

The complaint

Mr K complains about how HSBC UK Bank Plc handled a claim he made to it in respect of a purchase made on his credit card.

What happened

The background facts of this complaint are well known to the parties so I am covering them briefly here and focusing on giving reasons for my decision.

Mr K made two transactions on his credit card to a retailer ('the supplier') for home improvement items. The transactions were in November and December 2019 respectively.

Mr K says what he bought is faulty/of poor quality and he wants a refund along with consequential losses. He contacted HSBC around May 2021 to raise a claim under Section 75 of the Consumer Credit Act 1974 ('Section 75').

HSBC looked into his claim but didn't uphold it and told Mr K in July 2021. Mr K complained about the way HSBC had handled things and it responded. Mr K then sent in further information. HSBC looked at things again but didn't uphold the claim.

In summary, HSBC concluded that Mr K didn't follow the retailer instructions so there weren't grounds for upholding his Section 75 claim. It did acknowledge some customer service failings of its own though and paid Mr K £100 in compensation.

Mr K referred his complaint about the handling of the Section 75 claim to this service in November 2022. Our investigator concluded:

- HSBC had not made an error in not upholding the claim because the requirements for a valid Section 75 claim (specifically the financial limits in respect of the cash price of an item) had not been met;
- she was only able to look at some of Mr K's concerns with HSBC's handling of the claim as he had referred others to this service too late; and
- considering what this service was able to look into the £100 compensation which HSBC has paid is fair and reasonable.

Mr K disagrees. In summary, he says:

- his purchase is within the financial limits for a valid claim as he didn't buy a few items for decorative purposes but many for use over the same large area and all of these are faulty;
- his time and money spent on evidence gathering was wasted by HSBC and amounts to more than £100 compensation; and
- he is within his rights for all aspects of his case to be considered as he went back to HSBC to contest its reasoning and shouldn't be penalised for trying to resolve things amicably.

The matter has come to me to make a decision on.

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 have considered the evidence submitted by the parties but I won't be commenting on all of it – only what I consider to be particularly relevant. This isn't intended as a discourtesy but reflects my role resolving disputes informally.

I also note that Mr K has raised some things which are in respect of wider regulatory issues such as HSBC's customer grievance processes. While I have considered the requirement for HSBC to treat Mr K fairly, and the circumstances around his particular complaint I will not be commenting on the wider regulatory issues he has raised here because this service is not a regulator.

What I am considering here

Our investigator has explained this service is only able to consider some aspects of the handling of the Section 75 claim which Mr K is unhappy about. It is because some were dealt with by HSBC previously and Mr K didn't refer them to this service in time. Namely the complaint dealt with in HSBC's Final Response dated 24 November 2021 and as reiterated in the follow up (which reminded Mr K of his referral rights) on 5 January 2022. The complaint in this instance is essentially about HSBC's initial claim handling and the initial outcome which it gave (not upholding the claim and saying that in order to do so it would require further information).

I have considered this jurisdiction matter and agree that because Mr K referred his complaint about the issues covered in the Final Response dated 24 November 2021 to this service on 7 November 2022 it is too late to consider it under our *DISP* rules (as set out in the FCA Handbook) which give him 6 months to refer his complaint to us unless exceptional circumstances apply. I also note HSBC has not consented to this service considering this complaint either.

Mr K thinks this service should be looking at these matters because he maintained a dialogue with HSBC throughout. While I understand his reason for not referring the matter to us sooner (i.e. he wanted to sort things out with HSBC and sent it further information so it could reconsider his Section 75 claim) he was on notice of the timescale he had to refer his complaint to us. Nothing in HSBC's correspondence following the Final Response letter in November 2021 indicates that it was extending the time for Mr K's complaint to be referred to this service. Overall, looking at what Mr K has said I don't think exceptional circumstances

apply for him referring his initial complaint about the claim handling to this service late. So I am unable to consider it here.

For clarity – in this decision I will be covering the later complaint points as dealt with in HSBC's subsequent Final Response letters from 11 May 2022 and 8 June 2022 (and reiterated in its follow up letters) namely:

- HSBC's customer service in respect of the additional information Mr K sent it from early 2022 so it could then re-consider the Section 75 claim; and
- the claim outcome following HSBC's re-consideration of the claim.

Does Mr K have a valid Section 75 claim?

