

The complaint

Mr B complains about HSBC UK Bank PLC's response to a claim he made under Section 75 of the Consumer Credit Act 1974.

What happened

In April 2022, Mr B purchased a solar panel system ("the system") from a supplier. He paid for this in part using his HSBC credit card. There were a number of issues with the installation process and Mr B complained initially to the supplier.

Mr B says he agreed to purchase the system on the understanding that he would benefit from payments under the Smart Export Guarantee ("SEG") for any electricity generated by the system that is exported to the grid. But it turned out that the supplier was not MCS accredited and couldn't issue an MCS certificate, so Mr B's system was not eligible for payments under the SEG.

In September 2022, having not been able to resolve the issues with the supplier, Mr B made a claim to HSBC under Section 75. However, HSBC initially looked at this as a disputed transaction and initially pursued a chargeback. It provisionally refunded the amount Mr B had paid on his credit card while it went through the chargeback process. Mr B was frustrated with how HSBC was handling things and made a complaint. As a result, HSBC explained that it would go through the chargeback process before looking at a Section 75 claim, but paid Mr B £50 compensation for any distress and inconvenience caused by how it had handled things.

Mr B was unhappy with this and asked the Financial Ombudsman Service to look into what happened.

Our investigator felt there was a valid claim under Section 75 for misrepresentation – since it appeared that the supplier had told Mr B it was MCS accredited when it was not and that he would benefit from SEG payments, which he cannot. She recommended that HSBC:

- A. Calculate the total payments Mr B made towards the solar panels.
- B. Use his electricity bills to work out the benefits he's received so far from the solar panels.
- C. Deduct B and the £1,500 Mr B has already received from A and pay this to Mr B.
- D. Calculate 8% interest on C from the date Mr B raised the Section 75 claim to the date of settlement, and pay this amount to Mr B.
- E. Pay Mr B an additional £50 compensation for the distress and inconvenience caused.
- F. Pay Mr B no more than £450 towards the removal of the system within 21 days of receiving evidence that the system has been removed.

Mr B was unhappy with this. His preference is for a new system to be installed that is MCS

certified so he can benefit from SEG payments. He said that the quote for removal at a cost of £450 was part of a quote for installing a new system and didn't include other costs that would be incurred for removing the system, such as scaffolding, and reinstating any damage done by the original installation and its removal (since any damage would be made good during the installation of the new system).

HSBC responded to make an offer which it said would be simpler to carry out, which was to:

- Refund the cost of the system without deducting the value of any benefits.
- Pay 8% interest on this.
- Pay £450 towards removing the system up front.
- Pay an additional £50 compensation.

Mr B remained unhappy with this offer, so I've been asked to make a decision on what HSBC should do to put things right. I issued a provisional decision explaining that I was planning to uphold the complaint. Mr B and HSBC responded to say they would accept my provisional decision, so this final decision is in line with that.

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.

HSBC has in effect accepted that there was a misrepresentation or breach of contract on the part of the supplier and that it has liability for this under Section 75. All that is left for me to decide is how to put things right in a way that is fair and reasonable.

The usual remedies available in a case like this are to:

1. Cancel the contract and, in so far as is reasonably possible, put the customer back in the position they would have been in if they had not made the purchase.
2. Enforce the contract, so that the customer gets what they paid for.

My role is to make a decision that is fair and reasonable for both HSBC and Mr B. I would not generally expect a financial business to make a settlement that is more expensive than is necessary to put things right in one way or another just because that is the customer's preference. I am also free to recommend an alternative redress where I think that is fair and reasonable, for example to avoid unnecessary costs or disruption.

Overall, I think our investigator's recommended resolution was appropriate in order to cancel the contract – given that is the less expensive option. And that, at this stage, HSBC's offer is fair and reasonable (being better than what our investigator recommended). However, there is a caveat which I explain below under bullet-point iii.

Once HSBC has made the settlement to Mr B it will be up to him what he does in respect of the system. I think he'll have three options:

- i. Keep the system as it is. The system will continue to provide free electricity, which will save Mr B money on his electricity bills. Its expected lifetime is 25 years, so the benefits of that are likely to be significant, even without SEG payments – especially considering that Mr B will have been refunded everything he paid for the system.

- ii. Remove the existing system and pay to install a new MCS compliant one, allowing Mr B to enjoy savings and SEG payments going forward. HSBC's settlement is unlikely to cover the full cost of this. But I do not think that leads to an unfair outcome, given that Mr B could alternatively choose option i or iii, which would not involve any additional cost to him.
- iii. Remove the system and reinstate the property, so Mr B has no solar panel system. This option would put Mr B in the position he'd have been if he hadn't purchased the system at all (as far as is reasonably possible). If Mr B does this and the cost of removal is more than HSBC has paid, then I think Mr B ought to be able to submit evidence of this to HSBC so it can consider reimbursing him the reasonable additional costs that he incurred. Otherwise, the settlement could leave Mr B worse off than seems fair. If Mr B takes this option and this results in a dispute about how much more HSBC should pay, HSBC should allow Mr B to pursue that matter as a new complaint.

Putting things right

To put things right HSBC UK Bank PLC should:

- A. Reimburse Mr B the amounts he paid for the system (taking into account any credits or refunds already paid to him in respect of this).
- B. Pay 8% simple interest per year on A to cover the time Mr B has been without that money.
- C. Pay Mr B £450 towards removing the system up front.
 - a. HSBC should consider a further payment if Mr B does have the system removed and provides evidence that the cost of doing so was more than £450.
 - b. HSBC should allow Mr B to make a new complaint if this results in a dispute over what if any additional amount HSBC should pay towards removing the system.
- D. Pay Mr B an additional £50 compensation for distress and inconvenience.

My final decision

For the reasons I've explained, I uphold this complaint. HSBC UK Bank PLC should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 February 2024.

Phillip Lai-Fang
Ombudsman