

The complaint

Mr W complains about HSBC UK Bank Plc's decision to not uphold his dispute about an air conditioning system.

What happened

Mr W had two air conditioning units and a heat pump supplied and installed by a company (who I'll refer to as 'M' throughout this decision) in May 2023.

Mr W raised concerns with M about the lowest temperature he was able to achieve in one of the rooms in September 2023. M sent an engineer but as external temperatures had reduced it was suggested that Mr W contact M again during a further period of hot weather.

In the summer of 2024 Mr W contacted M again to raise the same concerns. It sent an engineer in July 2024 but ultimately found no fault. Mr W engaged in some further correspondence with M but once it was unable to resolve his dispute to his satisfaction he raised his concerns with HSBC; as he'd used his HSBC credit card to purchase the service and goods.

HSBC asked Mr W to provide an independent report and share this with M. Mr W employed the services of an air conditioning company (who I'll refer to as 'C') to inspect the system. When presented to M it raised concerns with the impartiality of the report, given the inspection had been conducted by a local competitor. HSBC accepted M's position and asked Mr W to obtain a report from another provider. It appears this was never supplied.

Mr W complained to HSBC in early November 2024 about the timescales for resolving his dispute and about the level of service he was receiving. HSBC said it had initially considered the dispute under the chargeback scheme, but was now considering it as a Section 75 (S75) of the Consumer Credit Act 1974 (CCA) claim. It did uphold Mr W's concerns about the level of customer service he'd received and paid him £75. In late November 2024 HSBC made Mr W aware it wasn't upholding his S75 claim as it didn't have evidence to show there had been misrepresentation or a breach of contract. Unhappy with HSBC's response Mr W referred his complaint to our service.

One of our investigators reviewed Mr W's complaint and asked him to obtain and provide us with further information to support his S75 claim.

Our investigator went on to consider the information Mr W was able to obtain and upheld the complaint in part. He didn't consider Mr W had evidenced misrepresentation or a breach of contract that would make HSBC liable under a S75 claim. He did however consider that further compensation was warranted, and he recommended HSBC pay Mr W a further £100.

HSBC accepted our investigator's view; Mr W didn't. In summary, he maintained his position that there had been a lack of reasonable care and skill provided by M in terms of when it initially completed its survey and recommended the specifications of the air conditioning system. Mr W provided our service with further information and evidence which he

considered supported his claim, including documentation from other air conditioning companies.

Our investigator reviewed this further information and evidence but didn't consider it changed their view. As an agreement couldn't be reached, and Mr W asked for an ombudsman's review, 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.

The information in this case is well known to Mr W and HSBC, so I don't intend to repeat this information here. Instead, I've focused my decision on what I consider to be the key points of this complaint. I don't mean to be discourteous to Mr W or HSBC by taking this approach, but this simply reflects the informal nature of our service.

I think it's helpful for me to set out from the beginning that having carefully considered all of the available evidence, I've reached the same outcome as our investigator for broadly the same reasons. I acknowledge this will be disappointing to Mr W. I've set out my findings for reaching this decision below under separate headings for ease.

A chargeback claim on Mr W's behalf

Initially, I've considered whether HSBC reasonably considered Mr W's dispute under the relevant chargeback scheme.

Chargeback is a voluntary scheme controlled by the card scheme operator (Mastercard in this case) to look to resolve some disputes between cardholders and merchants. There are specific criteria for a chargeback claim, and not all disputes will be able to be progressed or lead to customers' disputes being upheld.

Given the details of Mr W's dispute, it appears that the air conditioning system is capable of reaching the temperature of 16 degrees Celsius in both rooms simultaneously; Mr W has confirmed that both units have been capable of making each individual room this temperature. So, what is being disputed is the service that M provided when it surveyed Mr W's property; as from this survey Mr W says M didn't go on to recommend a powerful enough system to allow him to cool his rooms simultaneously to 16 degrees Celsius on hotter summer days.

HSBC hasn't said what chargeback condition it considered relevant in the circumstances of this dispute. Having considered Mastercard's chargeback scheme dispute conditions, I think it's reasonable that 'Goods or services were either not as described or defective' is the relevant chargeback condition. I say this because Mr W's dispute is essentially that the service he received from M was defective, as he argues it should reasonably have recommended a higher powered system following its inspection of his property.

Having reviewed the qualifying requirements of this dispute condition, I note that HSBC would have needed to have raised a chargeback claim on Mr W's behalf within 15 to 120 calendar days of the delivery of the goods or service.

