

The complaint

Mr S complains about a decision taken by HSBC UK Bank Plc ("HSBC") to decline a section 75 Consumer Credit Act 1974 ("section 75") claim.

What happened

On 20 December 2022 Mr S paid a car dealership that I will call "H" a £1,000 deposit for a used car costing £5,695.

On 22 December 2022 Mr S paid H £4,695 being the balance of the car's purchase price. Mr S paid H using his HSBC credit card.

In early 2024 Mr S contacted HSBC to complain that the car purchased in December 2022 wasn't of satisfactory quality.

Given the time that had passed between the date of the car's purchase and Mr S complaining about its quality HSBC concluded it was unable to raise a chargeback (on Mr S' behalf) but that it would consider whether it might be liable to him under section 75.

In March 2024 HSBC advised Mr S that it didn't believe it was liable to him under section 75 because there was no debtor-creditor-supplier ("DCS") agreement in place for such a claim to be valid.

In May 2024 and unhappy with the above Mr S complained to our service.

Mr S' complaint was considered by one of our investigators who came to the view that it shouldn't be upheld.

Mr S didn't agree with the investigator's view and so his complaint has been passed to me for review and 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've read the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point or particular piece of evidence, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome. Our rules allow me to do this, reflecting the fact that we are an informal free service set up as an alternative to the courts.

I would also add that where the information I've got is incomplete, unclear or contradictory, I've to base my decision on the balance of probabilities.

Finally I would like to make clear that I'm aware of the decision referred to by Mr S in support of his view that his complaint should be upheld. But although our service aims to apply a consistent approach to similar complaints, it needs to be remembered that each case is considered on its own facts and merits and that's what I've done here.

chargeback

Mr S hasn't disagreed specifically with our investigator's conclusions regarding whether or not HSBC could or should have raised a chargeback on his behalf. I've therefore not focused on this aspect of the complaint in my decision, but I've nevertheless considered it. Having done so, I agree with the conclusions reached by our investigator.

Chargebacks are subject to the rules set by the card schemes. I've consulted the rules and I'm satisfied that given when Mr S first contacted HSBC to complain about the car's quality HSBC wasn't in a position to raise a chargeback (on Mr S' behalf) on the grounds of time. So I don't think HSBC acted unfairly by not raising a chargeback (on Mr S' behalf). I will now turn to the main point of dispute, which is about HSBC's belief that it wasn't liable to Mr S under section 75 because there was no debtor-creditor-supplier ("DCS") agreement in place for such a claim to be valid.

section 75

Section 75 provides a degree of protection to consumers who use a credit card to purchase goods or services. So long as certain technical conditions are met, it allows a consumer to claim against their credit card company for any breach of contract or misrepresentation by the supplier of the goods or services.

In this case, our investigator has said one of the technical conditions haven't been met – the need for there to be a DCS agreement in place. The most straightforward way of explaining this is to say that the credit card account holder needs to have a claim for breach of contract or misrepresentation against the company he or she has paid using their credit card.

The problem here is that there is some uncertainty over who it is who would have a claim for breach of contract or misrepresentation against H. If the person who has the claim isn't the account holder (Mr S), then he can't bring a claim against HSBC under section 75.

Our investigator thought it was Mr S' son who had a contract for the purchase of the car with H, and not Mr S, and it would therefore be Mr S' son who would have a claim against H. She noted that the sales invoice was in Mr S' son's name, and so was the V5.

I think the analysis of the situation which is most likely to be correct here is that Mr S was assisting his son with the car purchase. It's not uncommon for a parent to pay for a car for their child, nor is it unusual for a parent to be involved in sale negotiations, including the ultimate price to be paid for the car. But this doesn't necessarily make Mr S a party to the contract of sale.

I'm also not convinced by Mr S' submission that the sales invoice being issued in his son's name was an error on the part of H. I say this because had it been an error by H I might have expected Mr S to query this at the time and to ask H for a new sales invoice to be issued in his name. Secondly, I see no reason why H would have issued a sales invoice in the name of Mr S' son if the purchase was being undertaken by Mr S for himself or even how H would have known who Mr S' son was or what his name was.

So in summary I'm satisfied, on the balance of probabilities, that Mr S' son was the contracting party and the only contracting party with H. This means Mr S' son is the person who would have a claim against H, not Mr S, for a breach of contract or misrepresentation. And because of this, my view is that Mr S is unable to make a claim against HSBC under section 75 in respect of the car's quality and HSBC did nothing wrong in declining such a claim.

I appreciate Mr S will be disappointed by my decision not to uphold his complaint but I hope he can understand why I haven't.

My final decision

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

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 February 2025.

Peter Cook
Ombudsman