

The complaint

Mr W complains that HSBC UK Bank Plc mishandled his claim under section 75 of the Consumer Credit Act 1974 for the reimbursement of the cost of a vehicle he says wasn't of satisfactory quality.

What happened

In February 2020 Mr W attended a dealership to view a camper van. Having taken the vehicle for a test drive he agreed to purchase it and paid a £300 deposit with the credit card he held with HSBC. Mr W says that although the camper van was advertised for £13,800, it was agreed with the supplying dealership that if he paid an additional £200 it would arrange for the vehicle to have a new MOT. A few days later Mr W paid the balance of £13,700 by bank transfer to the dealership.

Mr W collected the camper van and drove it home. Mr W says that a short time later he put some diesel into the vehicle as there was very little fuel in the tank. Mr W says he was able to use the camper van for the next day or so before it then broke down. He called a roadside assistance company out to investigate and repair the fault.

The roadside assistance company weren't able to fix the camper van and arrangements were made for it to be taken back to the supplying dealership. Mr W was supplied with a report by the roadside technician which said that the camper van had *"very very high crankcase pressure and a worn engine"*.

The day after the camper van was delivered back to the dealership, Mr W requested a refund of its cost from the retailer. Mr W said he had only had the camper van for three days, and driven around 50 miles in it, before it had broken down. He said the vehicle was not fit for purpose.

The supplying dealership declined Mr W's request for reimbursement. It said that following an investigation, the fault with the camper van was due to an issue with contaminated fuel which had been added by Mr W when he had filled the tank. The supplying dealership said there hadn't been any fault previously with the vehicle.

The supplying dealership said that it had the fuel tested by a company but as this particular company didn't comply with the necessary regulations to make the results of the testing admissible in a court of law, it had arranged for a second sample to be tested. This second sample was provided in April 2020 and the analysis also revealed that the fuel was contaminated.

The supplying dealer said that although contaminated fuel wasn't something it would be liable for, it had, nevertheless, cleaned out the vehicle's fuel system and undertaken repairs as gesture of goodwill. It said the vehicle was now fully repaired and back in working order.

Mr W declined to collect the camper van and disputed the supplying dealership's explanation for the vehicle breaking down. He made a claim to HSBC to be reimbursed the costs of the camper van.

HSBC opened a claim under both the chargeback scheme and section 75. Under the chargeback scheme, Mr W was reimbursed his £300 deposit, but his section 75 claim was eventually declined. HSBC said that the supplying dealer had defended the claim and, from the evidence provided, there hadn't been a breach of contract.

Mr W complained to HSBC about its handling of his claims and the decision to decline his section 75 claim. He said he didn't accept the results from the testing of the fuel sample as this had been undertaken around 70 days after the camper van had been returned to the supplying dealer. He said that he had contacted the garage that had supplied the fuel and had provided an email from them which said that it had sold about 15,500 litres of diesel that day and no other complaints about its quality had been received. Mr W also said he was aware the camper van had already been returned by someone else before he had purchased it for the same issue, and they had received a full refund from the retailer. Mr W said the fault found by the roadside assistance technician indicated a problem with the head gasket.

HSBC agreed that Mr W's claim should have been handled better. It accepted he had been misled about the length of time an investigation into a section 75 claim would take and it also agreed there had been delays. It offered Mr W a total of £150 as compensation.

However, HSBC said the decision to decline the section 75 claim had been correct as the evidence didn't support there had been a breach of contract as the fault with the vehicle appeared to be due to the adding of the contaminated fuel.

Mr W was unhappy at HSBC's decision and complained to this service. Our investigator partially upheld his complaint in that HSBC, having further reviewed the matter, offered an additional £150 compensation to Mr W for its handling of his claim which our investigator said he thought was fair.

Our investigator said that he didn't think there had been a breach of contract as an independent report had been provided that showed there had been a contamination of the fuel. Further, he said that the vehicle was reported to have been fully repaired at no cost to Mr W.

Mr W disagreed with the view of our investigator. He said he thought the results of the fuel tests were spurious at best due to the delay. Mr W said that when he had returned the camper van to the supplying dealer, he had never agreed to having it repaired. He also said that he was concerned that the supplying dealership may have now sold the camper van as it had applied to change the registered keeper with DVLA and even had a new MOT undertaken.

As the parties were unable to agree, the complaint has been passed to me.

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.

The issue for me to consider here is whether HSBC has handled Mr W's claim for reimbursement of the cost of the camper van fairly. I've seen that HSBC opened both a claim under the chargeback scheme and under section 75 of the Consumer Credit Act 1974 when dealing with Mr W's claim for reimbursement of the cost of the campervan.

Looking first at chargeback, this is a process that involves the card issuer disputing payments made on the card through a dispute resolution scheme operated by the

companies which run the card networks, here that's Visa. It allows customers to ask for a transaction to be reversed if there's a problem with the goods or services they've paid for. There's no automatic right to a chargeback and it isn't a guaranteed method of getting a refund.

The Card Scheme sets out the necessary conditions under which a claim can be processed. These are that the cardholder engaged in the transaction, the cardholder contacted the merchant to resolve the complaint and the merchant refused to adjust the price, repair the item or replace it. It also says that for disputes involving goods the cardholder must have either returned the item or have informed the merchant that the goods were available for pick-up.

I've seen that the claim under chargeback for the deposit payment of £300 was successful. This appears to be due to the camper van having been returned to the retailer. However, as there are differences between the chargeback scheme and a claim under section 75, I can't reasonably say that just because one was successful so should the other.

Mr W raised that there had been a breach of contract between himself and the supplying dealer because the camper van hadn't been fit for purpose. He doesn't accept the explanation for the vehicle's breakdown given by the supplying dealer and says it was due to it being inherently faulty.

