

## **The complaint**

Miss R complains HSBC UK Bank Plc unfairly declined a connected lender liability claim she made for breach of contract and misrepresentation in respect of building works paid for in part with her HSBC credit card.

## **What happened**

I issued a provisional decision on Miss R's case on 27 January 2023. Miss R accepted the provisional decision. HSBC agreed to settle in line with it, though noting that it did not fully agree with it. As both parties have agreed to settle, I don't intend to go into detail in this final decision, but to summarise very briefly:

### *Background to complaint*

- Miss R engaged a builder ("Mr L") to renovate her home. Mr L contracted out various parts of the works to other contractors, one of which was a heating, ventilation and air conditioning ("HVAC") company I refer to as "CT", which was responsible for carrying out HVAC works for a price of £56,238.79.
- Miss R says Mr L committed a major fraud against her and he was removed from the building project. CT had already done some work and Mr L had paid them some money. Miss R agreed to take over the contract Mr L had made with CT, paying the company £26,575 (said to be the amount outstanding), which included £275 on her HSBC credit card.
- Miss R and CT's relationship broke down after various delays and issues with the HVAC works. She commissioned reports from three independent third parties, all of which agreed that CT's work was of an unacceptably poor standard. Miss R also said she'd discovered CT had made various misrepresentations to her which had induced her to proceed and take over the contract.
- These concerns about CT were brought to HSBC, framed as a claim under section 75 of the Consumer Credit Act 1974 ("CCA"). HSBC rejected the claim as they said the value of the contract was too high for section 75 to apply to it. The bank refused to change its position after Miss R complained, and the matter was referred to the Financial Ombudsman Service.

### *My provisional decision*

In my provisional decision I made the following key findings:

- HSBC had been right to say that the contract value was over the limit (£30,000) at which the protection of section 75 of the CCA ceased to apply. The correct interpretation of what had happened was that Miss R had taken over the existing contract which had a value of £56,238.79, rather than making a new contract with CT with a value of £26,575.

- However, HSBC had not appreciated that Miss R had a connected lender liability claim under section 56 of the CCA, which did not have any limits on the value of the item or service being purchased. An analysis of the wording of section 56 of the CCA and an example contained in Schedule 2, Part II of the same act, showed section 56 applied to Miss R's scenario.
- Section 56 would cover only the "antecedent negotiations" between Miss R and CT. This would include misrepresentations and any pre-contractual conditions or warranties. I couldn't see that CT had given any specific pre-contractual warranties but noted Miss R had alleged several misrepresentations had been made by its director ("Mr D").
- I found CT had made false statements to Miss R about having a preferred contractor status with the manufacturer of the HVAC systems ("DK"), as well as falsely stating it had ordered HVAC units already when it hadn't, and that Miss R needed to make a decision very quickly to avoid a price rise, which wasn't true. Evidence Miss R had produced from DK enabled me to draw these conclusions.
- I noted that the false statements would have needed to play a substantial part in Miss R's decision to take over the contract with CT for them to be actionable as misrepresentations. Having carefully considered the evidence I thought it likely that the false statements did play a substantial part in Miss R's decision. Miss R had been very concerned to avoid falling victim to further fraud and CT's reassurances around its status with DK had been influential, especially combined with its other false statements which had put pressure on her to proceed quickly and without reflecting.
- Given Miss R had had a valid connected lender liability claim, I said I was minded to conclude HSBC had acted unfairly in turning her claim down. I thought it should refund the amounts she had paid as a result of the misrepresentation (£26,575) plus compensatory interest. I said HSBC could deduct the value of any items supplied by CT which were re-used when Miss R had the work redone.

### *Responses to the provisional decision*

As I've already indicated, both parties agreed to settle in line with my provisional decision. Miss R explained that there had been four HVAC units left by CT. She said two of them had been returned to CT and the others had been in her house for a while but she believed other contractors had eventually disposed of them.

### **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.

Save for the explanation of what happened to the HVAC units, neither party has submitted any new evidence or arguments for me to consider. It follows that, apart from making a slight modification to account for the fact items supplied by CT were not reused, I see no reason to depart from the conclusions I reached in my provisional decision as summarised above. This means my conclusion is that HSBC acted unfairly in turning down Miss R's connected lender liability claim, and should act to put this right as it has already agreed to do.

### **My final decision**

For the reasons explained above I uphold Miss R's complaint and direct HSBC UK Bank Plc to take the following actions:

- A) Refund or reimburse Miss R for all payments she made to CT in respect of the contract when she took it over from Mr L. This includes payments made on the HSBC credit card and by other means.
- B) Pay 8% simple interest per year\* on any refunds or reimbursements made as part of "A)", calculated from the date the bank originally declined Miss R's claim, to the date she is refunded/reimbursed.

Based on Miss R's further comments it appears none of the items supplied by CT were reused and therefore there should be no deduction made from any refund in this respect.

\*If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss R how much it's taken off. It should also give Miss R a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 2 March 2023.

Will Culley  
**Ombudsman**