

The complaint

Ms S complains that HSBC UK Bank Plc hasn't refunded a payment she made using her credit card.

What happened

In April 2022, Ms S made a payment of £1,579.53 using her HSBC credit card to a company I'll refer to as "B". The payment was for B to transport 12 boxes of Ms S' personal belongings from one of her addresses in the UK to one in Dubai as she was going to be living there. B was supposed to deliver the boxes within two weeks, however, it didn't deliver them at all.

B went into administration and another company arranged to reunite Ms S with her belongings in September 2022. Her items were delivered back to her at a different UK address as she no longer needed the items shipped to Dubai as she had moved back to the UK in July 2022.

Ms S contacted HSBC to raise a claim for a refund under section 75 of the Consumer Credit Act 1974 ("section 75"). She said that B never provided her with the services it agreed to. She said that she had also incurred thousands of pounds in consequential losses. She said the boxes had contained all of her belongings in the UK, including clothes, electronics, kitchenware, cosmetics and medicines. She said she had to pay for replacements while in Dubai and when she returned to the UK. Her claim was for around £13,000 although she said her true costs far exceeded this amount.

HSBC didn't agree to provide a refund. It initially said that Ms S had paid a different company to the one that was supposed to provide her with the delivery services. It then said it could find no evidence of a breach of contract.

Our investigator recommended the complaint be upheld in part. She didn't think HSBC had appropriately handled the section 75 claim and complaint. She thought HSBC had incorrectly said that the services were to be provided by a different business to the one Ms S paid and she thought that HSBC had taken too long to consider the claim. She considered that HSBC ought to refund the payment Ms S made to B as well as pay her £250 compensation for the upset and inconvenience it caused in the poor way it handled her claim.

In relation to Ms S' claim for consequential losses, our investigator wasn't persuaded that Ms S should be refunded for those by HSBC. She noted that many of Ms S' purchases she was claiming for pre-dated her handing her belongings to B. Further, some items she purchased (such as a large television) would never have fit in the boxes given to B. Overall, given the discrepancies with what she was claiming for, the investigator wasn't persuaded that Ms S had suffered any consequential losses.

HSBC accepted that outcome, but Ms S didn't. In summary, she said that she hadn't included in her claim a number of her high-cost items such as laptops and designer handbags which she said ought to demonstrate her claim was submitted with honesty. The replacement TV she purchased was bigger than the one she had in the box she'd given to B, but the larger TV was cheaper than a like-for-like replacement. She said that she needed to

buy items for her and her child and these were basic necessities like clothes and toiletries.

The complaint has been passed to me for a 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.

The general effect of section 75 is that where Ms S has a claim for breach of contract or misrepresentation against B, she can bring a like claim against HSBC (as the provider of credit), provided that certain conditions are met. One of those conditions is that there needs to be a debtor-creditor-supplier ("DCS") agreement.

HSBC initially rejected Ms S' claim on the basis that there was no DCS agreement, but it appears it has since accepted that there is. For completeness, I'm satisfied that there is.

HSBC then rejected the claim because it said that it couldn't see that there had been a breach of contract by B. It said that while Ms S' belongings had been damaged, it wasn't clear whether the damage was caused by B or the company that arranged to reunite Ms S with them when B went into administration. It said that as there was no breach of contract, it couldn't consider a claim for her consequential losses either.

Ms S' claim is that the services she paid for weren't provided and that as a result of that service not being provided, she incurred consequential financial losses as she had to replace items that were being held by B. There is no dispute that B did not provide the services it was contracted to provide – that is to ship her 12 boxes of personal belongings to Dubai. I'm satisfied that is a breach of contract and one which HSBC could be jointly liable for under section 75. As the service wasn't provided at all, I would consider an appropriate remedy to be a full refund of what Ms S paid – being £1,579.53. Ms S says she also paid a further £12 to B as part of the contract using her HSBC credit card. I consider it reasonable for this to be refunded as well if Ms S can demonstrate (or HSBC can see from its records) that it was paid.

