

The complaint

Mr H complains that HSBC UK Bank Plc didn't treat him fairly when he requested a refund for a car he'd paid for in part with his credit card.

What happened

Mr H paid a deposit of £257 on a used car with his HSBC credit card on 19 May 2023. He paid the balance owed with cash a few days later. The total amount Mr H paid for the car came to £2,739.

Mr H experienced several issues with the car and wanted to return it to the dealer for a refund, but the dealer didn't accept this request.

In June 2023, Mr H asked HSBC for a refund of the cost of the car under Section 75 of the Consumer Credit Act 2015 (CCA). A successful claim might result in HSBC refunding some or all of the money Mr H paid for the car or taking other action to put things right for him.

In November 2023, Mr H complained to HSBC that it was taking too long to investigate his claim. He said it hadn't investigated his case properly or considered all the evidence he'd provided. In order to resolve his complaint, Mr H asked HSBC to refund the total amount he'd spent on the car along with compensation for the delays in processing his claim.

HSBC sent Mr H a response on 6 December 2023. It said that its response time for Section 75 complaints depended on the information it received and the complexity of the claim. It didn't uphold his complaint but said it was pleased to see its Section 75 team had since been in touch with Mr H as he'd requested.

Mr H referred his complaint to us. He told us that he'd scrapped the car towards the end of 2023 because he felt it wasn't financially viable to repair and wasn't worth paying further related costs, such as insurance and MOT.

Our investigator looked into Mr H's complaint but didn't recommend that it be upheld. They found that HSBC hadn't erred in asking Mr H for the information it needed to consider his claim. They also found that it wasn't likely his claim would succeed without this information.

Mr H disagreed with this recommendation and asked for his complaint to come to an ombudsman to decide and it has come to me.

To be clear, I haven't looked into whether or not the dealer should have offered Mr H a refund or whether it should or should not have done anything else. If Mr H has complained to the dealer and it hasn't resolved things to his satisfaction, he could potentially pursue the matter through the courts.

Neither have I considered whether HSBC ought to have raised a chargeback on Mr H's behalf with the card scheme, Visa in this case. This is a voluntary refund process separate to the Section 75 claim process, and any award under this would be limited to the amount Mr H paid using his credit card.

My decision deals solely with whether or not HSBC made any errors in its handling of Mr H's Section 75 claim that it now needs to put right.

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.

In order to make my decision, I reviewed all the information both parties provided. If I don't specifically refer to something in my decision it is not because I haven't considered it, but rather that I have highlighted in this document what I consider to be the most relevant points.

In order to resolve his complaint, Mr H would like HSBC to refund the total amount he paid for the car along with compensation for the delay in processing his Section 75 claim. I've considered whether HSBC ought to refund Mr H and whether it erred in its handling of his claim.

HSBC was required to consider Mr H's request for a refund under Section 75 as this is a consumer's legal right. 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. HSBC could be held jointly and severally responsible in this case because Mr H paid for the car in part with credit it provided.

However, certain conditions need to be met in order for consumers to access this protection. In Mr H's case, some but not all of the conditions have been met. I've concluded, as our investigator did, that it's not likely Mr H could bring a claim under Section 75 with the information he's provided to HSBC and this Service.

The type of credit Mr H used and the total cash price of the car meets the necessary conditions. However, from everything I've seen, Mr H's claim doesn't meet the condition that there needs to be a link between the parties involved defined as a debtor-creditor-supplier agreement ('DCS').

It would seem on first looking that there was such an agreement in place as there was a debtor (Mr H), a creditor (HSBC) and a supplier (the dealer). Mr H didn't make his deposit payment (via his HSBC credit card) to the dealer however, but to another party. The dealer confirmed that it had received Mr H's deposit, and Mr H said he went on to pay the outstanding balance in cash. However, the party Mr H paid is not linked to the dealer in the way the law states it must be in order for the DCS to exist.

HSBC could be liable to make good any issues with the goods provided by the dealer, if it sent a payment to the dealer via an associate. This is strictly defined in Section 184 of the CCA. Two limited companies can be associates if they are controlled by the same people or by associated people. Although the dealer and the party to whom Mr H paid his deposit might have had a shared workplace, according to the information held on Companies House they are separate limited companies controlled by different people and I haven't seen any evidence that the people involved are associated.

In April of this year, in response to our investigator's view Mr H sent a number of emails to the dealer to ask why his deposit was paid to a different entity but didn't receive a response.

I appreciate that this will be very disappointing for Mr H and I do sympathise with his situation but I have to have regard to the law when making my decision. I can't now direct HSBC to consider Mr H's claim under Section 75 or require it to treat his claim as having

been successful to the extent that it should refund the cost of the car to him, because I can't say Mr H was entitled to this protection in this case.

I have also considered whether HSBC got anything wrong in its handling of Mr H's claim. Mr H made his request in June 2023 and HSBC hadn't considered his request by the end of November 2023 because it said it required further information from him before doing so.

It is true that the CCA doesn't set out expected timescales for a creditor's response to a debtor's request for protection, however HSBC is obliged as a regulated firm to treat Mr H fairly and with due regard to his interests in its dealings with him. In practice, this would mean considering his claim and providing him with an outcome within a reasonable period of time.

HSBC provided screen shots of its internal customer contact notes which summarise the information requests it made of Mr H. These show that HSBC asked Mr H for information in July, August, October and November 2023, and that Mr H responded to these requests.

HSBC noted the responses but also noted that it hadn't received some of the information it requested. This included proof of an association between the dealer and the party to whom Mr H had paid the deposit. HSBC asked Mr H for this information in early October. Mr H said that he'd responded to this particular information request to HSBC's satisfaction, in other words HSBC didn't challenge the information he gave.

The information Mr H provided was that the same address was shown for the dealer and the other party on their respective websites, and that the dealer had confirmed that it received his deposit although it had been paid to the other party. As I've explained above, this is not enough to establish a DCS.

It seems to me that HSBC had enough information by the end of October to know that Mr H might not have recourse to the protection offered under Section 75 because a DCS had not been established.

However, had HSBC considered that it needed further evidence of a DCS and let Mr H know this either in October or earlier in the process, I don't think the outcome would have been any different. As I've explained above, Mr H hasn't been able to provide us with evidence that a DCS existed, and it's unlikely that he would have been able to provide this to HSBC. I can't find that HSBC took an unreasonably long time to process the claim under these circumstances.

Altogether, having carefully considered all the information available to me, I've concluded that HSBC didn't get anything wrong in its handling of Mr H's Section 75 claim that it should now put right. It follows that I am not upholding Mr H's complaint.

My final decision

For the reasons I've explained above, I am not upholding Mr H's complaint about HSBC UK Bank Plc and do not require it to take any action in this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 November 2024.

Michelle Boundy
Ombudsman