It is important to note that HSBC is not the supplier of goods in this case. So when deciding what it should do in respect of the quality of those goods I am considering its role as a provider of financial services only.

I note Mr K has not made any submissions around chargeback. However, for completeness I note it is quite clear to me that when Mr K got in touch with HSBC he was too late to raise a chargeback under the relevant rules. So this was not a viable option.

In this case, HSBC was potentially liable for wrongdoing of the retailer through a Section 75 claim which is a legal right. I note that this is the claim Mr K made to it.

If Section 75 applies then HSBC are legally responsible for a 'like claim' which Mr K has against the supplier for breach of contract or misrepresentation in respect of an agreement for goods financed by the credit card. However, for Section 75 to apply certain legal requirements need to be met as set out in the Consumer Credit Act 1974. One of those is in respect of the cash price of the goods.

The law says that Section 75 does not apply:

'so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000'

In this case I am not persuaded what Mr K bought here can reasonably be taken as a 'single item' which the supplier attached a cash price exceeding £100. From the evidence I have seen including the invoices and the supplier's website I am persuaded that:

- Mr K purchased 117 separate items (9 on one occasion and 108 on another) and was free to purchase the amount he wanted vs having to purchase a set quantity together; and
- for the purposes of Section 75 the supplier attached an individual cash price to each item Mr K purchased (not exceeding £100) rather than selling and pricing these as a package.

I acknowledge Mr K has said he was using all the items together so they should essentially be considered one item – but I don't think that means he has a valid Section 75 claim. Ultimately each of the 117 items was sold separately as discrete units and not as a total package (each with a cash price attached on the website) which could be used together (or not) in varying quantities. For the purposes of the relevant law I consider the 'single item' here to be each individually priced item - not the collective of all the items taken together even if putting these together on a shopping list means the total transaction might exceed

£100.

In conclusion I don't consider that the requirements are met for a valid Section 75 claim here. So even though HSBC agreed to look into the claim for Mr K, and consider if the supplier was in breach of contract it wasn't obliged to do so here. Therefore, it went further than it would have been expected to. So even though it didn't uphold his claim for other reasons, in light of the fact that Mr K doesn't actually have a valid Section 75 claim against HSBC, it wouldn't be fair and reasonable for me to now say that HSBC made a mistake here in not upholding his claim.

Customer service

I know Mr K is unhappy with the customer service he received from HSBC. For the reasons outlined above I am only looking at the more recent customer service he got as a result of sending HSBC more information in the first part of 2022. From this I can see that HSBC were not as responsive as they should have been to emails Mr K had sent in – and did not return a call. This would no doubt have been frustrating for him. I have thought about this but I also think his overall frustration is largely because HSBC did not uphold his claim and how he didn't think it looked into things enough or give him detailed enough reasons for declining. I think HSBC did explain sufficiently why it was declining the claim, and I don't think it is fair to award Mr K for disappointment in receiving a declined claim – nor the time he has spent putting together his case. I also take into account that HSBC did apologise to Mr K about the customer service issues he encountered. So overall I think the £100 it has paid him is fair.

I note Mr K has recently said HSBC should have told him that the Section 75 claim was outside the financial limits. And by not doing so it has caused him to waste time and get evidence like expert information. I have thought about this but I think it is unreasonable to penalise HSBC for looking into the alleged breach of contract when it wasn't obliged to do so. I know Mr K now believes he has wasted his time in gathering evidence but:

- I don't think HSBC would have likely been in a position to comment on financial limits until much later on in any event (around the time Mr K sent in extra information around February 2022) and by which time Mr K had already got his evidence together;
- he could have referred this matter to this service after HSBC's initial outcome on the claim in July 2021 but chose to pursue the matter with HSBC (where there was still a reasonable possibility his claim could have been upheld); and
- had HSBC declined to look into things from the start Mr K would likely have needed to gather similar evidence for any dispute in any event (Mr K appeared to be willing to take the supplier to court as he had sent it a letter before action).

So I don't think any further compensation is due here. I can understand Mr K feels strongly about this case. I am sorry to hear about the impact he has described on him and his family. But my decision in respect of HSBC doesn't mean he cannot consider alternative ways of pursuing his dispute such as court action against the supplier. If he wishes to consider this he should get appropriate legal advice.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 15 October 2023.

Mark Lancod
Ombudsman