

The complaint

Mr K is unhappy that HSBC UK Bank Plc, who I'll call HSBC, have turned down a claim he made to them under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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.

I know it will disappoint Mr K, but I don't think HSBC have been unreasonable here. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments 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.

When something goes wrong and some or all of the payment was made with a credit card, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

I don't think HSBC were unreasonable when they asked Mr K to provide an independent expert report to substantiate his claim, that there had been a breach of contract with regard to the installation of his solar panel system. They're not, after all, experts on solar panel installation.

The law doesn't dictate that an independent report has to be presented in these situations, but I don't think the information Mr K has currently provided can fairly be considered sufficient to support his various claims that, for instance, the work has not been completed

with reasonable care and skill, the installation is of unsatisfactory quality, and that certification was required, and should now be supplied.

The brief email from an alternative supplier (I'll call "E") suggests that there may be faults with labelling, cable support, and cable segregation, but I don't think that email is sufficient to demonstrate that is definitely the case with Mr K's installation as it seems E have had limited information upon which to advance that advice. It's unclear, for instance, whether they have visited the installation and viewed the contract. Mr K is seeking a substantial refund and I don't think it's therefore unreasonable for HSBC to require a more detailed, truly independent opinion. I don't think E's report could fairly be considered independent as they stood to benefit from the potential award of any remedial work.

I note an invoice has been supplied for loft insulation that Mr K claims was to rectify the damage caused to insulation when the solar power system was fitted. While its clear insulation was supplied there's little evidence it was to replace damaged insulation.

Mr K says it's unreasonable to expect him to commission an independent report. He says he's tried, but suppliers are unwilling to provide one. I can see that in July of this year our investigator directed Mr K to an authority who may have been able to provide an independent report. As no report has been provided, and as I think the onus was on Mr K to substantiate his claim, I don't think HSBC have been unreasonable to reject his section 75 claim.

My final decision

For the reasons I've given above 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 27 November 2023.

Phillip McMahon
Ombudsman