

## **The complaint**

Miss F complains HSBC UK Bank Plc didn't do enough to help get a refund for a purchase made on her credit card.

## **What happened**

In November 2021, Miss F bought a table from a company I'll call "L" with her HSBC credit card. The supplier experienced delays and ultimately went into administration in March 2024, having failed to provide a table to Miss F.

Miss F consequently contacted HSBC to make a claim under Section 75 of the Consumer Credit Act 1974 ("Section 75"), whereby a credit provider may become liable if there's a breach of contract or misrepresentation by the supplier of the goods.

HSBC considered Miss F's claim but didn't agree it was liable under Section 75. It said Miss F had made the purchase for the benefit of her sole trader business but had used her personal credit card. HSBC said Section 75 was to cover transactions made for personal use only.

Unhappy with HSBC's response, Miss F referred her concerns to our service.

One of our Investigators looked into what happened and didn't think HSBC had fairly considered Miss F's claim. She said although the purchase was made for the benefit of Miss F's business, she thought Section 75 applied and in considering Miss F's claim she thought there was evidence of a breach of contract as the table hadn't been provided.

Our investigator therefore recommended HSBC compensate Miss F the cost of the table – £1,104 alongside 8% interest from the date it declined the claim, to recognise the time she'd been without the refund.

HSBC doesn't agree with our Investigator's recommendations. It says Miss F's credit card was a personal card and not for business use, so it doesn't agree it's liable for Miss F's claim. As the matter couldn't be resolved, it's 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.

When a customer contacts their credit card provider for help, there are two options through which it may be able to assist its customer achieve a refund. That could be through raising a chargeback or considering if it's liable under Section 75. I've therefore considered whether HSBC acted reasonably on both points below.

### *Chargeback*

A chargeback is a process in which HSBC can ask L for a refund via the card scheme provider; Mastercard. There are strict rules set by the card scheme including timescales to raise a chargeback. One of these is that a dispute about goods not being received must be raised within 540 days of ordering the goods.

The transaction was processed in November 2021, with Miss F first raising her concerns to HSBC in June 2024. While Miss F wasn't aware of a problem until 2024, it's evident more than 540 days had passed since making the transaction, meaning a chargeback wouldn't have been possible. Therefore, although it appears HSBC didn't consider a chargeback, I don't think this caused Miss F a loss, as it wouldn't have been successful as it was out of time.

### *Section 75*

In deciding what I think is fair and reasonable, I need to have regard to, amongst other things any relevant law. In this case, the relevant law is Section 75, which says that, in certain circumstances, if Miss F paid for goods or services, in part or whole on her HSBC credit card, and there was a breach of contract or misrepresentation by the supplier (L), HSBC can be held responsible.

#### *Did HSBC handle the claim appropriately?*

There are specific qualifying criteria, such as the connection between the contracting parties, and the cash price falling within set limits, which in this case are met.

The Consumer Credit Act 1974 "CCA" applies to agreements between creditors and individuals. The definition of individual in the Act excludes larger partnerships and limited companies. But the Act – and more specifically, Section 75 – doesn't contain any wording that suggests Miss F is prevented from making a claim against HSBC on the basis that the claim is connected to a business she runs as a sole trader.

I note HSBC says Miss F's card was provided for personal use only, however it hasn't been able to provide terms and conditions demonstrating this and even were this the case, as Miss F appears to meet the definition of an individual within the CCA, I think she'd be entitled to make a claim, even if the purchase was for business purposes.

Alongside this, HSBC has said there isn't a debtor-creditor-supplier agreement in place, which is a requirement for it to be liable under Section 75. This is on the basis that Miss F is the debtor, however it was her sole trader business contracting with the supplier. I've taken this onboard, however a sole trader isn't a distinct legal entity, rather a trading style of an individual. So, I find that Section 75 applies as Miss F and her business, run as a sole trader are essentially one and the same.

I'm also satisfied Miss F's claim meets the financial thresholds to make a Section 75 claim, with the table costing £1,104.

It follows that I don't consider HSBC handled Miss F's claim appropriately when it sought to reject it on these grounds.

#### *What should HSBC have done?*

On the basis I think Miss F's claim under Section 75 was incorrectly rejected, I've gone on to think about what should have happened had HSBC considered it further.

It isn't in dispute that L failed to provide the table Miss F had paid for, before it entered administration. So, I think it's evident that a breach of contract occurred, as L failed to provide the goods Miss F had paid for in the invoice.

As HSBC is jointly liable as the creditor and the goods haven't been provided, I therefore think Miss F is entitled to ask for a refund of the transaction. Therefore, I think HSBC should compensate Miss F £1,104, being the price she paid for the table.

As I think HSBC incorrectly declined Miss F's Section 75 claim, I think it should also pay 8% interest to recognise the time she was without the funds, in line with our approach to redress. This should be paid from 19 August 2024 when HSBC declined the claim, until the date it makes the payment.

### *Conclusion*

In conclusion, I don't think HSBC treated Miss F fairly. I think it declined her Section 75 claim incorrectly for the reasons set out above. Rather I find that HSBC is jointly liable for the purchase and as Miss F hasn't and won't receive the table she ordered, HSBC should compensate her the value of the transaction, alongside paying 8% on this.

### **My final decision**

For the reasons I've set out above, I uphold this complaint. To put things right, I direct HSBC UK Bank Plc to do the following:

- Refund Miss F the value of the transaction, being £1,104; and
- Pay 8% on this amount from 19 August 2024, until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 12 June 2025.

Christopher Convery  
**Ombudsman**