

## The complaint

Mrs A is unhappy with how HSBC UK Bank Plc handled a claim under Section 75 of the Consumer Credit Act 1974 ('S75') in relation to skin whitening products.

## What happened

In November 2018 Mrs A purchased various skin lightening products including balms, creams and oils from a company I'll refer to as "F". These were paid for on Mrs A's HSBC credit card on two different dates. The transactions were for £1,812.31 and £565.20.

Mrs A says the products were advertised as "*miracle*" products that would whiten skin within seven days and would work on all skin types.

Mrs A says she contacted F in December 2018 and said she wasn't happy with the results she was getting. She said a new batch of products was sent to her in January 2019.

In March 2019 she says she purchased further oils after a consultation with F at a cost of \$922.

Mrs A says she contacted F more than 30 times between February and June 2019 asking for a refund as she didn't get the results she expected.

Mrs A then explained after complaining to an electronic money provider I'll refer to as "P", she received a refund of \$922 for the products she bought in March 2019. But she said P told her she needed to speak to her bank about the other transactions, as she was not logged into her account with P when they were made. So, Mrs A contacted HSBC.

HSBC responded to Mrs A and explained it could not raise a claim under the chargeback scheme as it had been raised too long after the transaction date. And it said the transactions weren't eligible for a S75 claim as it said the payment had been taken by P, not F.

Mrs A was unhappy with this and complained. HSBC issued a final response in July 2019. This confirmed the time limits were not met for a chargeback claim. And HSBC explained it thought a valid debtor, creditor, supplier ('DCS') agreement wasn't in place due to the involvement of P.

Later, in 2024, Mrs A further disputed things with HSBC. She said P had confirmed she wasn't logged into her account for the transactions in November 2018 and so the claim should've been looked into. She said the products had been a scam, and were "*grossly misrepresented*".

In June 2024, HSBC wrote to Mrs A and said it had now reviewed the claim under S75. HSBC said F had advised results from the products could depend on skin type. It said there was no evidence of a guaranteed result and so it didn't think a breach of contract or misrepresentation had occurred. So, it declined the claim under S75.

Mrs A complained to HSBC about this. HSBC wrote to Mrs A and said the previous letter

was its final response to the complaint and it wouldn't consider the claim further.

Mrs A was unhappy with this and referred the complaint to our service. She raised various points and concerns about F that she'd also shared with HSBC. This included, but wasn't limited to, Mrs A saying:

- She believed the reviews on F's website were fake.
- F used 'deceptive' marketing tactics and false claims.
- F used fake photos on its social media accounts.
- F said it had won awards which weren't genuine.
- The products do not list any ingredients, or listed misleading ingredients, on the packaging.
- Products were listed with a much lower value than paid on delivery/customs forms.
- Postage and packaging costs were 'extortionate.'
- Packaging was poor.
- F charged excessively high prices.
- F used 'shaming' language to describe dark skin.
- F used photos of pale models to illustrate results.
- F used complex jargon to describe products.
- She had received poor customer service from F.
- P had upheld part of her complaint and said it was investigating F.

Mrs A also provided various evidence including photos and descriptions of the products from F's website.

Our investigator issued an opinion and didn't uphold the complaint. In summary, she said she hadn't seen enough to persuade her there had been a breach of contract or misrepresentation. And she explained she thought Mrs A had seen some results from the products.

Mrs A disagreed. She wrote to our service at some length at this point. In summary, she pointed to the description of some products from F's website and explained she didn't get the results she expected. She said this meant the products were misrepresented to her. She said the issue shouldn't be whether the products had any effects, but if they delivered the specific, measurable results promised.

Mrs A again said P had upheld her complaint to it. She said F gave her assurances after the purchase that the products would work. She compared the products she received to tanning products that failed to darken skin. And she said she developed dark circles on her skin and a rash using the products, which showed they were not suitable for all skin types.

Our investigator explained this didn't change her opinion. As Mrs A still disagreed, the

complaint has been passed to me to decide.

### **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.

Having done so, I do not think this complaint should be upheld. I'll explain why.

I'd like to explain to both parties that I may not comment on every piece of evidence or individual point raised in this decision. I'd like to reassure Mrs A that I've carefully considered everything she's told our service. And I would like to thank her for the detailed submissions she made. I can see she's clearly spent some time compiling a detailed set of arguments.

But some of the issues she's brought up do not fall under what I can consider as part of a S75 claim. My decision will focus on what I think are the key points I *can* consider, along with what I think is the crux of Mrs A's complaint. This means I will not comment on everything Mrs A has told us or provided. This doesn't mean I consider something unimportant; this simply reflects the informal nature of our service.

Mrs A complains about a claim made under S75. So, S75 is relevant to this complaint. This explains, under certain circumstances, that the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

Firstly, I need to consider if Mrs A had a valid claim under S75.

In order for there to be a valid claim, there needed to be a DCS agreement in place. I've seen details of the orders from F that show goods were supplied to Mrs A. And she's confirmed they were for her use.

