and says it asked for more information from Mrs P. Unhappy with HSBC's handling of the matter Mrs P brought her complaint to this service.

Our investigator looked into matters. An Independent specialist had surveyed Mrs P's installation in March 2023 and provided an independent quote for the remedial work. Our investigator considered this evidence alongside what Mrs P had said were the issues with the Installation and the other evidence available, and upheld Mrs P's complaint and told HSBC it should pay Mrs P the amount quoted for the remedial work to be done (which was just over £3100). HSBC made an offer on this basis to Mrs P. But Mrs P remains unhappy and so this complaint comes to me for a decision.

## **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.

Mrs P has described having on going medical conditions during the events of this case and having suffered from immense despair and upset at what has happened. I'm sorry to hear this and have kept these important issues in mind whilst considering all that happened here.

Mrs P has made a large number of arguments within the course of this dispute and done so in an articulate and clear manner. It is my duty to give reasons for my decision in this dispute

and to do so in an informal and clear manner. Accordingly I will not address every argument or nuance to an argument that that Mrs P has raised. However I have considered everything she has said and supplied in coming to this decision.

Mrs P used her HSBC credit card in part to pay the Installers for the installation. This means that section 75 of the Consumer Credit Act ('s.75') can apply to the transaction. This provides that where Mrs P has a claim against a supplier of goods or services (in this case the Installers) in respect of a misrepresentation or breach of contract she will have a 'like claim' against HSBC as creditor subject to the provisions of s.75.

Also, Mrs P's HSBC credit card is part of a card scheme which is operated by separate company. This scheme has rules which include giving HSBC an avenue for card transactions to be disputed with the relevant merchant, such as the Installers, namely through the chargeback process. The ultimate decision maker on chargebacks is the scheme itself and not HSBC. So it is possible that HSBC could take Mrs P's dispute as far as it could in the chargeback process and Mrs P still not be successful in getting a refund. However this service does consider raising a chargeback where there is a reasonable prospect of success to be good practice.

This decision is solely about HSBC in relation to whether it did what it should have, and whether it treated Mrs P fairly in consideration of her dispute with Installers. This decision isn't directly about the Installers, who are not within this Service's jurisdiction for complaints regarding chargeback and s.75.

*Could HSBC challenge the transaction through a chargeback?*

Mrs P doesn't dispute that she used her HSBC credit card to part fund this installation. Nor does she dispute the amounts applied to her account or when that was done. So I don't think HSBC could've challenged the payment on the basis Mrs P didn't properly authorise this spending given what I've set out.

HSBC is required to consider whether there is a reasonable prospect of success when it is considering whether to go through the chargeback process or not. If it does go through the process, then it must do so properly. And it can fairly decide to not proceed at any stage if it doesn't think there remains a reasonable prospect of success with that particular chargeback.

Here HSBC did raise a chargeback in this case which was then defended by the Installers stating that they were willing to remedy the issues. Mrs P has made clear that the relationship with the Installers had broken down. And it is clear from what she's said and done that Mrs P knew that outside of the chargeback scheme she was aware that if she was successful, a remedy could be provided by other parties than the Installers.

Under the scheme rules it is also clear that the willingness of the Merchant (the Installers here) to remedy the situation is a reasonable defence to a chargeback. And it should be remembered that this part of my decision is with regard to HSBC's approach to the chargeback in this case. Bearing in mind the clear breakdown in relations between the Installers and Mrs P, I'm not persuaded having the remedial works done by the Installers

would have been an acceptable solution to Mrs P. Furthermore only the amount of the transaction on the credit card could be recovered through chargeback, not the full cost of the Installation, nor any consequential losses.

Bearing all of this in mind and what Mrs P was claiming for originally (the full cost of the Installation) and the defence of the Installers, I'm not persuaded HSBC has treated Mrs P unfairly in relation to chargeback by not taking the chargeback further.

And on balance, even had the chargeback continued, I think it likely it would have been unsuccessful as the defence raised by the Installers was fair and it wasn't compatible with Mrs P's position. So I don't think Mrs P has lost out because of what HSBC did in relation to chargeback.

### *Section 75*

Before deciding on whether there is breach or misrepresentation here there are some requirements set out in s.75 which have to be met before these issues can be considered. One of these tests is around financial limits and having considered these I think that Mrs P's claim meets the financial limits criteria as it was above the minimum threshold and below the maximum threshold.

S.75 also requires there must be a Debtor-Creditor-Supplier arrangement in place (often referred to as a 'DCS arrangement'). This is between Installers and Mrs P and HSBC. And I'm satisfied this arrangement is in place also.

For HSBC to be liable under s.75 it has to be shown that there would be a claim against the supplier (Installers) for breach of contract or misrepresentation. Bearing in mind the correspondence between the Installers and Mrs P which included setting out the areas of the works needing remedy and the independent quote for repairs which reflected the same broad issues needing fixing, I'm satisfied that these works weren't done with due skill and care. And thus I'm satisfied there is a breach of contract to be remedied.

