

## **The complaint**

Mrs H has complained that HSBC UK Bank Plc ('HSBC') has unfairly declined her claim for a refund.

## **What happened**

On 9 August 2023, Mrs H's HSBC credit card (the 'card') was used to make a payment on behalf of her son and daughter-in-law for the repair of their car which involved the fitting of a new engine. The repairs were carried out by, what they thought was, a legitimate business – I'll refer to this business and the person who runs it as 'T'. The payment was made via a business owned by T's wife.

In August 2023, shortly after the car was returned to Mrs H's son/daughter-in-law, Mrs H contacted HSBC wanting it to put the payment of £1,428 on hold and subsequently, asked HSBC to dispute the payment so she could obtain a refund and compensation for consequential losses. After deciding it wouldn't pursue the chargeback further following a defence from T, HSBC reversed a temporary refund it had previously given to Mrs H. It did, however, say it would be considering Mrs H's claim under section 75 ('section 75') of the Consumer Credit Act 1974 (the 'CCA'). During the course of the claim Mrs H complained to HSBC about customer service issues which it responded to on 14 December 2023. Mrs H complained again in, or around, August 2024 when HSBC still hadn't resolved her claim.

Our investigator considered Mrs H's complaints. But thought we couldn't consider the customer service issues complained about that occurred up to 14 December 2023 due to not being referred to us in time. As far as the subsequent issues were concerned, he didn't think HSBC had acted incorrectly here. Amongst other things, he thought the conditions for a section 75 complaint hadn't been met. Mrs H disagreed and asked for an ombudsman's decision on the matter. I issued a provisional decision saying that I didn't think the necessary requirements had been met for a section 75 claim. Mrs H disagreed so the matter has been passed back to me to reconsider.

## **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 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. Having reconsidered everything, I'm still of the view that this complaint shouldn't be upheld. I've noted Mrs H's further comments and I'm sorry that she feels she won't obtain a refund and about the issues she refers to in terms of T's business. But for the reasons that follow, I'm not upholding this complaint.

What I need to consider here is whether HSBC – as a provider of financial services – has acted fairly and reasonably in the way it handled Mrs H's request for getting money back. With that in mind, I've gone on to think about the specific card protections that are available to Mrs H in seeking a refund for the car repair issues she's unhappy about. In situations like

this, HSBC can consider assessing a claim under section 75 or raising a chargeback.

### *The matters we can't consider*

In relation to the customer service issues that were addressed with in the final response letter sent to Mrs H on 14 December 2023 (the '2023 final response'), I agree with our investigator that the complaints which were addressed in this letter, are not within our jurisdiction. Under the Dispute Resolution rule 2.8R (1), I can't consider a complaint which has been referred to our service more than six months after the date of the final response letter unless the late referral is due to exceptional circumstances.

The 2023 final response addressed Mrs H complaint points about HSBC's customer service including that it had failed to send correspondence to her by post as she'd requested. And it confirmed HSBC would pay Mrs H £80 for the service failings – Mrs H has acknowledged receipt of this payment. However, she only referred this matter to us in September 2024, which was outside the six-month referral period. I can see the final response letter was correctly addressed. Further, the evidence shows she was aware of the outcome of the complaint. So, I'm satisfied Mrs H would've been able to refer her complaint to this service within the six months. And as such I'm currently unable to say that the matter was referred within the relevant time limits. As Mrs H continued to correspond with HSBC following the 2023 final response up until she referred the matter to us, I don't think exceptional circumstance apply. I'll now consider the matters that do fall within our jurisdiction.

### *Chargeback*

A chargeback (dispute) is a voluntary scheme which allows card issuers, on behalf of cardholders, to dispute payments for certain specified reasons set out by the card scheme operator. There is no obligation on a card issuer (HSBC) to raise a chargeback claim. And where a claim is raised the card issuer is bound by the card scheme provider's rules, which in this case is Mastercard. It is Mastercard – not HSBC – who will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. However, I consider it to be good practice that a chargeback be raised if there is a reasonable chance of it succeeding.

I think the most likely chargeback rule here is 'goods/services were defective'. Under this rule one of the requirements is that the merchant (in this case, T) refused to adjust the price, repair, or replace the goods or other things of value, or issue a refund. I can see in her letter dated 17 August 2023, Mrs H's daughter-in-law said to T that: *"Although you have offered to take our engine out and put ours back in we are declining this offer, as the report from the [car recovery service] shows you have allowed us to drive our vehicle from your garage in an un-road worthy conditions, which could have resulted in an accident."*

So, I can't see T had refused to repair/replace the goods or issue a refund. T had offered both of these things. I appreciate in following correspondence with Mrs H's daughter-in-law, T said the offer had been withdrawn. But another condition of the chargeback rule is that the cardholder informed the merchant that the goods were available for pickup or return. Mrs H says this wasn't done because her son/daughter-in-law had been advised by police not to do so because of safety concerns. I'm sorry to hear this was the case but a dispute under the Mastercard scheme is quite strict about the requirements that need to be met. Overall, I don't think HSBC acted unfairly when it decided not to pursue the chargeback when it did, as I don't think it had a reasonable chance of succeeding. And whilst I know Mrs H was upset when HSBC reversed the temporary refund it'd given her at the start of the chargeback process, I don't think it's acted unfairly here.

