

The complaint

Mr O complains that HSBC UK Bank Plc hasn't upheld a claim he made for a refund under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

In April 2017, Mr O purchased a computer using his HSBC credit card from abroad. He was charged £1,531.96. In April 2020, Mr O discovered a problem with the computer screen. He contacted the manufacturer to resolve the issue. The manufacturer had issued a statement previously to confirm that some computers of the same model as the one Mr O had purchased had a manufacturing defect which caused a problem with the screen. The manufacturer was offering a free replacement for affected models if the fault was identified within three years of purchase.

By the time Mr O contacted the manufacturer he was just outside of the three year window. The manufacturer said it would agree to replace the computer with a refurbished model, but as it had been more than three years Mr O would have to pay £569 to accept the replacement. Mr O didn't think this was fair so approached HSBC for help with obtaining a refund for the faulty computer.

HSBC took a long time to respond to Mr O's claim, but it eventually declined it stating that it needed Mr O to provide an independent report confirming the fault with the screen was due to a manufacturing defect. Mr O complained about the time it had taken to get a response to his claim and the outcome of that claim. He said he'd already provided evidence that the fault was a manufacturing defect.

HSBC paid him £100 compensation for the delays in dealing with his claim. However, it didn't uphold his complaint about the outcome of his claim. It said that Mr O hadn't provided sufficient evidence to demonstrate his computer had a manufacturing defect.

I sent Mr O and HSBC my provisional decision on 16 February 2023. I explained why I thought the complaint should be upheld. I said:

The effect of section 75 is that if Mr O has a claim for breach of contract or misrepresentation against the supplier of goods he purchased, he can bring a like claim against HSBC who supplied him with the credit to make that purchase. This is provided that certain other conditions are met. For completeness, I'm satisfied those conditions are met here.

It isn't in dispute that the manufacturer has accepted that the specific model of computer Mr O purchased was in some instances built with a manufacturing defect which affects the screen. The manufacturer has also confirmed that where this fault exists, it isn't possible to fix it, which is why it was offering affected consumers a replacement. This replacement would be free if the fault was reported within three years of purchase, or if later, a payment would be required to receive a replacement.

HSBC says Mr O needs to do more to demonstrate there has been a breach of

contract by the supplier (who was also the manufacturer), in relation to his specific computer. I disagree. I think Mr O provided HSBC with sufficient evidence to demonstrate his computer was also affected by the manufacturing defect. Mr O sent HSBC emails between him and the manufacturer. I think these emails made it clear that the manufacturer had accepted that Mr O's computer had suffered from the manufacturing fault. The manufacturer said to Mr O that:

"If a device with this particular issue [the manufacturing defect] is reported when the 3 years coverage have passed, the only solution we can offer is to replace the affected unit under an out of warranty exchange. We're not able to make an exception if this timeframe has already passed, which is the case of the [Mr O's specific computer]."

The manufacturer said that the out of warranty exchange would cost Mr O £569. I think this email makes it clear that the manufacturer had accepted the Mr O's specific computer was affected by the manufacturing defect. However, the only reason Mr O was not eligible for a free exchange was because he had reported the issue more than three years after the date of sale.

Mr O had reported the issue a matter of weeks after the three year cut-off. So, I don't think there was any breach of contract by the manufacturer in the way it was administering the warranty. But that isn't the end of the matter. The Consumer Rights Act 2015 ("CRA") also implies into the contract between the manufacturer and Mr O that the goods Mr O purchased should be of satisfactory quality. Satisfactory quality includes among other things fitness for purpose, freedom from minor defects and durability. All of these things I think are relevant here.

The manufacturer has confirmed that the computer had a defect which was there from the date of manufacture. It has also confirmed that it isn't possible to fix that defect and the effect of it is that the computer becomes unusable. I'm satisfied that Mr O's computer was affected by the manufacturing defect. Taking into consideration the price paid for the goods, their intended use and how soon the fault appeared, I'm satisfied the computer wasn't of satisfactory quality when it was supplied. I don't consider it to have been free from minor defects or reasonably durable. I'm therefore satisfied there was a breach of contract for which HSBC could be held jointly liable under section 75.

For this reason, I don't think HSBC acted fairly and reasonably in declining Mr O's claim and complaint. I've therefore thought about what it should do to put things right.

The CRA sets out remedies that might be available to Mr O. It's clear a repair isn't possible and the manufacturer has refused to provide a replacement unless Mr O makes a sizeable payment towards that replacement. Mr O therefore has the right under the CRA to reject the goods and receive a refund of sums paid, minus a deduction for use. I think that would be a fair remedy here.

The computer failed three years after purchase, so Mr O did already have some use of it before it ceased to function as it should and I think it would be reasonable to make a deduction for this use. It isn't clear what a reasonable useable lifespan for a computer of this nature would be expected to be. However, I've seen that the manufacturer would have provided firmware and driver support for a period of six years for the model of computer Mr O had. Looking at the specification of the computer, it appears to still be consistent with models available for purchase today (albeit at a cheaper price), so it's fair to conclude the specification of Mr O's computer would continue to be current and usable for longer than six years.

There isn't an exact formula for working out what fair redress ought to be in these types of scenarios. But in deciding what's fair and reasonable I've taken into consideration the factors I've mentioned above, as well as the additional fee the manufacturer was seeking from Mr O to provide him with a like-for-like replacement three years ago. Having done so, I think it would be fair and reasonable to make a deduction of 33% for his usage of the computer. This means I think HSBC should refund Mr O £1,021.41. As Mr O has been deprived of the use of that refund, it would be fair for HSBC to also pay an additional 8% simple interest per year on that refund from the date it declined his section 75 claim to the date of settlement.

Lastly, HSBC accepts it took too long to respond to Mr O's section 75 claim and it says it has paid him £100 compensation for the inconvenience caused. I think this is fair compensation for the delays that were caused.

Mr O accepted that outcome, but HSBC didn't respond.

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.

As neither party had any further comments or evidence to provide, I've seen no reason to reach a different outcome to the one I reached in my provisional decision. For the reasons I set out in my provisional decision, I think HSBC acted unfairly towards Mr O when dealing with his section 75 claim and complaint.

My final decision

For the reasons given above, I direct HSBC UK Bank Plc to:

- Refund Mr O £1,021.41 which represents the cost of the computer minus a deduction for fair use.
- Pay 8% simple interest per year on the above refund from the date it declined the section 75 claim to the date of settlement.
- If it hasn't already, pay Mr O £100 compensation for the distress and inconvenience caused in the way it dealt with his claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 11 April 2023.

Tero Hiltunen
Ombudsman