

## The complaint

Mr N complains that HSBC UK Bank Plc didn't treat him fairly when he requested a refund of a payment made with his credit card.

## What happened

Mr N bought a boiler costing £1,699.99 with his credit card in July 2021. It was bought at a store and delivered a few days later. Mr N installed it in his kitchen, replacing his existing boiler, but didn't arrange for it to be connected to his heating system until October. Aware that it didn't come with a flue, Mr N checked the installation instructions which mentioned two different rigid flue types. Neither type worked for his particular situation which required him to use his existing chimney flue. He researched flues online and found a flexible one that he thought might work however the online installation instructions made it clear that his chimney didn't meet the minimum diameter requirements. This meant he couldn't use the boiler.

Mr N asked a nationwide energy supplier and professional boiler fitter to assess the installation. They said they wouldn't install a flexible flue system even had the existing chimney diameter proved suitable. They surveyed Mr N's heating system and recommended the installation of a different boiler. Mr N accepted this quote and subsequently had another boiler installed elsewhere in his property. Mr N wrote to the retailer asking to return the boiler on 14 October 2021.

On 2 November 2021 Mr N asked HSBC for help as he hadn't heard back from the retailer. He said that the information about the boiler provided in the manufacturer's sales brochure was misleading. He asked HSBC for a refund under Section 75 of the Consumer Credit Act 2015 (CCA). The CCA offers protection to consumers by making the lender jointly and severally responsible for any misrepresentation or breach of contract for goods paid for with credit. A successful claim might result in HSBC refunding the money Mr N paid for the boiler.

HSBC didn't investigate this claim for Mr N until over a year later. Instead, it considered a chargeback claim where it applied to Visa to refund the money he paid to the retailer. Card suppliers like HSBC can ask a card scheme (companies that run the card networks, Visa in this case) for a refund on behalf of their customer if there's a problem with the goods or services they've paid for. The rules for chargeback claims are made by the card schemes. Refunds can be requested only in specific circumstances and requests have to be submitted within strict time limits.

HSBC requested information from Mr N several times before submitting a chargeback request to Visa in February 2022 and crediting Mr N's account with £1,699.99. Visa declined the chargeback claim in March 2022. HSBC went back to Visa with a second appeal (the pre-arbitration stage). Visa declined the claim again in May and HSBC submitted a final appeal (the arbitration stage). This was again declined in July and Visa said the claim had been submitted outside its permitted time limit. HSBC re-debited the boiler cost from Mr N's credit card in August.

Mr N complained to HSBC that he'd brought his claim to the bank within the time limit required by Visa and so it wasn't his fault that the claim had been declined. He also got in

touch with us.

In November 2022 the bank considered whether or not Mr N's was entitled to a refund under Section 75 of the CCA. In March of this year HSBC told us that Mr N had relied on information which was provided for guidance and didn't seek professional advice before buying a boiler. HSBC said when Mr N found that the boiler was not suitable for him this amounted to buyer's remorse and it didn't find in his favour.

Our investigator looked into Mr N's complaint but didn't recommend that HSBC take further action. They found that HSBC hadn't treated Mr N unfairly as it had raised a chargeback claim on his behalf which was successfully challenged by the retailer. They also found that HSBC hadn't treated Mr N unfairly by not providing a refund under Section 75.

Mr N disagreed with this recommendation and asked for his complaint to come to an ombudsman to decide and it came to me. I issued a provisional decision on the 20 October 2023 explaining why I thought Mr N's complaint should be partly upheld. Both parties agreed with my provisional conclusions. This is now my final decision on the matter which will be legally binding once accepted by Mr N.

### **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.

Having reconsidered everything, and as both parties agreed with what I'd said in my provisional decision, I see no reason to depart from my initial conclusions. I remain of the view that Mr N's complaint should be upheld in part. I'll explain again how I've reached my decision and what HSBC needs to do now to put things right for Mr N.

As I said in my provisional decision, when considering this complaint I've borne in mind relevant legislation including the aforementioned CCA and the Consumer Rights Act 2015 which gives consumers rights when they have problems with the goods or services they've bought.

HSBC was required to consider Mr N's request for a refund under Section 75 as this is a consumer's legal right, but it didn't have to raise a chargeback request for him. Requesting a chargeback is a voluntary process for card providers run by the card schemes, and providers (and cardholders) are subject to the chargeback rules. I haven't considered whether Visa ought to have allowed this refund. That question is outside the remit of this decision. I'm considering here whether HSBC acted fairly and reasonably in the way it handled Mr N's request for a refund under the chargeback process, given it chose to do this.

