

The complaint

Mr S has complained about how HSBC UK Bank Plc dealt with a claim in relation to goods and services he'd part paid for on his credit card.

What happened

The circumstances of the complaint are well known to the parties so I'm not going to go over everything again in detail. But to summarise, in September 2023 Mr S said he placed an order for a solar PV system with battery and bird protection ("the system") from a supplier I'll call "H". He paid £1,000 towards the deposit using his HSBC credit card. Mr S said the total cost was £6,000, and he paid another £2,000 towards the deposit using other cards. The quote I've seen includes 8 panels, a roof mounting kit, two batteries and an inverter. The quote set out it was for scaffolding, removal of solar thermal, and the installation of the new system.

Mr S said H attended his property to allegedly check measurements and without permission it disconnected his existing solar thermal panel but didn't remove the pipework. He said following delays H failed to install the goods and a few days later damaged his property when removing its scaffold. Mr S also said H breached The Home Insulation & Energy Systems Quality Assured Contractors Scheme's ("HIES") code of practice.

Mr S contacted HSBC to put in a claim in December 2023. He said H's failure to install the system was a breach of contract. He said he was entitled to find an alternative supplier and requested the difference in price. He said the cheapest of the alternative quotes he found was £8,755 so he requested £2,755. He requested £100 for the cost to repair the wall he said H damaged. He also requested £750 compensation for the delays, distress and inconvenience. He asked HSBC to raise a chargeback and for it to consider a claim under section 75 of the Consumer Credit Act 1974 (s.75). He also claimed a further £660 to remove solar thermal pipework that was agreed as part of the contract with H.

HSBC asked for an independent report from Mr S along with evidence of payments made to H. Mr S was reimbursed the £1,000 through chargeback but he wasn't happy with how HSBC was dealing with the claim for the further costs. He thought its requests were unreasonable and so complained and referred matters to the Financial Ombudsman.

Our investigator didn't uphold the complaint and so didn't make any recommendations. Mr S didn't accept the findings. He said the remedy for a breach of contract is to put the innocent party in the position they'd have been in had the contract been performed. He said simply refunding the deposit doesn't remedy the breach of contract or put him in the correct position. He said he was in a worse position given the solar thermal system had been disconnected. He said the investigator didn't address his entitlement to loss of bargain.

I issued a provisional decision that said:

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr S and HSBC that I've

reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

What I first need to consider is whether HSBC – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr S's request for getting money back. It's important to note HSBC isn't the supplier. I've gone on to think about the specific card protections that are available. In situations like this, HSBC can consider assessing a claim under s.75 or raising a chargeback.

The chargeback process provides a way for a card issuer to ask for a payment to be refunded in certain circumstances. The process is subject to rules made by the relevant card scheme. It's not a guaranteed way of getting money back and only covers the amount paid by card.

Mr S has received reimbursement of the £1,000 paid using his HSBC card, so I don't need to direct HSBC to refund him anything more in relation to the chargeback. I understand he also received the £2,000 he'd paid from the other card providers. Mr S has claimed other losses and compensation. So I've gone on to think about how HSBC answered the s.75 claim.

S.75 is a statutory protection that enables Mr S to make a like claim against HSBC for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it had with him for the provision of goods or services under certain conditions. I think the necessary relationships between the parties exists and the claim is within the relevant financial limits.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that traders must perform the service with reasonable care and skill. And that services should be performed within a reasonable amount of time. The CRA implies terms into the contract that goods supplied will be of satisfactory quality. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

It's important to note I'm required to decide the complaint by deciding what I think is fair and reasonable. In considering what is fair and reasonable I need to take into account the law; regulators' rule, guidance and standards (including the Consumer Duty); codes of practice and what I consider to have been good industry practice.

Mr S says there was a breach of contract because H failed to carry out the service. Although I note H said it had tried to contact Mr S several times to discuss the installation and that it cancelled it because it wasn't able to deliver materials. In any event, I've thought about whether the sums claimed by Mr S would be fairly recoverable from HSBC if we are to accept there was a breach of contract.

