

The complaint

Mr L complains about how HSBC UK Bank Plc treated a chargeback claim he made, after he used his credit card to buy a used car.

What happened

In September 2022, Mr L bought a used car from a dealer. To pay for the car, Mr L used his HSBC credit card.

Around a month later, Mr L's wife was using the car when a warning light appeared and the car went into limp mode. This meant the car needed to be recovered and Mr L arranged for it to be taken back to the dealer.

After a few weeks, Mr L says the dealer told him he had completed repair work to the turbocharger in the engine. Additionally, the dealer charged Mr L £60 for an oil change. However, at the end of October 2022, Mr L says the same fault happened again. So, Mr L says he told the dealer he wanted to return the car and get a refund.

The dealer didn't agree to take the car back, so Mr L took the car to a repair garage accredited by the car's manufacturer. Once there, he says he was told that parts of the engine had been cleaned, rather than repaired. Mr L says this meant the dealer hadn't carried out the repairs to the turbocharger.

Without any resolution with the dealer, Mr L contacted HSBC to talk about a chargeback claim and a claim under section 75 of the Consumer Credit Act 1974 (section 75). After a few days, HSBC credited Mr L's credit card account with funds equal to the cost of car. Mr L says he assumed that meant his claim was successful. He says he transferred those funds to his current account and spent them.

By the start of January 2023, Mr L says he could no longer store the car on his driveway. And as the dealer was refusing to collect it, he arranged for the car to be taken to a scrap merchant. But, in April 2023 HSBC told Mr L that his chargeback claim had been unsuccessful because the dealer said Mr L hadn't returned the car. Consequently, HSBC debited his account for the cost of the car. Mr L didn't think this was fair and complained to HSBC.

In their final response to Mr L's complaint, HSBC said they had taken the chargeback claim as far as they could. HSBC also told Mr L that they couldn't start a section 75 claim, because the invoice for the car was in his wife's name. Mr L didn't accept HSBC's reply and brought his complaint to us.

One of our investigators looked into Mr L's complaint and found that HSBC had treated Mr L fairly. He concluded that HSBC had handled the chargeback claim correctly and they didn't tell Mr L that he could dispose of the car. The investigator also said in that in the absence of any report or appraisal of the car, HSBC couldn't assess if it was of satisfactory quality.

Mr L didn't agree and said he tried to return the car to the dealer, but the dealer would not

collect it. He also said it was reasonable for him to have sent the car to a scrap merchant.

The investigator didn't change his conclusions, so Mr L's case has now been passed to me to make a final decision.

I sent Mr L and HSBC my provisional decision on this case, on 9 July 2024. I explained why I think the complaint should be upheld. A copy of my provisional findings is included below:

This case is about a transaction Mr L carried out using his credit card account with HSBC. These types of accounts are regulated financial products, so we are able to consider complaints about them.

The chargeback claim

Raising a chargeback is a way that HSBC can try to recover money that was paid using Mr L's credit card. However, it is not guaranteed to succeed and is governed by particular scheme rules. I have considered the circumstances of this case alongside the requirements of the relevant chargeback scheme.

Having done so, I can see that HSBC used a dispute code relevant to goods or services being not as described or defective. The chargeback for the car was raised by HSBC after Mr L called them on 14 November 2022. Mr L then received a payment to his account two weeks later. But, HSBC took this payment back from Mr L's account in May 2023.

HSBC have provided their records of Mr L's chargeback enquiry and I can see where the dealer disputed Mr L's claim. The dealer said Mr L hadn't returned the car, so HSBC asked Mr L for evidence to show that he had. Mr L has told us he tried to organise for the car to be returned, but didn't think he should pay for that to happen, since he couldn't drive it. And Mr L says the dealer wanted to charge him for the previous repair to the turbocharger.

It was a few days after HSBC asked Mr L for further evidence, that they refunded the cost of the car. Mr L says he thought this meant his dispute was over and that the dealer no longer had a claim on the car.

However, HSBC's notes show that Mr L's claim hadn't come to an end. I can see that although the dealer's bank had declined to provide a refund, HSBC took Mr L's claim to an arbitration with the card scheme on 18 January 2023. The card scheme declined Mr L's claim and said he hadn't provided enough evidence to show that he had tried to return the car.

