DRN-5429925

The complaint

Mr E complains that HSBC UK Bank Plc ('HSBC') rejected his claim under section 75 ('s.75') of the Consumer Credit Act 1974 ('CCA'). Mr E made the associated purchase along with his wife. But as the payment was made by him using his credit card account, only Mr E is an eligible complainant. Therefore for simplicity, I will refer to him only throughout my decision.

What happened

In June 2016 (the 'Time of Sale'), Mr E entered into a contract with a business who I'll refer to as 'GGH'. There was also a separate Management Mandate Agreement ('MMA') with another business, who I'll refer to as 'GEC'. Mr E says he paid €5,995 to GEC using his HSBC credit card.

Mr E has not said what payment was made to GGH, or how it was funded. But neither that particular contract, nor any payment(s) made under it are the subject of this complaint. Only the payment Mr E says he made to GEC.

In March 2024, Mr E submitted a claim to HSBC under s.75 CCA. In doing so, he completed a form provided by HSBC headed 'Disputed Goods & Services Declaration Form'. Within that form, Mr E confirmed that his dispute was that the contract with GEC had been misrepresented to him. To support that, Mr E said that he had *"recently received a report which provides information on recently discovered misrepresentation by GEC".* The report referred to was prepared by an online investigation company. Mr E also said that he had *"made further payments for the purchase of real estate products to* [GGH] *by bank transfer but this is part of an ongoing investigation by* [the online investigation company]".

HSBC responded to say that *"due to the age of the transaction we're unable to progress this any further".* In May 2025, HSBC told Mr E that their *"records only go back as far as 6 years. This means we cannot investigate anything prior to May 2018. As this transaction reported was made in 2016, this isn't something we can raise a claim for under Section 75 of the Consumer Credit Act, or a dispute claim through* [the card scheme] *(this only covers transactions made in the last 120 days)".*

Mr E complained to HSBC about the outcome of his claim in October 2024 arguing that the misrepresentation was only discovered in December 2023/January 2024, so couldn't have been reported within six years of the transaction. He went on to reference advice and guidance obtained from the online investigation company. In particular, pointing out that the contract with GGH was unlawful. And as the contractual service with GEC (under the MMA) was to ensure all processes were in order, GEC had failed to fulfil that service meaning that contract had also been misrepresented. In response, HSBC reiterated the contents of its earlier response.

Unhappy with HSBC's response, Mr E referred his complaint to the Financial Ombudsman Service whereupon an investigator considered all the evidence and information provided. Having done that, the investigator didn't think HSBC had done anything wrong. In particular, the investigator thought:

- Mr E's dispute had been brought too late for a refund to be sought under the associated chargeback scheme.
- HSBC had a reasonable defence to reject Mr E's claim for misrepresentation as it

had been brought too late under the provisions of the Limitation Act 1980 (the 'LA').

Mr E didn't accept the investigator's findings and asked that his complaint be considered further by an ombudsman, which is why it has been passed to me. In doing so, Mr E said:

> *"I am of the opinion that HSBC are not being transparent. The statements would have been kept in a computerised system and they would not be destroyed. It suits them to claim a 6 year cut off date in cases like ours".*

Having considered the relevant information about this complaint, I reached the same conclusion as our investigator. However, in doing so, I wanted to put forward some additional reasoning to provide greater clarity. So, I issued a provisional decision ('PD') on 13 March 2025 giving Mr E and HSBC UK Bank Plc the opportunity to respond to my findings before I reach a final decision.

For completeness, I said the following in my PD:

> Whilst I understand and have every sympathy with Mr E's experience, I do not think this complaint should be upheld. But before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable to all parties in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.
>
> What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.
>
> When deciding complaints, I am required by DISP[1] 3.6.4 R of the FCA[2] Handbook to take into account:
>
> > *"(1) relevant:*
> >
> > *(a) Law and regulations;*
> >
> > *(b) Regulators' rule, guidance and standards;*
> >
> > *(c) Codes of practice; and*
> >
> > *(2) (where appropriate) what* [the ombudsman] *considers to have been good industry practice at the relevant time."*
>
> <u>The claim under s.75 CCA</u>
>
> Liability under s.75 isn't based on anything the lender does wrong, but on any proven misrepresentation and/or breach of contract by the supplier. S.75 imposes on the lender a "like claim" to that which the borrower enjoys against the supplier. If the lender is notified of a valid s.75 claim, it should pay its liability. And if it fails or refuses to do so, that failure or refusal can give rise to a complaint to the Financial Ombudsman Service.
>
> So, when a complaint is referred to the Financial Ombudsman Service on the back of an unsuccessful s.75 claim, the act or omission that engages this service's jurisdiction is the creditor's (here that's HSBC) refusal to accept and pay the debtor's (Mr H) claim – rather than anything that occurs before the claim was put to the creditor, such as the supplier's alleged misrepresentation(s) and/or breach(es) of contract.
>
> In Mr H's case, as HSBC refused to accept and pay his claim in March 2024, it is HSBC's handling of that claim that this service is investigating – not the alleged

[1] Dispute Resolution: Complaints Sourcebook
[2] Financial Conduct Authority

actions or failings of the supplier or its associates. So, in considering Mr E's complaint, it is my role to decide whether HSBC acted fairly and reasonably when considering and responding to his claim.

Earlier in my decision, I summarised the claim that Mr E included on the Disputed Goods & Services Declaration Form he submitted to HSBC.