## Section 75 claim

Section 75 makes the provider of credit (HSBC in this case) equally liable where there is a case of misrepresentation or breach of contract by the supplier of the goods or services. For section 75 to apply there are a number of criteria that need to be met, one of which is a valid a debtor-creditor-supplier ('DCS') agreement between the parties. In this regard CCA (the Consumer Credit Act 1974) says under section 12(b) that a DCS agreement is a regulated consumer credit agreement being: *"a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier."*

Our investigator said one of the reasons he thought the DCS agreement wasn't valid was because the payment was made via a business which belonged to T's wife. However, I think this issue is complicated by the fact there's provisions under CCA for the necessary arrangements to be in place when the business or person who took payment is an 'associate' of the relevant supplier (see section 187(1)). In the present case, there's quite limited information about T's wife's business through which the payment was made. For example, it's unclear whether this was a limited entity, or a sole trader business. And this could impact on the issue of what is deemed to be an 'associate' under the CCA. However, I don't think I need to consider this issue further as I don't think the required DCS agreement is valid for the other reason our investigator said. I'll explain why.

It isn't in dispute that Mrs H used her card to pay for the car repairs carried out by T. But the person(s) who entered the agreement with T for the repairs were Mrs H's son and daughter-in-law. I think there's persuasive evidence of this for the following reasons:

- Mrs H's daughter-in-law said in a letter to T on 29 August 2023 that: *"I have owned the vehicle since August 2017 and had no letters of any recalls on my vehicle during this time."* She also noted it was her husband (Mrs H's son) who'd agreed the cost with T for the repairs.
- In a letter also dated 29 August 2023 from Mrs H to HSBC setting out why she was disputing the payment she said: *"I agreed to pay for the repair on their [son's/daughter-in-law's] behalf on my credit card to which a payment was taken for £1,428...They collected the vehicle on 9<sup>th</sup> August and noted numerous faults and damage when they returned home...My son and daughter in law have been left with no vehicle and has been parked up on the drive since returning..."*
- In a letter dated 14 November 2023 to HSBC, Mrs H noted: *"To finalise the reasons why I'm still disputing this payment is because a service offered in which I paid for has left my daughter in law without a vehicle for months, due to [T's] incompetence."* And: *"By not having the vehicle for such a long time put my daughter in law in a very difficult situation for work. She is a [job title] and needs the car for work. She has to produce all relevant documentation to her employer, mot and insurance certs as she uses her car for business use..."*. Mrs H went on to say that because of the car's failure this had resulted in her having to loan her own vehicle to her daughter-in-law so she (Mrs H's daughter-in-law) could use it for work.

So, in my view, I don't think the necessary arrangements are in place for a valid DCS agreement. From what I can see Mrs H's only involvement was to use her card to pay for the repairs, but the necessary arrangements were between her son and daughter-in-law who entered into the agreement with T. I can see following the investigator's view Mrs H provided an invoice dated 18 August 2017 showing she purchased the car. But as noted above, her daughter-in-law confirmed she (Mrs H's daughter-in-law) has owned the car since August 2017 and has consistently referred to herself, or Mrs H's son, owning the car and arranging the repairs with T. So, even if I were satisfied Mrs H had initially purchased the car I still consider,

on balance, that the necessary arrangements were between T, and her son/daughter-in-law. All the evidence including Mrs H's own testimony, strongly points to this being the case.

All in all, whilst I note HSBC has given other reasons for not accepting liability, I'm satisfied this hasn't resulted in an unfair outcome as I don't consider the required DCS agreement is in place for there to be a valid section 75 claim.

### *Customer service issues*

As I noted above, I can't consider the matters prior to 14 December 2023 other than for context purposes. From what I can see from this point onwards (December 2023), HSBC appears to have complied with Mrs H's request to send correspondence by post. I know Mrs H says she can't remember receiving anything from HSBC. But I also note, when she spoke with our investigator in February 2025, she said she wasn't sure what she'd received from HSBC as her daughter-in-law had all this correspondence. And I can see HSBC has sent Mrs H a number of correctly addressed letters by post from December 2023 onwards including a request for further information sent on 11 January 2024. I've seen other letters sent to Mrs H from HSBC up until she complained to us in September 2024. I don't think there's sufficient evidence to say it has acted unfairly here.

I also note Mrs H said she had to send documents via a HSBC branch, but this seems to have been her preference to do so. And from what I can see, HSBC has confirmed it received these documents. Overall, at least from mid-December 2023 onwards, I think HSBC has acted fairly and reasonably in terms of meeting Mrs H's communication needs.

So, whilst I know Mrs H will be disappointed with this outcome, I'm not upholding her complaint. As noted above, my role is to look at things informally. So, if Mrs H disagrees, she can reject my decision and pursue matters by alternative means if she wants, such as court (seeking appropriate advice in the process).

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 27 August 2025.

Yolande Mcleod  
**Ombudsman**