

## **The complaint**

Ms E complains that HSBC UK Bank Plc hasn't considered her dispute with a merchant about a stairlift fairly.

## **What happened**

In December 2021 Ms E used her HSBC credit card across two transactions to pay for a stairlift costing £4790 from a merchant to be installed in her mother's house. In December 2022 the stairlift stopped functioning as it should. Ms E tried to contact the merchant only to discover that the merchant had entered liquidation. So unhappy with what had happened she complained to HSBC.

HSBC looked into the matter and has said it didn't consider Ms E's dispute should be successful through Section 75 of the Consumer Credit Act 1974 (CCA for short) or through the chargeback process. So that's why it didn't refund her.

Ms E didn't think this was fair, so she brought her complaint to our service. Our investigator looked into the matter. Overall, he didn't think HSBC had acted unfairly by declining Ms E's request for a refund because he decided that Section 75 didn't apply here. And didn't think there was enough to show any chargeback had a reasonable prospect of success. Ms E didn't agree. So 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.

I should make very clear that this decision is not about the merchant. Whatever the issues there maybe with the stairlift, and just because Ms E says she has lost out, it doesn't necessarily follow that HSBC has treated Ms E unfairly or that it should refund her. And this decision is solely about how HSBC treated Ms E. I hope this point is clear.

### *chargeback*

There's no dispute that Ms E's HSBC card was used here. So I don't think HSBC did anything wrong by charging this transaction to her account at the points of purchase.

In certain circumstances, when a cardholder has a dispute regarding a transaction, as Ms E does here, HSBC (as the card issuer) can attempt to go through a chargeback process. Chargeback is a voluntary process which is decided simply on the terms of the dispute within the rules of the card scheme. I don't think HSBC could've challenged the payments on the basis Ms E didn't properly authorise the transactions, given the conclusion on this issue that I've already set out.

Here HSBC didn't raise a chargeback, because it didn't think it had a reasonable prospect of success due to the time limits within the chargeback scheme. The scheme rules include time limits from the dates of transactions or from the date of the service provision (the provision of

the stairlift). Here Ms E says issues with the stairlift first appeared roughly a year after purchase. This is considerably outside the 120 day time limits applicable here. So I don't think Ms E has lost out due to HSBC not raising a chargeback. I say this because any such chargeback would have been well outside the time limit and thus had no prospect of success.

### *The CCA*

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "supplier").

A business such as HSBC can only be held responsible under S75 of the CCA if certain requirements are met *and* if there is breach of contract or misrepresentation of the contract and if there is that it also means that Ms E has lost out as a result. Our Investigator concluded that one of the requirements for a S75 claim (the debtor being the contractor) wasn't in place, so HSBC didn't have to consider the matter further. And even if breach or misrepresentation was made out (which Ms E argues) this doesn't make a difference because Ms E's claim under s75 didn't meet the qualifying criteria of Ms E being both the debtor and the contractor to the transaction the credit financed. In short the Investigator concluded that this S75 claim fails before getting to the point of considering the question of whether the stairlift was of satisfactory quality or whether it had been misrepresented to her.

### *Was Ms E a contractor?*

HSBC has pointed to the fact that although Ms E paid for the stairlift the qualifying criteria of s75 wasn't met. S75 says:

*"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."*

Clearly here the debtor is Ms E, the creditor HSBC and the supplier is the merchant who sold the stairlift. And this arrangement is often referred to as the 'DCS agreement'. The section of the above that HSBC is pointing to as to why it won't consider the matter further is that it says Ms E doesn't have a claim regarding the transaction financed by the DCS agreement. In essence it is saying that although Ms E financed the transaction, she wouldn't be able to bring a claim against the merchant (if it were still trading) in court, so she cannot bring a 'like claim' against HSBC as she wasn't a contractor in the contract it financed.

Ms E has made many representations on this point noting particularly that she paid for it and to the fact that she says she had arranged the purchase for her mother, that the merchant had emailed Ms E saying "*thank you for your recent order*". She has also pointed to decisions by colleagues, which she says supports her position. However I'm not persuaded by these arguments. I say so for the following reasons.

It is not abundantly clear from the paperwork from the time of purchase who the merchant considered it was contracting with. It is clear Ms E was the person financing the transaction and liaising with the merchant, but it was also clear it was for the benefit of her mother and to be installed in her mother's house. Accordingly I need to consider how a court would consider this matter. To do so I need to consider all of the documents and consider who the merchant would have thought it had a contract with as I think that would be a key consideration in how a court would construe the evidence here.