Section 75 of the CCA offers protection to consumers by making the lender jointly and severally responsible for any misrepresentation or breach of contract for goods paid for with credit. I've considered whether HSBC treated Mr N unfairly by not accepting liability for the cost of the boiler and refunding him the money he paid for it. Let me say at this point that I'm satisfied the CCA is relevant here taking into account the cost of the boiler, the amount Mr N paid for with his credit card and the relationships between the parties involved. I'll look at what happened regarding both of these refund processes beginning with the chargeback request.

### **What happened with Mr N's chargeback request?**

My understanding of the Visa rules is that Mr N needed to submit a chargeback claim within 120 calendar days of the transaction processing date (29 July 2021) or the date he received

the boiler. I've taken the delivery date as 30 July 2021 as this is what Mr N said in a claim form. The deadline was therefore 27 November 2021 at the latest.

In some cases a claim can be submitted within 60 calendar days of the date the card issuer (HSBC) received the first cardholder notification of the dispute (if there is evidence in the notification of previous ongoing negotiations between the cardholder and the merchant to resolve the dispute which occurred within 120 days of the transaction processing date). In other words, if Mr N and the retailer had been in discussion about what happened when HSBC received his notification on 5 November, the claim deadline could have been 4 January 2022. Mr N sent a letter to the retailer asking to return the boiler on 14 October 2021 but didn't receive a reply. He confirmed this in his completed dispute resolution form dated 9 November. So it doesn't seem to me that this later deadline applied here.

When Mr N complained to HSBC on 2 November he sent it a detailed letter about what happened, along with the detailed letter he'd sent to the retailer on the 14 October. He included a copy of the invoice and receipt and a copy of the page from the manufacturer's brochure describing the boiler. I understand that Mr N completed the dispute resolution form online on 9 November and uploaded supporting documents with the form. He confirmed in the form that he'd sent a letter to the retailer but had been unsuccessful in contacting them and that he'd tried to return the goods, also unsuccessfully. He explained that a professional boiler fitter had assessed his situation, modified his heating system and installed a different boiler in another location. I understand this cost him £5,650 which he paid for with the same credit card.

HSBC sent Mr N a letter on 22 November requesting further information to include an invoice, terms and conditions, all correspondence between himself and the retailer and a detailed letter explaining the events that took place, as it was "unclear of the dispute".

Mr N said he received this letter on 27 November and as there was no specific forwarding address for the information asked for in the letter he contacted the telephone number stated in the text of the letter for further assistance. Mr N said that the representative was unsure of the address and transferred him internally. He abandoned the call after 45 minutes of silence. Mr N then visited his local branch who advised him to send it to the address shown on the letter and he did so on 29 November. He explained in the letter that he had sent all this information with his original complaint letter of the 2 November and had included some of it in his online dispute complaint submission on the 9th. Nevertheless he included all the information as before.

Meanwhile HSBC sent another letter to Mr N that same day (29 November) asking for an invoice, proof of return, proof of what was not as described and proof of attempts to resolve the matter with the retailer.

Mr N replied to this letter on 6 December. He said that he would now send for the third time copies of all the correspondence and information that he had relating to his dispute and would also send everything to another HSBC address to ensure the bank had everything it needed. Mr N also said he was concerned as it seemed his claim was being dealt with by multiple people. He also said that the letters weren't signed and weren't specific about what was required which led him to question whether the correspondence was genuine.

HSBC accepted that Mr N received poor service when he tried to call for an update on his case. It apologised and paid him £50 in compensation for the distress and inconvenience this caused.

HSBC sent a letter to Mr N on 14 February asking for the information again and requested that he complete another disputed transaction form. Mr N said he called the bank and went

through the form with the representative and was told his claim had been submitted.

HSBC then sent two letters to Mr N both dated the 21 February. One explained that it had credited his account with £1,699.99 and was looking into things for him. The other asked for an independent report that the goods received were not as described and for a detailed letter explaining the events which took place. Mr N replied to these in a letter dated 1 March in which he reminded HSBC that he'd sent all this information for the fourth time on 6 December.

Visa declined the chargeback claim in March 2022 because it had been successfully challenged by the retailer who explained that it stated on its website and on the boiler packaging that boilers which have been unboxed/opened are non-returnable. Visa said the claim was also declined because it had been submitted outside of the permitted time limit. On 31 March HSBC sent a letter to Mr N asking for him to call as it needed more details from him before it could pursue a claim. It also said that the credit it had applied to his account would be reversed in 7 days from the date of the letter if it didn't hear from him.