Courts may order the trader to pay damages for breach of contract cases. These are generally intended to compensate the injured party for loss suffered. But the person claiming can generally only recover damages for loss which was caused by the breach and which was sufficiently foreseeable; and the person can't recover for loss which they could have reasonably acted to mitigate.

£100 for damaged brickwork

Mr S has claimed £100 for damaged brickwork he said was caused by H. He's provided an estimate from a tradesperson to repair one or two bricks on top of a wall. But I don't think HSBC had sufficient evidence the damage to the brickwork was caused by H carrying out a

service without reasonable care and skill. So I don't think I have grounds to direct HSBC to reimburse Mr S the cost for this because there's not enough evidence the loss was caused by a breach of contract.

£750 compensation

It's important to note that compensation for distress and inconvenience caused by H is limited with this type of complaint. I appreciate Mr S is very upset about what's happened. But I have to consider what HSBC can be held liable for – which is the like claim Mr S would have in court against H for breach of contract or misrepresentation. Damages aren't generally recoverable for distress or inconvenience. Awards in building cases where there's been a breach of contract which caused the claimant physical distress or discomfort can be made, but they tend to be modest. While I appreciate Mr S is unhappy H didn't complete the service, I don't think the nature of the issues have caused physical inconvenience or discomfort. I therefore don't have the grounds to direct HSBC to pay the compensation he's asked for.

£660 to remove pipework and £2,755 expected extra future costs

Mr S has also claimed further damages in relation to the cost he'd likely incur for the thermal system to be removed as well as the extra cost he says he'll likely incur to have another system installed. Our investigator thought Mr S was put in a fair position because he was given a full refund so he could effectively start again. But Mr S has said he should be put in the position as if the contract had been fulfilled.

Part of the thermal system was removed, but Mr S said the job wasn't complete. Mr S has received a full reimbursement for what he'd paid H so hasn't paid anything for the work that was carried out, albeit I accept this was very limited. Mr S didn't submit evidence to HSBC for financial losses as a result of part of the thermal system being removed, so I don't find it unfair it hasn't considered that aspect. But Mr S is claiming for the cost to have the job completed. He's also claiming for the extra cost to have another similar solar system installed to what H was going to supply. In essence he's saying it will cost him an extra £3,415 (£660 + £2,755) to be put in the correct position.

Bearing in mind what I've said above about what courts may order for damages in breach of contract cases, while I can understand Mr S's point, I'm not persuaded HSBC was unfair not to pay him the sum he's requested. I'll explain why.

The relationship between Mr S and H appears to have broken down because fundamentally the contract was ended. Mr S said this was because H wouldn't carry out the work. He also questioned its credentials. Therefore directing HSBC to carry out repeat performance isn't viable. It's not a matter of putting the same contract right. Mr S will need to start a new one.

Mr S has claimed damages and generally damages for breach of contract are intended to compensate for loss suffered. Mr S is indicating H was a defective supplier and that it didn't follow the proper codes of practice. He's heavily criticised and discredited H and said it wasn't up to standard. This could be a reason why he found the service for the price he did. It may not have been a reliable measure for what the services should have cost. Mr S has now found other suppliers that are more expensive. But the price those suppliers are charging may be a more realistic price for the work to be done to the required standard. The money Mr S is claiming isn't a loss as such, it's more likely part of the cost he would have paid to have the work done to a proper standard. The quotes he arranged weren't done long after H's quote. It's not clear the price Mr S obtained from H is a reasonable measure of what the services should have cost taking into account the other quotes he received and what he's said about the way H operated. And if he thinks H's price was a fair measure, he'd

be able to proceed with a firm that charges that sort of price, at no loss because he's had a full refund.