I note, and place significant weight on in my decision making, the original quote the merchant provided in relation to this sale. In the documentation headed "*quotation*" there is a box for the "*customer name*" and in that is handwritten Ms E's mother's name. I place importance upon this above the other evidence from the time because as it is the quotation it is clear that this was from the early stages of the relationship and prior to the installation of the stairlift and that once the merchant considered Ms E's mother to be its customer it was likely to consider that to be the case from then on unless there was persuasive evidence to the contrary. I also place importance upon this because it is the only time in the paperwork where the merchant specifically states who its customer is and thus it is likely to show who it considered itself to be contracting with. And it is not in dispute that the stairlift was installed at Ms E's mother address and so clearly she'd be the recipient of the benefit of the supply and installation of the stairlift.

Ms E points to an email she received from the merchant enclosing documents which thanks her for "*your order*". I'm not persuaded that this outweighs the evidence I've pointed to already on the quotation. It could clearly be that the merchant meant "your" in the plural, referring to Ms E and her mother. And naturally the merchant would be likely to wish to acknowledge Ms E's involvement considering she was paying for the stairlift and the recipient of the emailed documents. And obviously the merchant wouldn't allocate a high priority to delineating between the roles of Ms E and her mother in such an email when it is trying to make a sale. It is also unlikely to have at the forefront of its mind whilst drafting such an email the potential for later consideration of such matters in a like claim against the credit card provider who financed the sale. If this point had been at the forefront of its mind both its paperwork and emails would have been clearer on this point. So I don't think I can allocate this email significant weight in my decision making here as I don't think this is persuasive as to who a court would consider the contractor to be.

In order for me to decide in Ms E's favour in her dispute with HSBC I need to be persuaded on balance of probabilities that it has treated her unfairly in its consideration of her S75 claim. And in considering such a 'like claim' as to that against the merchant it is entitled to the same defences that the merchant would be through the legal process. And it is clear that in such a claim the merchant would be able to point to Ms E's mother being its customer because that's what the quote said and that it could argue Ms E's role was simply that of financing and facilitating the contract between the merchant and Ms E's mother.

I shall address Ms E's key arguments. Ms E points to decisions by colleagues on similar facts. Firstly I'm not bound by decisions of colleagues, we consider each case on its individual merits and I am bound to consider this case fairly and reasonably. The power I have to issue decisions includes an overarching power to decide on what is fair and reasonable, including the power to not follow the law where I decide it fair and reasonable to do so. In this case I'm satisfied HSBC has acted fairly in its consideration of whether Ms E could make a claim as a contracting party and in its decision that she couldn't.

Ms E has argued the quotation isn't the contract here. I agree. It is clear there is no written contract available in this case. If Ms E were to bring a claim in court she'd have to establish she was a claimant under a contract to which she was a contracting party. This would involve the court construing the contract and the parties to it. For the reasons given above I'm not persuaded HSBC has treated her unfairly by concluding that she wouldn't be able to bring such a claim. I do think the quotation does give a strong indication as to who the merchant thought it was contracting with-specifically Ms E's mother. And I think a court would be similarly minded. Hence my conclusion that HSBC hasn't treated her unfairly.

Ms E has made many representations as to the amount of and various instances of her role in the events here. I accept she was involved throughout the purchase of this stairlift. But

that doesn't persuade me that a court, based on this evidence, would conclude she could bring a claim to it on the matter or that HSBC has treated her unfairly by concluding she couldn't. I think it likely a court would consider the quotation's naming of Ms E's mother as its customer would be the most persuasive evidence available and that considering everything else on balance would conclude Ms E's mother to be the contractor here.

I do appreciate that this isn't the decision Ms E wants to read. And I'm sorry to hear about what happened. But having considered everything here I don't think HSBC treated her unfairly. And just because Ms E has lost out doesn't mean it's fair for HSBC to refund her. It would only be fair for it to refund her if it had done something wrong. For the above reasons Ms E's complaint therefore does not succeed.

### **My final decision**

For the reasons set out above, I do not uphold the complaint against HSBC UK Bank Plc. It has nothing further to do here.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 6 June 2024.

Rod Glyn-Thomas  
**Ombudsman**