As a general rule, creditors (like HSBC) can reasonably reject s.75 claims that they are first informed about after the claim has become time-barred under the LA as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Mr E's s.75 claim was time-barred under the LA before he put it to HSBC.

A claim under s.75 is a "like" claim against the creditor. It essentially mirrors the claim the consumer could make against the Supplier. A claim for misrepresentation again the Supplier would ordinarily be made under s.2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrues (see s.2 LA).

But a claim under s.75, like the one in question here, is also *"an action to recover any sum by virtue of an enactment"* under s.9 LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of Sale. I say this because Mr E entered into the MMA with GEC at that time based upon the alleged misrepresentations – which he says he relied upon. And as regards the credit card account with HSBC used to help finance that purchase, Mr E was already an account holder at the Time of Sale.

Mr E first notified HSBC of his s.75 claim in March 2024. And as more than six years had passed between the Time of Sale and when he first put his claim to HSBC, I don't ultimately think it was unfair or unreasonable of HSBC to reject Mr E's concerns about the supplier's alleged misrepresentations.

In submitting his claim to HSBC, Mr E suggests that GEC failed to fulfil its responsibilities under the MMA, which could amount to a breach of contract. He argues that GEC didn't fulfil its obligations under the MMA by providing *"assistance with the acquisition of real estate/tourism product"* and *"to ensure the correct execution of the administrative and legal processes necessary for the full registration of the real estate assets for tourism use".*

I understand that GGH ceased trading in 2023. And based upon advice and guidance provided by the online investigation company, in particular about the lawfulness or otherwise of the contract he entered into with GGH, it was this that made Mr E aware of the alleged breach by GEC. In essence, Mr E argues that GEC should have identified that the contract with GGH was illegal and acted in his interest accordingly.

Much of the information that Mr E relies upon suggests that the whole scheme was fraudulent. So, I have considered whether the provisions of s.32 LA apply here insofar as the limitation period may be postponed in instances of fraudulent misrepresentation and/or deliberate concealment. Having done that, I don't think this is something this service is ultimately able to decide. But I have to consider if it is something upon which Mr E could rely on in pursuing his claim with HSBC. So, for the purposes of this decision, I think it's worth considering the merits of Mr E's claim on the presumption it was made in time.

The MMA

I've gone on to consider whether it would have been reasonable for HSBC to have upheld Mr E's claim for breach of contract based upon the documentary evidence I've seen.

The MMA appears to be a document between Mr E and GEC which sets out across 6 clauses the parties' contractual obligations under it. The document appear to have been signed by the parties to it and lists a number of services GEC will provide in very general terms. These include:

- the co-ordination and intermediation of the internal and external procedures;
- settlement of administration and registration costs;
- to ensure correct identification of the customer; and
- that the products allocated to the customer are available for registration.

In reference to the findings and advice provided by the online investigation company, Mr E suggests that no real estate investment existed and the GGH contract was unlawful. In particular, as the purchase agreement with GGH breaches the regulations that apply. Therefore, the suggestion is that GEC *"cannot possibly have fulfilled the service* [under the MMA]*"*.

Having considered the MMA in some detail, I'm not persuaded that Mr E has demonstrated that GEC failed to deliver under it in such a way as to amount to a breach of contract. The services to be provided by GEC are vaguely worded, and it would be extremely difficult to establish that the contract had been breached. Nor does any of the documentation indicate that GEC was acting as an agent for GGH. It was providing services to Mr E and not to GGH.

To take one example; of all the services GEC agreed to supply, I think the one which offers the greatest support to Mr E's claim is:

> *"Check with the development company that the products allocated to the customer are available for acquisition under the legislation in force".*

This wording is typical of the document generally in that it is imprecise. It does not specify which company is the development company, but it is reasonable to presume that could be GGH. While I can see that Mr E may have taken that to read that GEC should check that the product is legally available for him, it does not say that. It simply says it will check with the development company. So, in order to satisfy any obligation under that clause, it simply had to ask the development company whether the products were legally available. I can't see that it offered to do any more than that. And it certainly didn't offer to ensure any answer from GGH was accurate.

I appreciate Mr E takes it as implicit in the MMA that GEC would ensure everything was in order with the GGH contract. Whilst I can understand why he may think that I can't reasonably conclude that it offered such a service. So, even if the purchase contract with GGH was found to be illegal and/or fraudulent – and I make no such finding – I can't reasonably say that GEC failed to deliver what was promised under the MMA.

Mr E may well be able to pursue his claim through other avenues however, I can't say that HSBC ultimately acted unfairly or unreasonably in rejecting his claim as it did.

Other matters

In responding to the investigator's findings, Mr E has voiced concerns about HSBC stating it is only able to access details of his account for the preceding six years. Under section 388 of the Companies Act 2006 and the provisions of s.5 LA, businesses are only required to keep financial records for 6 years. I can see no

reason why HSBC would be required to retain those records beyond that in the specific circumstances of Mr E's complaint. So, I can't say that HSBC response was unfair or unreasonable.

In response to my PD, HSBC has confirmed it has nothing further to add. Mr E confirmed his disappointment but provided nothing new for consideration. So, Mr E's complaint was passed back to me in order to reach a final 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.

In the absence of any new comments or information for me to consider, I've no reason to vary from the conclusions reached in my PD. Whilst I acknowledge Mr E's disappointment, I will not be asking HSBC to do anything more here.

My final decision

For the reasons set out above, I don't uphold Mr E's complaint about HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 23 April 2025.

Dave Morgan
Ombudsman