I've said that a chargeback claim doesn't guarantee a refund of a card payment. Overall, I think HSBC treated Mr L fairly by raising the chargeback claim and gathering evidence. I think they continued to treat him fairly when the chargeback was taken to arbitration with the card scheme, after it was initially declined by the dealer's bank.

Having considered everything, I don't think there was anything further HSBC could have done to try and make Mr L's chargeback claim successful.

But, I can see where HSBC caused Mr L some confusion and where they caused a delay in telling Mr L the outcome of the chargeback claim.

I've listened to the call Mr L made to HSBC and I can hear where some confusion has arisen. Near the beginning of the call, the advisor tells Mr L that he'll receive a refund "for now," pending the outcome of the investigation. But, at the end of the call, the advisor says:

"If we do manage to resolve the dispute for you, you'll receive a credit back into your credit card account."

Given what HSBC told Mr L, I can understand why he thought his chargeback claim had succeeded when the refund was paid to his credit card account on 30 November 2022. Because of this and where he needed space on his driveway, Mr L says he took the car to a scrap merchant on 4 January 2023. So, I've considered if Mr L's actions here were reasonable.

In the circumstances of Mr L's chargeback claim being upheld, HSBC would normally have a responsibility to make arrangements for the car's future. This may be to sell it, return it to the dealer or to ask Mr L to dispose of it. I've not seen from Mr L's records, or the notes provided by HSBC that any arrangements were made. Nor have I seen where Mr L was told the chargeback claim had ended.

I empathise with Mr L's position, in that he says he couldn't continue to store the car and he thought his chargeback claim was over. But, I don't think it was reasonable of him to assume he could dispose of the car, without checking with HSBC or the dealer beforehand.

So, I don't think the disposal of the car was because of any incorrect information given to Mr L by HSBC.

While I've concluded HSBC took the chargeback claim as far as they could, there was another option for Mr L to complain about the quality of car. So, I've thought more about that and HSBC's responsibilities.

The section 75 claim

Section 75 provides protection for consumers for goods and services bought using credit. Under section 75, subject to certain criteria, consumers who use a credit card to pay for goods and services, have an equal claim against the finance provider, for any breach of contract or misrepresentation by the supplier.

Part of the criteria for a section 75 claim to go ahead, is there must be a valid debtor-creditor-supplier (DCS) agreement between the parties. I've seen a copy of Mr L's credit card account statements which shows a payment to the dealer. Mr L was therefore responsible for repaying the amount owed to his credit card provider and so he is the debtor. As Mr L's HSBC credit card was used to make this payment, HSBC was the creditor.

But, HSBC say that the invoice from the dealer was made out in Mr L's wife's name. Because of this, they say a valid DCS agreement wasn't in place for the purchase of the car and that Mr L cannot make a section 75 claim.

I've looked at the invoice from the dealer and I can see that Mrs L is included as the buyer of the car. But, I've also considered that Mr L has shown us where he handled the negotiations with the dealer before and after the sale. I've said Mr L paid for the car and from what he's told us, I'm persuaded it was to be used by both himself and Mrs L.

In light of everything, I think a valid DCS agreement existed between all the parties in the sale of the car. So, I think Mr L was able to bring a section 75 claim when he used his credit card account with HSBC for the purchase of the car. It follows that I don't think HSBC treated Mr L fairly here, where they prevented a section 75 claim from going forward.

Under the Consumer Rights Act 2015 (CRA), there is an implied term written into contracts that goods supplied need to be of satisfactory quality, fit for their intended purpose and as

described. The CRA sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

The CRA says that goods will be considered of satisfactory quality where they meet the standard a reasonable person would consider satisfactory. This takes into account the description of the goods, the price paid and other relevant circumstances. In instances involving a car, the other relevant circumstances to take into account might include things like the age and mileage at the time of supply, and the car's history.

In Mr L's case, I can see he bought a used car for around £2,400 that was ten years old and had been driven for 124,000 miles. So, I think it was reasonable for Mr L to have less expectations about the car's quality than if it was brand new. In other words, I think a reasonable person would expect to need to replace or service some of the parts on the car.