The problem with directing HSBC to pay Mr S the price for one of the more recent quotes he had arranged is that it opens the door to unjust enrichment. It's also not clear the money he's claimed for was as a result of the breach of contract. It seems like it could be a cost that arose as a result of market conditions and not a direct consequence of the breach. I need to consider what HSBC could fairly be held liable for when considering the like claim Mr S would have in court. For the reasons given above, I don't think I can safely conclude the court would award the damages Mr S claimed to allow him to get the work done at arguably a higher standard. I'm also able to decide the complaint by setting out what I think is fair and reasonable. This isn't a situation where the contract was nearly complete and it needed finishing. Nearly all the work wasn't done. Mr S has received a full refund, and he can now start again. I think that puts him in a fair position.

I should point out that our service is an informal alternative to court. I don't know exactly what a court would award on any given day. I need to consider if HSBC acted fairly based on the evidence presented. If Mr S thinks a court would award the costs he's claimed he's free to pursue the claim through that process against HSBC or H. But bearing in mind our fair and reasonable remit, and that I need to decide the case quickly and informally, I'm not going to direct HSBC to reimburse Mr S the costs he asked for.

HSBC's handling of the claim

I can, however, consider how HSBC handled the claim generally. HSBC has said there was no set timescale for dealing with a resolution under s.75. But the Financial Conduct Authority (FCA) set out guidance in 2021 titled: "Cancellations and refunds; helping consumers with rights and routes to refunds" that says We expect credit and debit card providers to handle section 75 and chargeback claims in a reasonable timescale, and remind firms of their obligations to treat customers fairly. If there are delays in processing claims, firms should clearly explain the reason for the delay. So I think it needed to deal with the claim within a reasonable amount of time.

HSBC followed through with the chargeback and Mr S was ultimately refunded what he paid using his card. I can understand Mr S's frustration that HSBC was insisting on an independent report. Lenders will often ask for independent reports when customers are claiming breach of contract. And perhaps an independent report may have been able to set out if H damaged the brickwork. But for a £100 repair, I can of course understand why Mr S wouldn't want to pay for a report for a relatively minor issue because the cost of the report would likely outweigh or be similar to the cost of the repair required.

Moreover, it's not clear a report would've been needed for HSBC to assess the compensation for distress and inconvenience Mr S was claiming. Although for the reasons given above, I don't think that was fairly recoverable. And Mr S provided three quotes for alternative installations, so he didn't need a report for those. I don't think HSBC fully got to grips with what Mr S was asking for. And it's not clear why it insisted on seeing evidence of payments made to H given those sums were refunded, and that wasn't what he was claiming for.

I need to consider primarily what happened up to the point HSBC issued its final response letter as those events relate to what it has had the chance to consider. So that narrows things down somewhat. Mr S received reimbursement for the funds around the time the complaint was referred. But I think HSBC could have been clearer around what steps it was taking, what was fairly required, and been more informative around the status of pursuing

chargeback or considering a claim under s.75. I think this has led to some frustration and inconvenience for Mr S. So I'm going to propose it compensates him £100.

HSBC accepted the findings. Mr S didn't. In summary, he said:

- My understanding of contract law was incorrect, and I'd relied on irrelevant factors.
- He's entitled to be put in the same position as if the contract had been performed, and to recover the costs of an alternative supplier(s) to carry out the works.
- He'd provided HSBC with three quotes and took the cheapest as he was entitled to do. This shows he mitigated.
- It was reasonably foreseeable that if the trader failed to complete the contract, he'd need to find a new one.
- The overriding aim of an award of damages is to put him in the same situation as far as money can do as if the contract had been performed.
- The contract hadn't ended and given the installer didn't complete the contract it is not repeat performance.
- It was irrelevant if the price paid for the contract wasn't a reasonable measure. The contract was valid.
- Loss is measured at the time of the breach, and he was entitled to obtain alternative quotes for carrying out the work following the breach.
- Courts seek to enforce the bargain made otherwise it would lead to people walking away from contracts.
- Market conditions were irrelevant, and he wasn't seeking unjust enrichment.

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'd like to thank the parties for their responses.