Section 75 of the Consumer Credit Act 1974 may apply when the goods purchased via a credit card cost over £100 and up to a limit of £30,000. The general effect of the section is that if a consumer has paid for goods or services with a credit card and they have a claim against the supplier of those goods or services for misrepresentation or breach of contract, they are given a like claim against the credit provider, which here is HSBC.

However, when making a claim it is for the consumer to provide evidence of the breach and/or misrepresentation. Mr W has provided the roadside report prepared by the technician who inspected the vehicle when it broke down. He has also queried the veracity of the fuel analysis obtained by the supplying dealer. Mr W has provided an email from the garage setting out there had been no complaints about the quality of its diesel and says the fault displayed by the camper van weren't consistent with there being an issue with the fuel.

Mr W says that the previous owner of the camper van had complained about the same issue and returned the vehicle to the dealer receiving a full refund. But I haven't seen any direct evidence about this and so I don't think I can reasonably say that HSBC should have attached any weight to this information. There could have been a number of reasons why the camper van was returned, and a refund provided.

The supplying dealer says that the camper van was in full working order when supplied to Mr W. It says that the fact the vehicle broke down only a short time after refuelling supports what it says about there being a contaminant. It says this was also corroborated when the fuel was independently analysed. The supplying dealer says that a fault caused by contaminated fuel isn't something that it would be responsible for and wouldn't mean the camper van hadn't been of satisfactory quality at its point of supply to Mr W. It has strongly disputed Mr W's claim.

I've also seen that the supplying dealer says that camper van has now been fully repaired at no cost to Mr W, however he has refused to collect it.

Mr W says that there are a number of questions about the analysis of the fuel and has queried the delay in having the test carried out. The supplying dealer has explained that this was because the first test had been carried out by a company whose results wouldn't be

accepted in court of law so it decided to have another test performed by a company who complied with the necessary regulations. While I accept there was a delay of several weeks, I can't reasonably say that HSBC wasn't entitled to accept the results of the as evidence of this independent test as to the cause of the fault with the camper van.

Mr W has raised the contents of the roadside assist technician and that the fault that arose didn't support a problem with the fuel. But the roadside assistance report states that its *"diagnostic testing maybe limited in a breakdown type situation"*. This report doesn't set out any view as to the cause of the high crankcase pressure or engine being worn that was found. I don't think this report in itself would rule out fuel contamination.

Mr W has also said that after the fuelling he was able to use the camper van in the following two days before it broke down. But again, this isn't evidence that would necessarily discredit the independent analysis report as I've seen that Mr W hadn't driven the camper van very far in this time. And while I acknowledge that the garage says it hasn't had any other complaints about the diesel it was providing, I don't think HSBC acted unfairly in weighing up all the evidence that had been provided and finding that a breach of contract hadn't occurred. I think this was a decision that it could reasonably reach on the evidence provided to it.

As stated above, when making a claim under section 75 it's for Mr W to prove. However, as the vehicle has now been repaired, I don't think if a new independent inspection was arranged it would be likely to disprove the fuel analysis results.

Mr W says he didn't ask the supplying dealer to repair the vehicle though I've seen that the supplying dealer disagrees with this. However, although the vehicle was returned within only a few days from its point of supply, for Mr W to be entitled to a full refund under the Consumer Rights Act 2015 there would need to be evidence that the vehicle had been either faulty or developing a fault at the point of supply. So, I think the dealership was acting reasonably when it investigated the problem. I also don't think that, having identified the issue, the dealership then acted unfairly in repairing the camper van at no cost to Mr W.

I've seen that the supplying dealer says it suspected a fuelling issue when the camper van was returned and that the roadside assistance company had agreed with this view (although I've seen no evidence of that). It says that the first analysis of the fuel confirmed this as did their own inspection. It proceeded to fix the camper van as a gesture of goodwill and so at no expense to Mr W. In these circumstances, regardless of whether repairs were agreed or not between the parties, I don't think the supplying dealership has acted unfairly.

So, looking at the evidence I don't think HSBC's decision to decline Mr W's section 75 was unfair in light of the evidence that had been provided. I don't think there was enough evidence to show it was more likely than not that the camper van had a fault from the point of supply. The evidence was also that the camper van was fully repaired at no cost to Mr W and ready to be collected.

However, while I think its decision to decline Mr W's s75 claim was fair I think HSBC's handling of Mr W's claim had resulted in unnecessary distress and inconvenience for him. I've seen Mr W was given an unrealistic expectation as to how quickly the matter would be decided, that communication wasn't as effective as would reasonably be expected and there was a long delay before a final view was reached. I think additional compensation of £150 on top of the £150 already offered, so making a total compensation payment of £300 is fair and I'm partially upholding Mr W's complaint.

I've seen that Mr W is concerned that the supplying dealership may have already sold the camper van on. He is concerned that it applied to the DVLA to change the registered owner and also had a new MOT carried out. While I can appreciate his worries, I can't ask HSBC to

get involved without proof the vehicle has been sold on without permission and that he has also made a complaint to the police. If the camper van is no longer with the dealership then Mr W will need to raise a new complaint with HSBC.

Putting things right

Although I appreciate this will be of disappointment to Mr W, for the reasons given above, I'm partially upholding Mr W's complaint. I'm asking HSBC to pay Mr W an additional £150 compensation (so making a total payment of £300) for its handling of his section 75 claim.

My final decision

For the reasons set out above, I'm partially upholding Mr W's complaint. I'm asking HSBC UK Bank Plc to pay Mr W an additional £150 as compensation (so making a total payment of £300) for its handling of his section 75 claim which caused him distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 26 August 2022.

Jocelyn Griffith
Ombudsman