Mr W raised his concerns with HSBC over a year after M provided the inspection and installed the air conditioning system. So, based on this chargeback condition, I consider HSBC fairly concluded that a chargeback claim on Mr W's behalf wouldn't be successful.

The S75 claim

HSBC went on to consider Mr W's claim under S75 of the CCA. In certain circumstances S75 provides the borrower under a credit agreement an equal right to claim against a credit provider, where there's either been misrepresentation or a breach of contract by the supplier of the goods and/or service.

So, for HSBC to be liable to uphold a claim under S75 there needs to be evidence of misrepresentation which induced a customer into a contract, or a breach of contract.

Ultimately HSBC concluded that Mr W hadn't provided sufficient evidence to support misrepresentation or a breach of contract, so it didn't uphold his S75 claim.

Before considering the details of the claim, I've reviewed whether the details of this dispute meet the qualifying requirements of a S75 claim. Having done so, I consider they do.

I say this because the goods and/or service must be purchased through certain forms of credit, and must have a cash price of more than £100 but no more than £30,000. Mr W purchased the goods and service by way of his HSBC credit card; which he made across two payments of £1,800, therefore paying a total cash price of £3,200. There must also be a valid debtor, creditor, supplier (DCS) agreement in place; which there is between Mr W (debtor), HSBC (creditor), and M (supplier). So, the qualifying requirements of a S75 claim have been met.

I've therefore gone on to consider the details of the claim. Having done so, I haven't been presented with anything which persuades me that HSBC is liable under a S75 claim.

I say this because while I acknowledge Mr W employed the services of M to inspect his property and provide him with an air conditioning system; I've seen no evidence that any indication or guarantee was provided by M that Mr W would be able to achieve a temperature of 16 degrees Celsius in either room – under any conditions. While I don't doubt the testimony and documentary evidence Mr W has provided about minimum temperatures and details of the specifications of the units; I've not been persuaded that Mr W was induced into entering this contract with M on the grounds that he would be able to achieve a temperature of 16 degrees Celsius simultaneously in both rooms with the units.

So, I can't reasonably conclude that misrepresentation took place as I've not been persuaded that M made an untrue statement of fact regarding the minimum achievable temperature which induced Mr W to enter into the contract.

I've therefore gone on to consider whether a breach of contract has occurred. Based on the evidence available to me, I'm not persuaded that a breach of contract has been demonstrated either.

I say this because in terms of the goods provided, Mr W has confirmed within his testimony that he has been able to achieve a temperature of 16 degrees Celsius in both rooms simultaneously, on days where external temperatures haven't been at their highest. So, it appears to me that the goods themselves are capable of achieving this temperature, and therefore it isn't a fault with them.

So, I've gone on to consider the obligations on M when it was providing Mr W with the service of inspecting his property before recommending the specifications of the air conditioning system.

Under section 49 (1) of the Consumer Rights Act 2015 (CRA) it states: *'Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.'* I've carefully considered this provision of the CRA to determine whether I'm persuaded M completed its contracted service of surveying Mr W's property and detailing the type of system required with reasonable care and skill.

As I've set out above, Mr W has told us that the air conditioning system is able to achieve simultaneous temperatures of 16 degrees Celsius in both rooms; from the information and evidence it appears this isn't achievable on some hotter days in the summer months. So, for the majority of time it would appear the system is able to meet Mr W's requirements; albeit I acknowledge that arguably it's on the hotter days that Mr W would have a higher requirement to use the system.

I've reviewed the information and evidence Mr W has provided from other air conditioning companies. This includes the report he received from C in September 2024, the quote he received from another company in early 2023 for a full system, and the information he's received from other companies as part of this complaint process.

Initially, I'll acknowledge that all of the information Mr W has provided from other air conditioning companies does detail having a higher powered system; either in terms of individual units or the system as a whole. This includes the quote he'd received from another provider before he proceeded with the services of M. But I don't consider this in itself is enough to demonstrate M's recommendations in the power of units required weren't provided with reasonable care and skill.

I say this because I'm mindful that all of the companies Mr W has contacted since the start of this complaint, and therefore the information they've provided, has been done so with the knowledge that there is at least a concern with the current system. So, it appears to me that it's more likely these companies' recommendations would naturally include higher powered systems. I also note that the most recent company Mr W obtained information from hasn't physically surveyed his property; albeit Mr W has said he provided it with photos, measurements and necessary details. So, this isn't a like recommendation.

The report Mr W obtained from C in September 2024 to support his S75 claim set out that:

'The Engineer carried out various diagnostic checks to the twin split system installed.