Mr N said he received this letter on 6 April and attempted to get in touch by phone. He said he was on hold for about two and a half hours only to be told that the relevant department was closed. He experienced the same issue the following day having been on hold for more than six hours altogether. Mr N explained all of this in a letter to HSBC dated 11 April, along with a timeline of key events relating to his claim. He wrote to HSBC again on 20 April saying that he was almost at the end of his tether.

HSBC wrote to Mr N on 22 April to apologise for his recent experience and offered him £30 compensation. It told him his claim was ongoing. As mentioned above, HSBC took the claim to pre-arbitration, in other words it appealed the initial decline. It then took the claim to arbitration, in other words submitted a final appeal. HSBC wrote to Mr N on 8 August to tell him his claim had been declined as it was made outside the time limits and that it would re-debit the boiler cost to his card on 15 August, which I understand happened.

### My considerations

Having reviewed all the available information I was unsure why HSBC sent Mr N a letter on 22 November 2021 given he'd provided the information requested and there was very little time left before his claim would be invalid. I was also unsure why HSBC wrote to Mr N again on 29 November asking for similar information. It was now outside of the 120 days and the claim would be invalid.

I asked HSBC why it requested more information from Mr N in November and again in March when it seemed to me that it had all the information it needed to submit his claim by 9 November 2021. I also asked why it had then pursued the claim all the way to arbitration when it had been out of time by the 27 November.

HSBC said that around that time (November 2021) the team dealing with disputes were still managing caseloads following the aftermath of the pandemic which set the team back many months and caused an internal delay in raising the chargeback claim with Visa. The team made their best endeavours to get the decline overturned for Mr N because he had raised his dispute with it within 120 days.

HSBC also said that there seemed little prospect of a successful outcome with the chargeback as it was difficult to prove that the retailer had "provided a product that was not as described, especially where it's been found the customer had opted to purchase goods without any professional guidance and is holding the retailer and manufacturer accountable for advice provided in a manual which is there to guide only."

HSBC explained that it would usually process a chargeback claim in the first instance to attempt to obtain a refund from the merchant under the relevant scheme where possible. Once the arbitration ruling had been made on Mr N's chargeback claim in August 2022 it was for another team to review his Section 75 claim. I understand that this didn't happen and wasn't picked up by the Section 75 team until this Service asked HSBC for its response to Mr N's complaint referral. The HSBC complaint handler notified the relevant team in mid-November 2022.

As mentioned, the card scheme sets the rule for the chargeback process. Although Mr N raised a request in time with HSBC it didn't manage to raise the request with Visa in the time allowed. HSBC apologised to Mr N on two occasions throughout the process when he had problems getting in touch and paid him a total of £80 compensation.

However, I don't think HSBC has acknowledged the stress and inconvenience it caused to Mr N during its pursuit of a chargeback claim which was outside of the time limit by asking him several times for information he had already provided to the extent that he wasn't sure if the information requests were genuine; by not explaining why the information requested was necessary to the claim and by not explaining the chargeback process and how that might delay a Section 75 claim. Mr N told us that he found the bank's actions unacceptable considering the time it's taken to resolve the situation and the distress and frustration that he experienced during the process.

There isn't a specific calculation for awards to compensate for the emotional impact of errors. We have an approach (which is set out on our website) which I've borne in mind alongside everything else when making this decision. The approach set out on our website includes examples of awards of over £300 and up to £750 where a mistake has caused "considerable distress, upset and worry – and/or significant inconvenience and disruption that needs a lot of extra effort to sort out. Typically, the impact lasts over many weeks or months". I think an award in this range would be appropriate here.

Mr N said that in order to resolve his complaint he would like a refund of the amount he paid for the boiler. He said he holds HSBC totally responsible for the failure of his claim because it was raised outside the 120 day time limit.

However, this wasn't the only reason Visa gave for declining the claim. It initially declined it not only because it was raised outside of the time limit but because it was successfully challenged by the retailer. Visa said in its decline notification that the retailer had explained that it didn't offer refunds if the boiler had been unboxed and that this information was available prior to the purchase. Mr N had installed the boiler by the time he realised that it was unsuitable for his property and so he was unable to return it.

It seems to me therefore that Mr N's claim wouldn't have succeeded even if it had been submitted within the time limits required and I don't think it would be appropriate for HSBC to pay the cost of the boiler in lieu of a refund from Visa.

#### What happened with Mr N's Section 75 request?

Mr N complained that the information about the boiler provided in the manufacturer's sales brochure was misleading: it described the boiler as a perfect replacement for old floor-standing boilers, it didn't mention that there were only three types of flue suitable for use with the boiler nor did it direct buyers to check the installation requirements. Mr N said that the boiler was not fit for purpose as there wasn't a suitable flue he could source which would enable it to be installed in his property.