As I'm satisfied there was a breach of contract by B, I've gone on to consider Ms S' consequential losses. She has asked HSBC to reimburse her around £12,000 for items she had to buy because B held her belongings. However, she says her actual losses exceeded £30,000. Having reviewed her submissions, I'm not persuaded that HSBC ought to refund any consequential losses as I'm not persuaded that the breach of contract by B directly resulted in those losses – or any specific losses at all. I'll explain why.

Ms S says she moved to Dubai in December 2021, five months before she handed over her belongings to B for transportation. She's provided receipts of various items she purchased between December 2021 and April 2022 whilst in Dubai, which included furnishings, clothes and living essentials. So, I don't accept that Ms S needed her belongings from her London address to meet her basic living needs in Dubai. She had been able to manage for five months without them and was buying essential living items in Dubai regardless.

I accept it's possible that Ms S was then short of some essential items when she moved back to the UK in July 2022. She's told us that she took what she could on the flight back and left everything else in Dubai. But if B had completed the contract as it should, this is the position Ms S would always have been in as her possessions from London would have been in Dubai. So, she would always have moved back to the UK in July without those items immediately available.

She was reunited with her belongings at the end of September 2022, only around two months later. I note that rather than transporting items she had purchased in Dubai back to the UK, Ms S chose not to do so. While she says this is because she no longer trusted any courier company, I don't think she's done enough to mitigate any losses she says she suffered.

Ms S says she had two properties in the UK and both were empty as she had filled the 12 boxes with all of her personal belongings from both properties. Ms S therefore moved back to the UK knowing she would be returning to an empty property and made a conscious decision not to attempt to bring back all the household items she had purchased in Dubai. This means she would be forced to buy items she had already bought. So, I think those losses don't flow directly from any breach of contract by B, but by Ms S' decision to not try to mitigate her losses further.

I accept it's possible there might have been some smaller purchases Ms S had to make as a result of B holding onto her personal belongings. However, it isn't possible to say with any degree of certainty what those might have been – if any. This is because of the contradictory and inconsistent nature of the information and evidence Ms S has provided.

For example, she's provided receipts for many purchases that happened months before she contacted B to arrange delivery of her items, she says she had to purchase a wide screen television, ceiling lights and items of furniture in Dubai but has also said she was forced into furnished accommodation because her belongings didn't arrive. Many of the items she purchased when back in the UK are every day essential items that she would likely have needed to purchase even if B had never held onto her belongings (such as toiletries and food).

While I accept Ms S was deprived of her belongings by B for many months, I've not been presented with persuasive evidence to show these were essential every-day items and that Ms S was forced to replace them. Predominantly this is because she was living in Dubai for five months without these items prior to looking into getting them transported. She says that as a result of B not transporting them she was *"left desperate and devastated alone with a toddler with absolutely nothing to wear, nothing to be able to cook, no toys for him to play with. We were suffering severely living in an empty apartment on hardwood floors with no rugs, no beddings, no nothing."* But this would also have been the case for the five months prior and she's also provided receipts for that period showing she had bought furniture, clothes and rugs. This means I find what Ms S has told us to be inconsistent and unreliable. For all these reasons, I don't consider that it would be fair and reasonable for HSBC to refund any of the consequential losses Ms S has claimed for.

Lastly, HSBC's overall handling of this claim and complaint has been poor. It dragged out the claim for several months and repeatedly misunderstood the crux of the claim. For example, it incorrectly assumed there was no DCS agreement when the involvement of the third party who returned Ms S' belongings had nothing to do with the claim. Similarly, Ms S repeatedly told HSBC she wasn't claiming for any damage to her belongings, yet this appears to be the main issue HSBC focussed on. Given the poor way the claim and complaint were handled, this understandably caused unnecessary frustration, upset and inconvenience to Ms S. In the circumstances I consider £250 compensation to be a fair way to put things right.

My final decision

For the reasons given above, I uphold this complaint and direct HSBC UK Bank Plc to:

- Refund the payment of £1,579.53 Ms S paid to B. It should also refund the further

£12 Ms S says was paid if she can provide evidence this cost was incurred.

- Pay Ms S £250 compensation for the distress and inconvenience HSBC caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 9 May 2024.

Tero Hiltunen
Ombudsman