

The complaint

Mr E has complained that HSBC UK Bank Plc (“HSBC”) rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

In June 2020, Mr E used his HSBC credit card to fund the purchase of a television (TV) from a supplier that I’ll call “S”. The TV cost just under £3,200.

In late 2023, Mr E contacted S as he says the TV had suffered a burn and he bought the TV believing that this type of TV would not suffer a burn, at least not for 10 years. I can see in December 2023, S sent a communication to Mr E explaining that as his TV was older than six months, that the “shop” department would not look to refund or replace the TV – and instead referred him to their technical support department. Mr E says he was bounced back and forth between the two departments and because he was unable to resolve matters directly with S, in January 2024, he raised a section 75 claim against HSBC under the Consumer Credit Act 1974 (s.75).

HSBC initially asked Mr E to confirm if the TV was under any warranty/guarantee but Mr E confirmed it wasn’t. He clarified that his complaint wasn’t about a breach of a warranty or guarantee, but his complaint was that the TV wasn’t of satisfactory quality and wasn’t as described. HSBC then asked Mr E to submit a report from an independent expert showing that the TV had suffered a fault and confirming the cause of the fault. Mr E refused saying that the communication from S had confirmed the TV had suffered a fault, and it was irrelevant what caused the fault as he says S had assured him that the TV would not suffer a burn. He felt the very existence of a burn meant the TV was not of satisfactory quality and was not as described. HSBC declined the claim and confirmed it would not look at the claim further without the evidence requested.

Mr E remained unhappy so referred the complaint to our service. Our investigator looked into things and didn’t think HSBC had acted unfairly. He said there wasn’t sufficient evidence that there had been a breach of contract because there was no evidence the TV was defective. He added that Mr E hadn’t registered for a 10 year burn warranty that was advertised on S’s website from around the time of sale which would indicate this isn’t something he was too concerned about. Mr E disagreed saying that the communication from S, clearly showed it had agreed the TV had suffered a burn and referred to the TV as a “faulty TV”. He added that his decision to not register for the warranty wasn’t relevant as the product was sold as burn free irrespective of whether consumers register for the warranty or not.

As things weren’t resolved the complaint has 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.

Firstly, I'd like to reassure Mr E, that I have considered all his concerns carefully, but I will only be dealing with the most salient parts of his complaint in this decision as I'm required to decide matters quickly and with minimum formality.

I would add that I'm sorry to hear that Mr E is unhappy with the TV. But it may be helpful to explain that I need to consider whether HSBC – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr E's claim. It's important to note HSBC isn't the supplier. S.75 is a statutory protection that enables Mr E to make a 'like claim' against HSBC for breach of contract or misrepresentation by a supplier paid using a HSBC credit card for the provision of goods or services. But I want to explain from the outset that I can only consider Mr E's complaint on that narrow basis – that is, whether it was fair and reasonable for HSBC to respond to his claim in the way that it did.

There are certain conditions that need to be met for s.75 to apply. From what I've seen, those conditions have been met and HSBC has also agreed that s.75 applies.

Misrepresentation

To make a claim for misrepresentation, Mr E would need to evidence that the TV has been misrepresented to him, that he relied on the misrepresentation and that this caused him to suffer loss. We generally assess cases using the definition of a misrepresentation as, an untrue statement of fact or law made by one party (or his agent) to a second party which induces that second party to enter the contract, thereby causing them loss.

Breach of contract

In order to uphold Mr E's s.75 claim on the basis that there has been a breach of contract, Mr E would need to evidence that S breached a term of the contract – and that caused him to suffer loss. He would have to show that either, there was a breach of an express term of the contract (for example the TV being damaged within any warranty/guarantee period) or whether there has been a breach of an implied term. The Consumer Rights Act 2015 (CRA) implies terms into the contract that the goods must be of satisfactory quality, aspects of which include goods being durable and free from minor defects. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

Evidence

However, in order to assess either a claim for misrepresentation and/or a breach of contract – I'd need to see evidence that the TV is faulty to begin with and usually would require details of what caused the fault. I would then need to look into whether any alleged fault and the cause of the fault means either the TV was misrepresented to him by S, that he relied on any such misrepresentation, and whether that caused loss. I would also consider whether such faults amount to a breach of contract as well.

I understand Mr E feels the communication from S's shop department confirming the burn and faulty TV is sufficient evidence that the TV is faulty and therefore no further report is necessary, but I don't agree. While I think the communication from S's shop department could've been worded more clearly, the purpose of this communication is simply to tell Mr E that this department will not look into TV's sold more than six months ago – and it's very common in these types of communications for businesses such as S to simply mirror the language consumers use when they make their claim. This does not confirm that S has carried out any diagnostic testing, provided any details of the testing carried out, and the results of such testing. It does not include any expert opinions as to the cause of any such faults. I understand Mr E says that S's shop department did run a test on the TV – but this

communication doesn't confirm that. So, from HSBC's perspective I can see why it didn't deem this evidence as sufficient to confirm the TV is faulty. I would add that I'm not sure why S's shop department would run any tests when it's clear that it won't look to repair or replace any TV's old more than six months ago.

As Mr E is making a claim a number of years after the sale, HSBC would only be liable to offer a remedy, if Mr E could establish with evidence that the TV was either, defective to begin with or was of unsatisfactory quality at the time of sale, or show that the TV isn't durable as would be expected - rather than becoming damaged over the years due to usage or misuse. Or that the TV had been misrepresented to him, and he relied on the misrepresentation that caused him loss. But all of that rests on the TV having a fault to begin with – and I don't think it was unreasonable for HSBC to conclude that Mr E hasn't submitted sufficient evidence to demonstrate that in this case.

Mr E has sent in a few images of the TV and a video – its not clear if these were sent to HSBC. But I am not a TV expert, and neither is HSBC and I cannot confirm from reviewing these whether the TV is defective. Based on what I've seen, I don't think it's unreasonable for HSBC to require the evidence that its requested (an independent report from an expert), especially bearing in mind, Mr E raised his claim almost four years after the sale. Machines sometimes breakdown or suffer faults due to wear and tear, overuse, misuse, accidents or lack of proper care or maintenance. So, while I appreciate Mr E believes the TV is faulty, and the very existence of the fault means the TV isn't of satisfactory quality, I'm not satisfied that he has evidenced this.

As explained above, I can only assess Mr E's complaint, on a narrow basis – whether there is a breach of contract or misrepresentation that S made that HSBC would now be responsible for. And I don't think it was unreasonable for HSBC to conclude that there is insufficient evidence here to support either claim. I want to be clear, that I am not concluding that something hasn't gone wrong, I can see Mr E feels strongly that the TV has definitely suffered a fault. And given how much he paid for it – I can see why he is so disappointed. But under the CRA, Mr E must evidence the fault – and that is usually done with an independent report from an expert detailing the fault and the cause for the fault – and based on what I've seen, I don't think he has.

Overall, I don't think there's sufficient evidence that there's been a breach of contract or misrepresentation. So, I don't think HSBC acted unfairly for declining this claim. While I am sorry to hear Mr E is unhappy, with s.75 in mind, I don't find there are grounds to direct HSBC to offer a remedy at this stage. Mr E can now obtain an independent report and ask HSBC to reconsider his claim. Alternatively, I should point out Mr E doesn't have to accept this decision. He's also free to pursue the complaint by more formal means such as through the courts.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 17 June 2025.

Asma Begum
Ombudsman