Our Investigator set out in their assessment that the remedy appropriate was for HSBC to pay Mrs P the amount quoted for the repairs (£2,607 plus VAT). HSBC subsequently made an offer of settlement to Mrs P of £3,128.40 which equates to the same amount plus the VAT amount at the current VAT rate. Mrs P hasn't disagreed with this remedy directly, rather she has said that she deserves compensation for the events here over and above this amount.

In such cases of breach one of the most appropriate remedies is to remedy the breach through repair, or in other words to make good what went wrong. Here an independent firm has quoted on what needs repairing and HSBC has made an offer to cover that cost of repair. Accordingly I find HSBC's offer to pay the amount quoted to be a fair remedy for the breach of contract here.

I shall now turn to Mrs P's other arguments here. Mrs P says she should be compensated for what happened here. However a section 75 claim is a 'like claim' to that which Mrs P would have against the Installers through legal means, such as court action. This means that HSBC only needs to consider the remedies that such an action could provide. HSBC is not

more liable than the Installers would be in this regard, and it can rely on the same defences as the Installers are able to rely upon and should offer remedies on the same basis as the 'like claim'. And it should be remembered that this service does not make awards on a punitive basis. Mrs P has not provided persuasive argument as to why HSBC should pay more here. And HSBC is only liable to remedy the matters here as the Installers would be, were Mrs P to launch any action against them.

Mrs P points to extra costs with regard heating. However it is well known that heating costs have risen substantially over the period in question here due to outside influences on utility pricing. Furthermore Mrs P has a duty to mitigate her losses from such matters as the drafts caused by the breach of contract in the installation here. And it is clear that such draughts would have been evident from the outset. So I'd have expected her to take action to mitigate the drafts. Furthermore the heating costs she point to are not solely caused by any such draft. And Mrs P hasn't done enough to show which costs within her heating costs are purely a consequence of the draft and that she has taken steps to mitigate that. So I'm not persuaded that HSBC has treated Mrs P unfairly by not making an offer in relation to consequential loss here all things considered. I say this because I'm not persuaded Mrs P has done enough here to make out causation on these matters. And I've noted her comments about not willing to provide further information on the entire dispute to our Investigator. And I don't consider her arguments on consequential loss persuasive.

Mrs P points to the length of time this matter has taken to get to this point. I can see that Mrs P didn't take her complaint to HSBC until sometime had elapsed after the agreement for the Installation was made. I can also see a final response from HSBC in March 2023 which provided her with referral rights to this service and Mrs P bringing her complaint to this service shortly afterwards. I can also see that Mrs P sought a full refund to start with. I can also see evidence from the Installers which makes clear that it considers Mrs P's behaviour towards it as being unwarranted and not being conducive to an amicable solution. The independent inspection was in March 2023, and I also note HSBC made a fair offer to Mrs P in August 2023. Accordingly having considered all the circumstances here I'm not persuaded the making of any award to Mrs P in relation to distress and inconvenience would be fair here.

Mrs P has said "*I am unable to spend a winter in draught due to deteriorating health conditions*" due to this dispute. I'm sorry to hear this. However she was made a fair offer in August this year and also has a duty to mitigate losses throughout such a dispute, which would include mitigating such draughts from the point she became aware of such an issue which would be from around the point of installation. Mrs P has also pointed to medical costs but hasn't demonstrated causation between those costs and what the Installers could be responsible for. She has not delineated between those costs she'd have occurred in any event and those due to the installation. So I don't make any award here.

Mrs P says HSBC's behaviour was highly suspicious. I'm not persuaded of any untoward behaviour by HSBC here. I can see it went to close the matter having not heard from Mrs P at one point, but shortly afterwards raised the chargeback when Mrs P liaised with it, as is good practice. In any event it was only shortly after this point Mrs P brought her complaint to this service. I'm not persuaded there was any deliberate wrongdoing by HSBC here.

Mrs P has provided ample comment on HSBC's processes and systems and noted how long it took for her to upload documents. I'm sorry she found this difficult. But how HSBC meets its regulatory requirements is not for me to consider here. And how its systems are set up and resourced is for HSBC to consider within its commercial decision making. I'm satisfied Mrs P had sufficient means and opportunity to raise this dispute with HSBC and I can see a wealth of correspondence between Mrs P and HSBC throughout. Just because HSBC didn't agree with Mrs P doesn't mean it is deliberately treating her badly as she implies.

I note Mrs P has repeatedly suggested she wishes to take legal action against the Installers, HSBC and indeed this service. It is my generic advice that any party considering taking legal action against any other party should first source independent legal advice at their own cost before embarking on such legal action so that they are advised and informed in making their decisions in that regard.

### **Putting things right**

So all in all and having considered everything that has happened here and all the evidence I uphold Mrs P's complaint and direct HSBC to put things right. Accordingly I direct HSBC to pay Mrs P £3,128.40 to conclude this dispute.

### **My final decision**

For the reasons set out above, I uphold the complaint against HSBC UK Bank Plc. I direct it to remedy the matter as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 9 November 2023.

Rod Glyn-Thomas  
**Ombudsman**