

The complaint

Mrs S complains HSBC UK Bank Plc (HSBC) should refund her, under section 75 Consumer Credit Act 1974, a payment she made to debt collectors under duress.

What happened

On 5 February 2024, agents from a debt recovery company (which I'll call "D") visited Mrs S' home to recover an outstanding debt. I understand the debt originated from a County Court Judgment (CCJ) for around £5,000 that was referred to the High Court for enforcement.

Mrs S said the debt was in relation to services she never received. She also said she didn't receive any warning that D planned to visit her, probably because D listed her house number as 21 when she lives at house 23. If she had received previous warnings that D were going to visit, as she feels she should have, she says she'd have contested the debt in court.

Mrs S said D threatened it would take all her fittings and fixtures if the debt wasn't paid. So she paid it in full with her HSBC credit card out of fear and to get D's agents to leave her house. And she called HSBC soon after to cancel the payment.

HSBC raised a chargeback on her behalf, but it was defended and HSBC didn't think it could reasonably pursue the claim further. So HSBC looked into whether Mrs S could instead claim under section 75 Consumer Credit Act 1974 (CCA) as another means of securing a refund. However, HSBC didn't think she could raise a valid section 75 claim because the credit card payment didn't go towards purchasing any service.

Our investigator agreed with HSBC for broadly the same reasons. As Mrs S was unhappy with the outcome, the complaint's come to me for a decision.

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.

I think it's important to first set out the scope of what I will and won't consider in this decision.

Mrs S has a separate complaint with the Financial Ombudsman Service about both the outcome of the chargeback claim and HSBC's poor service while handling that claim. Mrs S said she was unhappy with the £250 the investigator recommended in that complaint given the poor service she experienced since contacting HSBC – but as that relates to the other complaint, I won't be considering any of those service issues here.

What I am considering is Mrs S' complaint about the outcome of the section 75 CCA claim, and whether HSBC handled this claim fairly.

It's important to note that HSBC isn't the supplier of either debt recovery services or the underlying services Mrs S allegedly received. So in order to decide if it acted fairly, I need to consider its role as a provider of financial services only. As Mrs D used her credit card to pay

the debt, I need to consider how HSBC could have reasonably assisted her through the protections offered by section 75 CCA.

Section 75 Consumer Credit Act

If a consumer buys goods or services on credit, section 75 CCA can sometimes make the credit provider equally responsible for a breach of contract or misrepresentation by the supplier. Certain technical criteria must be met for section 75 CCA to apply.

Putting to one side whether the full criteria is met, Mrs S can only obtain a remedy under section 75 CCA if she can show there's been a breach of contract or misrepresentation.

It appears the crux of Mrs S' complaint is that since she used her credit card to pay D, HSBC is responsible for any breach of contract or misrepresentation by D. And because D didn't do what it was supposed to do when recovering the debt, she feels HSBC is liable for D's failings – which I understand includes the following:

- D recorded her address incorrectly, meaning she never received any of its letters.
- D failed to give her advance warning before attempting to collect the debt.
- D added extra charges that weren't permitted by the court order.
- D were overly aggressive when collecting the debt.

The key issue for me to consider here is whether the above amounts to either a misrepresentation or breach of contract by D.

To evidence a misrepresentation, Mrs S must show there was a false statement of fact that induced Mrs S into entering a contract with D. And to show D breached a contract with her, for obvious reasons Mrs S must evidence both a contract with D and the contract terms for which she feels there was a breach.

I sympathise with Mrs S' situation. However, Mrs S hasn't provided evidence of any contract terms that have been breached or shown that D's actions amount to a misrepresentation. Her credit card payment was made to fulfil an existing legal obligation – specifically to satisfy a court debt. And the above allegations appear to relate more to a possible breach of regulatory or statutory obligations, or codes of best practice, in the course of collecting that debt - rather than D's failure to adhere to or carry out any contractual obligations.

In the circumstances, I cannot see how Mrs S can successfully claim under section 75 CCA. So I think HSBC acted fairly when it declined her section 75 CCA claim.

Customer service

Mrs S is unhappy with the way HSBC handled her payment dispute. However, as previously stated, I'm not looking at the bulk of the customer service issues Mrs S raised, as they're covered by a separate complaint with the Financial Ombudsman Service. All I'm considering here is whether HSBC handled her section 75 CCA claim fairly.

HSBC started the section 75 CCA process in around July 2024 after the chargeback was unsuccessful. I don't think that was unreasonable as section 75 CCA claims can sometimes succeed where chargebacks don't.

I can also see HSBC sent Mrs S its section 75 CCA outcome on around 16 August 2024. All things considered, I don't think Mrs S had to wait very long for the outcome.

I've also considered the communication between HSBC and Mrs S from when HSBC first raised a section 75 CCA claim and when it delivered its outcome in August 2024. Having done so, I find that HSBC's customer service was adequate during this period.

In summary, as I think HSBC handled Mrs S' section 75 CCA claim fairly, I'm not recommending that HSBC do anything further.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 21 April 2025.

Alex Watts
Ombudsman