Mr S hasn't offered further substantive comments about what I said in relation to the damaged brickwork and the compensation for distress and inconvenience caused by the breach of contract. So I'm not going to go over those points again.

In summary, Mr S's response is that he does not consider my provisional decision was consistent with relevant law on damages for breaches of contract in relation to my findings that HSBC should not be required to pay him for the costs of removing pipework and installing a new solar panel system by an alternative supplier.

When considering what is fair and reasonable in all the circumstances of a complaint, including in relation to what would be fair compensation (if any), I am required to take into account relevant law. However, on consideration of relevant law on breach of contract, I remain minded to conclude that it wouldn't be fair and reasonable for HSBC to pay Mr S for the further losses (in relation to the pipework and new installation) he has alleged are owed to him, and I'll explain why.

When considering fair compensation for financial losses, I have taken into account that damages for a breach of contract claim would aim, so far as money can do it, to place the claimant in the same situation as if the contract had been performed. This does not mean that a claimant would always be placed in the same situation physically as if the contract was performed, and it is important to consider what financial loss the claimant has in fact sustained.

The courts typically measure loss for breach of contract in building cases either by reference to the costs of curing the breach or the losses suffered if the cure were not undertaken. It is appreciated that in many cases the costs of cure will be the appropriate measure, but not always.

Whether it would be reasonable to make a money award based on the cost of cure, e.g. the costs of having the work completed by an alternative supplier, would be dependent on several factors including the proportionality of the costs of cure by comparison to the losses suffered if the cure was not undertaken, and the intention of the claimant to pay for the work by the alternative supplier.

Therefore, I've considered whether the costs of curing the breach or the losses suffered if the cure is not undertaken would be a reasonable measure of fair compensation in all the circumstances.

Applying the above to the facts of this complaint, where Mr S appears to have not incurred the costs of having the pipework removed or having a new system installed by an alternative supplier, taking into account we have asked him to confirm this but he has refused to answer, I consider the costs of those works are so much more expensive than those quoted for by the original supplier, I find that to make a money award based on the costs of curing the breach in the particular circumstances of this case would be unreasonable.

The reason I consider the costs of cure measure would be disproportionate here are that the contract for the removal of pipework and installation of the system through H was £6,000. Mr S has shown, with the lowest quote received out of three he arranged, it would cost £9,415 to have the contract fulfilled elsewhere. Where, this is over 50% more expensive than the original contract I consider that the costs of curing the breach would be significantly disproportionate.

As I explained in my provisional decision, I'm not satisfied the quote by H was realistic and that I consider the completion of work quoted by an alternative supplier would put him in a better position than what Mr S would have been in but for the breach of contract by H. Therefore, I've also thought about whether the likely betterment which would result from awarding compensation based on the costs of cure should be taken into account. In my view it ought to be, and so I'm satisfied my conclusion remains a fair and reasonable one in all the circumstances of the complaint.

On considering the losses suffered by Mr S where the alternative supplier is not instructed to cure the breach by completing removal of pipework and the installation of a new system, I take into account that Mr S has received the amount he had paid to H and do not consider HSBC is required to pay anything further in terms of financial losses. I've also considered if it would be appropriate to make any award for non-financial losses such as a court might where pleasure, relaxation or peace of mind was not a major or important object of a contract, but I don't consider that would be fair and reasonable in this particular complaint. I don't consider those were major objects of the contract.

It follows, I don't consider it would be fair and reasonable to require HSBC to pay Mr S anything further for the breach of contract by H in this case.

I do still think, however, that HSBC made some mistakes in the way it handled the s.75 claim, as set out in my provisional decision.

I should point out again that Mr S doesn't have to accept this decision. He's free to pursue the complaint by more formal means, such as through the courts. But for the reasons above, I'm not going to depart from the conclusions I reached in my provisional decision.

My final decision

My final decision is that I uphold this complaint in part and direct HSBC UK Bank Plc to pay Mr S £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 April 2025.

Simon Wingfield

Ombudsman