He has reported that the operating refrigerant temperatures & pressures are within an acceptable operating range, and the system is operating within its temperature parameters.

The equipment size selection should be adequate to maintain an average temperature of +20/22 degrees Celsius. This is the standard temperature range of air conditioning systems, if the system is operated at a lower temperature there is a risk of the fan coil in the room to ice up & block any air flow through the unit.'

So, it appears to me that the report suggests the system is operating within an acceptable range, which is the standard temperature range of air conditioning systems. And I note Mr W has been able to achieve at least 20/22 degrees Celsius in both rooms simultaneously on the hotter summer days.

The report does go on to state:

'It was noted that the window in the bedroom is south facing, as an example this can potentially cause a high demand on a warm sunny day for example.

...

The existing bed room [sic] a/c is I believe a 2.5kw high wall mount cooler & is under size for summer conditions & therefore [I] recommend a bigger system.'

So, while I acknowledge the report recommends a higher powered system for the room in question, it does also use an 'example' of potential higher demand in certain conditions.

I also note that when Mr W made further enquiries as part of this complaint process with the other air conditioning company he'd initially received a quote from, it told him that it would never provide assurances or guarantees of the minimum achievable internal temperatures. And from the evidence on file, I've seen no indications or guarantees from any supplier of the minimum internal temperature that Mr W would be able to achieve.

I think it's reasonable to suggest that a higher powered system should, by definition, be able to reduce the temperature in a room to a greater extent and/or at a greater speed; that appears to be a logical conclusion. But, I don't consider that means M didn't act with reasonable care and skill when recommending the size of system it did for Mr W.

I've also considered mitigating factors that may impact the effect operation of the system. This includes that there will likely be some days during the summer months where temperatures will peak and could cause higher heat loads in the rooms. I also note that Mr W told M that he'd built a structure around the heat pump, seemingly for aesthetic purposes. He's said that when he asked one of M's engineers whether this would impact performance, he was told it wouldn't. I note that in documentary evidence as part of this dispute M noted that having a structure around the heat pump wasn't recommended. I have no reason to doubt Mr W's testimony as to what he was told on this point, but I do consider this structure adds a further variable to the situation that *may* have an impact on the system's performance.

Ultimately, I can't be satisfied what requirements Mr W set out to M as part of the contract he entered into with it; as this isn't documented within the contract or invoices that have been provided. While I acknowledge that in certain external temperature conditions Mr W isn't able to reduce the internal temperature in one of the rooms to the minimum that appears can be achieved; I'm not persuaded that a breach of contract has been evidenced that means HSBC is liable under a S75 claim. So, I consider HSBC's decision to not uphold Mr W's S75 claim was reasonable.

Has HSBC acted unfairly or unreasonably in any other way?

I've carefully considered whether HSBC has acted unfairly or unreasonably in any other way relating to this complaint.

HSBC did identify service issues with its handling of Mr W's dispute, and it has confirmed it paid him £75 distress and inconvenience for this.

Our investigator recommended HSBC pay Mr W a further £100 as it could have provided him with more helpful information as part of the S75 claim process, which it has accepted.

HSBC did take a couple of months to provide Mr W with its answer to his dispute, and Mr W did need to chase it for updates during this time. I am mindful that HSBC initially considered whether it could raise a chargeback claim on Mr W's behalf, before considering the S75 claim. And I agree that its requirements of Mr W and the information it was requiring to support his S75 claim could have been clearer.

So, I consider a further £100 distress and inconvenience payment reasonably reflects the level of customer service HSBC provided during its consideration of the dispute.

Summary

I acknowledge my decision will be disappointing to Mr W; I would like to recognise the lengths he has gone to in providing our service with information and evidence in support of his dispute. I don't doubt Mr W's strength of feeling on this matter, and how he feels M has let him down in terms of the goods and services it provided, as well as HSBC's decision to not uphold his S75 claim.

But my role here is to review the information and evidence available to me, and decide whether within the parameters of a S75 claim that misrepresentation or a breach of contract is evidenced. Taking into account my findings above, I don't consider either has been proven. So, it therefore follows I don't conclude HSBC is liable to uphold Mr W's S75 claim.

Putting things right

For the reasons I've set out above, HSBC should pay Mr W an additional £100 distress and inconvenience payment, taking the total value to £175.

My final decision

My final decision is that I direct HSBC UK Bank Plc to pay Mr W an additional £100 in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 December 2025.

Richard Turner
Ombudsman