

The complaint

Mr W complains that HSBC UK Bank Plc (“HSBC”) haven’t upheld a claim he made to them about unsatisfactory goods.

What happened

The details of this complaint are well known to both parties, so I won’t repeat them again here. Instead I’ll focus on giving my reasons for my 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.

I know it will disappoint Mr W, but I agree with the investigator’s view of this complaint. Please let me explain why.

Where the information I’ve got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I’ve read and considered the whole file, but I’ll concentrate my comments on what I think is relevant. If I don’t comment on any specific point it’s not because I’ve failed to take it on board and think about it but because I don’t think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made in part or in whole with a credit card, as is the case here, it might be possible to make a claim through a chargeback request. Here, HSBC attempted to process a chargeback, but it was rejected as it was made outside of the strict time limits the chargeback scheme providers set. I don’t think HSBC did anything wrong in that respect.

There are, however, no time limits within which a business needs to consider a claim under section 75 of the Consumer Credit Act 1974 (“section 75”). That legislation says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there’s either a breach of contract or misrepresentation by the supplier. Here the suggestion is that there’s been a breach of the implied terms of the contract; that the dryer should have been of satisfactory quality.

I’m not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what’s a fair way to resolve the complaint, but I don’t have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met. That was therefore an avenue I think HSBC should have explored.

The Consumer Rights Act (2015) says that if a fault occurs with goods within the first six months it is to be assumed that the problem was present at the point they were supplied (when the business were responsible for the quality of goods), unless the business can demonstrate otherwise.

Mr W says that the supplier were wrong to refer him to the manufacturer to get an uplift number for them to remove the faulty dryer under warranty. He says his contract was with the supplier and that they should merely have complied with legislation and arranged a repair of the goods.

I agree with Mr W that, in those circumstances, if the goods were found to be faulty the supplier would be entitled to repair them. But I don't think the supplier refused to repair the goods and I don't think their request that Mr W contact the manufacturer was an unreasonable one in the circumstances. It may well have been possible to return the goods or have them repaired under warranty, and that would still have resolved matters for Mr W. I'm required to decide what's fair having considered all the relevant guidelines and legislation and I think the supplier's request was fair.

So, I don't think there was sufficient merit in Mr W's claim, but HSBC should have considered it under section 75, as they didn't do so they have delayed the process and caused Mr W some inconvenience.

Putting things right

HSBC should pay Mr W £70 in respect of the inconvenience caused by their failure to consider his claim under section 75. But, I'm not asking them to take any further action.

My final decision

For the reasons I've given above I uphold this complaint in part and tell HSBC UK Bank Plc to pay Mr W £70 to compensate him for the inconvenience experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 July 2022.

Phillip McMahon
Ombudsman