I don't know if Mr N ever received a response from HSBC regarding its review of his claim for a refund under Section 75 - I haven't seen any correspondence from HSBC providing an outcome to that request. It told us in March of this year that the information Mr N relied on when making up his mind about the boiler was provided for guidance and the retailer wasn't at fault if Mr N later found the boiler to be unsuitable having purchased it without professional advice.

### My considerations

In thinking about whether HSBC treated Mr N fairly when he asked for a refund under Section 75, my considerations include:

- Whether the boiler was misrepresented to Mr N. In other words, was Mr N told something untrue about the boiler which induced him to buy it when otherwise he would not have?
- Was Mr N provided with enough clear, fair and not misleading information to make an informed decision about the boiler?
- Whether there was a breach of contract on the part of the supplier, for example was the boiler of unsatisfactory quality when it was supplied, which would include aspects such as fitness for purpose?

In order to find that the boiler was misrepresented to Mr N I'd need to find that he was told a false statement of fact about the boiler which induced him into buying it. For example, if Mr N had a conversation with the sales representative about his particular requirements and was told that he would be able to replace his existing boiler in its location with this specific one.

Mr N told us that he decided to buy the boiler after consulting the manufacturer's sales brochure and finding one that was the equivalent size and output to his original boiler. He said that the boiler was misrepresented to him because of the wording in the brochure which stated that the boilers from the series in question "are a perfect replacement for old floor standing boilers." It doesn't seem to me that this is a statement of fact about the particular boiler Mr N bought but more a sales pitch for the boiler series as a whole. I think it's fair to say that Mr N was aware he needed to investigate the specifications of the boiler to check it would work in his particular circumstances, so I don't think he took this statement to be factually true at the time.

The retailer said in response to Visa's investigation into Mr N's chargeback request that it didn't accept boiler returns if the packaging had been opened. It said that this disclaimer is specified on its website page for this item as well as on the packaging itself, which Mr N should have seen when purchasing in store. The retailer said that the staff in store advise customers about the returns policy when processing an order. I've checked the retailer's website and it's clear that Mr N would be unable to return the boiler once the packaging had been opened. I appreciate that Mr N bought the boiler in store, but given the specific nature of the returns policy I think it's more likely than not that he would have been aware of it when making his purchase.

Mr N said that he was aware that the boiler didn't come supplied with a flue and so he'd need to source one. The installation instructions for the boiler and the recommended flues are available on the manufacturer's website and it wasn't necessary for Mr N to open the boiler packaging to retrieve them. Mr N was able to source another potential flue online and read its installation instructions so it's likely he would have been able to source the installation instructions for the boiler and the recommended flues without invalidating the retailer's return policy. Mr N learnt from the installation instructions that the two recommended flues wouldn't work in his circumstances. Unfortunately for Mr N he could have found this out sooner had he considered more aspects of the boiler's specifications prior to purchase.

Mr N said that the boiler wasn't fit for purpose for his particular circumstances but I haven't seen anything which makes me think it wasn't fit for purpose generally, in other words could be used for the purpose for which it was sold had it been installed and commissioned as per the installation instructions. Mr N mentioned that the professional boiler fitter informed him that even if his chimney had the diameter required to fit the flexible flue he'd investigated that it wouldn't install the boiler he'd purchased. I understand that another boiler was installed in an alternative location as it was deemed to be "a more practical and least expensive" solution. I have no further information on this point however and can't find that the fitter determined that the boiler Mr N purchased was not fit for purpose generally or was of unsatisfactory quality in some other way. I understand that Mr N has recently sold the boiler.

In summary, I think Mr N had all the information he needed, or had access to it, to make an informed decision about the necessary specifications of the boiler before buying and unpacking it. I don't think the boiler was of unsatisfactory quality when supplied or that it had been misrepresented to Mr N on the basis of the sales literature. It follows that I don't think HSBC treated Mr N unfairly by not offering him a refund in accordance with the Section 75 provisions.

### **Putting things right**

I've found that HSBC didn't treat Mr N fairly when it processed a chargeback request on his behalf and that it should pay him compensation to reflect the distress and inconvenience this caused to him. Having considered this point carefully and borne in mind our approach to compensation for the emotional impact of errors, I think an award of £400, in addition to the compensation it's already paid, would be appropriate in this case.

### **My final decision**

For the reasons I've explained above I am upholding Mr N's complaint in part and HSBC UK Bank Plc should now compensate him as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 20 December 2023.

Michelle Boundy  
**Ombudsman**