Mr L says the car was faulty at the point of sale. He says the car's engine went into limp mode a few weeks after he acquired it. And although it was repaired by the dealer, he says the same thing happened again soon afterwards. Mr L has also explained that a different garage, accredited by the car's manufacturer, doubted the dealer had carried out the repair.

However, neither the dealer, HSBC nor Mr L have provided any paperwork or correspondence to show the faults Mr L has complained about. I'm persuaded the car did need a repair after Mr L had bought it and I can see the dealer had told Mr L that he had completed a repair. But, Mr L isn't able to show us a record of the fault, or what he was told by the accredited garage.

Additionally, Mr L disposed of the car before any further investigation could be carried out. From looking at the timescales involved, I can see that Mr L sent the car to the scrap merchant, before HSBC gave him the outcome of his chargeback claim. Therefore, I think it was unlikely that HSBC would have received further details about the condition of the car.

I've found that Mr L doesn't have any information about the fault, or a diagnostic report which details the repairs needed. I acknowledge what Mr L has told us about the car and the position he now finds himself in. But, based on all the evidence and on balance, I don't think a reasonable person would say the car Mr L bought from the dealer was of unsatisfactory quality. Overall, I don't think there was a breach of contract between Mr L and the dealer. This means I don't think Mr L is due a remedy from HSBC.

So, while I think HSBC should have raised a section 75 claim, I don't think the overall outcome would have been any different. I say this because I don't think Mr L's section 75 claim would have been upheld in his favour.

Distress and inconvenience

During my investigation, I've found that HSBC caused confusion in their initial call with Mr L on 14 November 2022. I've also said that HSBC took just over five months to tell Mr L the outcome of his chargeback claim.

While different types of claims will take different timescales to resolve, I think HSBC had a responsibility to keep Mr L updated and manage his expectations. And I cannot see that they did this. Furthermore, I've concluded that HSBC should have taken Mr L's section 75 claim forward.

Mr L has told us about the worry of keeping the car safe while HSBC's investigation was progressing and where he needed to buy another car, so his family had transport.

In all the circumstances, I think the confusion and delays have caused distress and inconvenience to Mr L. So, I think it's fair for HSBC to make a payment to Mr L in recognition of that. Having thought carefully, I think it's fair for HSBC to pay Mr L £250 for the distress and inconvenience he has experienced.

Mr L responded to the provisional decision and in summary, he said:

- HSBC's communication with him about the chargeback was poor.
- He would not have sent the car to the scarp merchant, had HSBC communicated with him about the chargeback claim.
- The car supplied by the dealer wasn't in good condition and the dealer hadn't treated him fairly.
- The payment of £250 doesn't reflect the distress and inconvenience caused to himself and his family.

HSBC responded to the provisional decision and said they had nothing further to add.

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.

While I agree that HSBC took an unreasonable amount of time to give Mr L the outcome of the chargeback claim, I don't think they are responsible for Mr L's decision to take the car to a scrap merchant. Although I've carefully considered what Mr L has said, I still don't think it was reasonable for Mr L to have disposed of the car without checking with either the dealer or HSBC first.

I do of course recognise the impact of Mr L's decision here, in that it means he's now unable to provide an engineer's report to support his view that the car was of unsatisfactory quality. But, I've looked at all the evidence we have, including what Mr L has told us about the faults. And while I empathise with Mr L's circumstances, on balance, I don't think a reasonable person would say the car was of unsatisfactory quality.

It then follows that I don't think the dealer breached the contract they had with Mr L. So, HSBC aren't required to provide a remedy under the CRA.

Having thought about everything, I still think it's fair for HSBC to make a payment to Mr L for the confusion and delay with the chargeback claim. After thinking about the overall impact of the distress and inconvenience HSBC have caused, I think it's fair for that payment to be £250.

Putting things right

For these reasons, HSBC UK Bank Plc should pay Mr L £250 for the distress and inconvenience he's experienced.

My final decision

My final decision is that I uphold this complaint and require HSBC to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 19 August 2024.

Sam Wedderburn
Ombudsman