There was some initial dispute from HSBC about P's involvement in the transaction and HSBC originally said it believed this meant a valid DCS agreement wasn't in place. I'm satisfied this is no longer HSBC's stance, and so I don't think I need to comment on this in any detail. But I've seen a copy of Mrs A's credit card statement. P's details are listed as part of the payment information, but so are F's. I've seen information from P explaining Mrs A wasn't signed into any account for these transactions. I'm satisfied that this means P were acting as a payment facilitator and so this doesn't break the DCS agreement.

Thinking about this, I'm satisfied a valid DCS agreement was in place for the transactions covered in this decision.

I've then considered the financial limits that apply to a valid S75 claim. Mrs A needed to have purchased a single item with a cash price of over £100 but no more than £30,000.

I've seen invoices from both of the transactions from November 2018. I should note the items are listed in dollars, but one of the invoices has an exchange rate used at the time. Taking this into account, I'm satisfied all six separate items from the orders fall within the above limits.

It follows that I'm satisfied Mrs A had a valid claim under S75. So, what I now need to consider is whether there was a breach of contract or misrepresentation.

When considering if a breach of contract occurred, I've had a look at what Mrs A explained she saw before she purchased the products. This includes the terms and conditions and

product descriptions she sent from F's website. I will say I'm not 100% confident these are the same as what would've been online in 2018, but I think it's likely they are at least similar.

I know how strongly Mrs A feels that F promised her specific results. But up front, it's worth explaining that I disagree. All of the information I've seen from F has a lack of both specific guarantees and specific details about what results can be expected. The very specific terms and wording used are key to consider when looking at any potential breach of contract.

For instance, the terms and conditions state:

*"We are confident that our products/services will satisfy you; however every ones (sic) skin, health, satisfaction etc. is different and what may work faster for one person and (sic) may work slower for you and vice-versa"*

*"we are confident that you will achieve great results"*

Thinking about this, these passages don't contain any guarantees or specific information about any expected results.

Looking at some of the product descriptions Mrs A provided, these contain wording such as:

*"It is very safe and suitable for all skin types with guaranteed results from 3 DAYS"*

*"guaranteed results from 7 days"*

*"after using by the 3rd day, dull colour fades"*

Mrs A in response to the investigator's view said the issue wasn't whether any results were achieved, but whether the specific, measurable results she was promised were achieved. I think this is the crux of the complaint. But I haven't seen anything to suggest Mrs A was given specific, measurable results that she would expect. Statements like *"guaranteed results from 3 DAYS"* are not measurable and contains no details of what results it refers to.

Even if she was given more specific guarantees, I am not a dermatologist or other trained skincare professional. So I would need to rely on expert reports to confirm any results, or lack of, from any treatments. I haven't been presented with any measurements of any results either way – for instance there's no evidence from a medical professional about Mrs A's skin condition prior to or following the treatment.

I accept that what I've seen suggests F advertises the products have an effect, but I've seen evidence that Mrs A told F she was getting results from the products, just not to the level she expected.

Thinking about all of this, I've not seen enough to persuade me a breach of contract occurred.

Mrs A has also pointed to what F told her when she complained about the lack of results. But, I'm satisfied this communication took place after the purchases. So I can't consider it a part of any contract.

I've gone on to consider whether a misrepresentation occurred here. I would consider a misrepresentation to have taken place if Mrs A was told a 'false statement of fact' that induced her into entering into a contract with F when she otherwise would not have.

Its important to note that when considering a misrepresentation I need to decide if a *fact* was

told to Mrs A, not whether she was given an opinion.

Having thought about this, I don't think Mrs A was told any false statements of fact about the products. I say this because, as above, I'm satisfied Mrs A wasn't given any specific, measurable, information about what results could be expected.

I'm satisfied other statements like *"This product is now considered as the most potent, mildest and safest skin whitening cream in the world"* give an opinion about the product, due to the specific wording. But, even if I accepted this statement contained a fact, i.e. that the cream is considered to have these attributes, it doesn't state who or what considers this to be the case. So it's almost impossible to show this statement could be 'false'.

Thinking about this, I haven't seen enough to persuade me a misrepresentation took place.

I've thought about the comparison Mrs A makes with a tanning product. It's difficult to comment in any detail about a hypothetical situation. But it might help to explain if the same wording was used here in reference to a tanning product, albeit referring to darkening rather than lightening the skin, I would very likely reach the same conclusions for the same reasons.

I know how strongly Mrs A feels about this. And I'd like to remind her that this decision makes no findings about F itself, so I cannot comment on or give my opinion about its ethics, business model, customer service or practices. Instead, I have only considered the very specific questions of whether there was a breach of contract or misrepresentation. Having done so, I'm satisfied there was not. So, it follows I don't think HSBC did anything wrong when it declined the claim under S75.

Finally, I have considered whether HSBC should've looked at raising a dispute under the chargeback scheme. But, as it told Mrs A, time limits apply to when a dispute can be raised. I'm satisfied Mrs A disputed the transactions with HSBC outside of these limits.

### **My final decision**

My final decision is that this complaint should not be upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 20 May 2025.

John Bower  
**Ombudsman**