

The complaint

Mr P complains that HSBC UK Bank Plc didn't fairly deal with a claim he made under Section 75 of the Consumer Credit Act 1974 (the 'CCA') and Chargeback claim in relation to a purchase he made with a supplier.

What happened

In May 2021 Mr P ordered two sofas from a retailer, R, manufactured by M, he said the sofas were chosen based on the leather version he and his wife sat on in the store. Mr P said the invoice from R stated the cushions were "soft". He said "soft" was their preference.

Mr and Mrs P started using the sofas and found them to be extremely uncomfortable with the seat interiors being much too firm/hard for them to sit on. Mr P complained to the retailer in January 2022 and raised a Chargeback/Section 75 dispute in April 2022 with his credit card provider HSBC.

Mr P received a letter from HSBC on 27th of April 2022 saying that it was unable to assist in this instance since it had no disputes rights over quality of service. HSBC then investigated a Section 75 claim. During this time Mr P received two final response letters with referral rights to the Financial Ombudsman Service concerning issues related to the claims. In February 2023 HSBC sent Mr P a final response letter in which it did not uphold Mr P's Section 75 claim. Mr P disputed this and brought his complaint to our service. In addition he complained about the customer service he had received from HSBC.

Our investigator concluded that because Mr P complained more than six months after the first final response letter he was unable to deal with part of the complaint relating to Chargeback. With regards to Section 75 he thought HSBC had dealt fairly with the complaint. Mr P did not agree and asked for a decision from an ombudsman. I issued a provisional decision. I considered the requirements and time limits set out in the rules which guide this service and concluded this is a complaint our service could consider in full. Both parties accepted this conclusion, so I issued a jurisdiction decision and went on to consider the merits of the complaint.

I issued a provisional decision on 18 March. I wasn't persuaded that HSBC had acted unfairly when it dealt with Mr P's Section 75 claim. But I thought HSBC must pay Mr P £75 compensation for distress and inconvenience caused by not considering the Chargeback claim fairly and a further £75 for the customer service during the Section 75 claim. HSBC agreed with this provisional decision. Mr P did not and provided further comments and evidence. I issued a second provisional decision on 18 April. A copy of this is below and forms part of this decision.

Both parties accepted these findings. HSBC asked for an amendment to the remedy which I have addressed below.

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 both parties have accepted my provisional decision I see no reason to depart from its conclusions. HSBC said it is logistically difficult for it to remove the sofas so it asked if Mr P would be prepared to dispose of them and be reimbursed any reasonable costs. Mr P accepted this.

Putting things right

To put things right:

- Mr P to dispose of the sofas. Reasonable costs will be refunded by HSBC up to two months from the date of this decision, on production of the receipt.
- HSBC UK Bank Plc must:
 - Refund the cost of the sofas (£3,923) less an amount due to fair use. Mr P has had use of the sofas for over two years, although this will likely not have been comfortable use. So HSBC must refund Mr P two thirds of the sale price he paid (£2,615).
 - Refund Mr P the cost of the independent inspection, £150, on production of the receipt to HSBC.
 - Pay Mr P £275 compensation for the distress and inconvenience this has caused. This sum includes the £75 I awarded in my provisional decision for the poor customer service during the claims.

My final decision

My final decision is that I uphold this complaint and HSBC UK Bank Plc must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 10 June 2024.

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### ***"My provisional decision of 18 April 2024:***

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Having done so I'm minded to uphold this complaint and ask HSBC to put things right. I'd like to thank Mr P for the additional comments he's provided along with an additional piece of evidence.*

### **Section 75**

#### ***Breach of contract***

*Having reviewed Mr P's additional evidence I'm minded to say there was a breach of contract. Mr P has provided sales literature for the sofas he purchased. The leaflet includes photos of the models available, descriptions of the sofas as well as the specification of each model. The first descriptor is unambiguous:*

*"Two seat options – soft or medium"*

*Mr P has been consistent in his testimony that the retailer gave him a choice of soft or medium upholstery and that the retailer always recommends soft and only stocks the soft versions. As I mentioned in my provisional decision verbal representations are hard to substantiate but the sales leaflet Mr P has provided has persuaded me that the sofas were sold as soft or medium and not as firm. And as I've already noted the invoice says the sofas Mr P ordered were to be with "soft interiors". The independent inspector described the sofas:*

*"...the seating areas are a very firm foam  
...my professional opinion is that the seat interiors are firm and hard."*

*And in a letter dated 31 January 2022 to Mr P the retailer said:*

*"I can confirm you did order M's soft interiors. And you are right we do not keep the medium models on the shop floor. I do also on a personal level think M products generally are firm but yet have a supportive seat especially when comparing it to other filling types i.e. feather or fibre..."*

*I'm persuaded by the leaflet along with Mr P's testimony that the sofas were sold as either 'soft' or 'medium'. I'm satisfied Mr P intended to order 'soft' and indeed did so. But I'm persuaded by the technical evidence the sofas delivered are 'firm'.*

*In his complaint Mr P said:*

*"When we started using the sofas, we found them to be extremely uncomfortable with the seat interiors being much too firm/hard for us to sit on... and have therefore been unable to use them (despite spending £3,923 on them).*

*We had to purchase a new armchair as a temporary measure, which we are still using, costing £238. We spent £150 on the independent report by the Furniture Ombudsman, giving a total outlay of £4,311 to date."*

*Because the sofas were uncomfortable I'm satisfied they likely were not fit for their intended purpose. So, subject to any further information I might receive I'm minded to say that there is a breach of contract.*

#### *Misrepresentation – False Statement and Inducement*

*While I'm minded to say there was a breach of contract I also think it likely, having seen the sales literature, that the sofas were not as described. The sofas are stated as soft and medium on the sales literature. The independent report findings contradict this literature.*

*In my provisional decision I said I wasn't persuaded the soft interiors would have been the only inducement to the contract. Mr P has responded by detailing his age and medical conditions that would lead him to purchasing sofas for seat comfort. He has highlighted other features which are important but has said seat comfort is the most important to prevent numbness in the legs. Mr P has said he cannot recall if he made this clear to the retailer at the time and this is understandable due to the passage of time. But I find Mr P's testimony credible.*

*Nevertheless I'm persuaded there was a breach of contract under Section 75 so, I will be asking HSBC to put things right.*

#### *Chargeback*

*Mr P has responded to my provisional decision with some comments regarding how HSBC*

*dealt with his complaint with the Chargeback process. As I have mentioned above I think it likely the sofas were not as described, and it is possible that a Chargeback claim may have been successful had the leaflet been provided to support the claim in time.*

*Subject to any further information I might receive from either party, to put things right HSBC UK Bank Plc must:*

- *Collect the sofas at no cost to Mr P.*
- *Refund the cost of the sofas (£3,923) less an amount due to fair use. Mr P has had use of the sofas for over two years, although this will likely not have been comfortable use. So my recommendation is that HSBC should refund Mr P two thirds of the sale price he paid (£2,615).*
- *Refund Mr P the cost of the independent inspection, £150, on production of the receipt to HSBC.*
- *Pay Mr P £275 compensation for the distress and inconvenience this has caused. This sum includes the £75 I awarded in my provisional decision for the poor customer service during the claims."*

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Maxine Sutton
Ombudsman