

The complaint

Mr W says HSBC UK Bank Plc (“HSBC”) were unreasonable not to fully support claims he made to them under the chargeback scheme and Section 75 of the Consumer Credit Act 1974 (CCA).

What happened

Mr W purchased a used car, using a credit card supplied by HSBC, from a dealership (the Supplier) in December 2022. The car was first registered in July 2011 and had already completed about 100,000 miles.

A couple of days after he bought the car Mr W contacted the Supplier. He wanted to return the vehicle as he said it had been misrepresented to him on the following grounds:

- He’d not been provided with the HPI report he was promised the vehicle had.
- He’d been told that the car had a full service history, but it hadn’t.
- He’d been told the timing belt had been changed but it hadn’t.
- He was told the car had a “clean MOT”, but it’d had failures in the past.

Mr W was unable to resolve matters with the Supplier and a few days later he contacted HSBC. They raised a chargeback claim through the chargeback administrators (VISA) and when the Supplier successfully challenged that claim they went on to consider Mr W’s claim under Section 75.

HSBC agreed to refund £906.04 to pay for repairs to the car. But Mr W was unhappy with that offer, and he referred his complaint to this Service.

Our investigator thought HSBC’s offer was reasonable and noted they had also offered to pay Mr W at total of £150 in compensation for breakdowns in communication when informing Mr W of the outcome of his claim. He didn’t think they needed to take any further action.

Mr W remained dissatisfied, and his complaint has, therefore, been passed to me, an ombudsman, to make a 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 think HSBC have done enough here. I’ll 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.

Chargeback

When something goes wrong and the payment was made with a credit card, as is the case here, it might be possible for the business to raise a chargeback claim.

The chargeback scheme isn't administered by HSBC, it's administered by VISA and they set the rules. HSBC didn't have to submit a chargeback claim but I'd think it good practice for them to do so where the right exists and there is a prospect of success.

VISA rejected Mr W's claim as the Supplier defended it with evidence that a timing chain had been fitted; there was a clean MOT, and that the car hadn't been advertised as having a full service history. They also provided a copy of the HPI report, albeit one that was requested after the car had been supplied to Mr W. HSBC pursued the claim to arbitration but that also failed for similar reasons. I think HSBC did all that could have been expected of it here.

Having failed in its chargeback attempt I think HSBC were reasonable to then go on to consider the claim under Section 75.

Section 75 of the Consumer Credit Act (1974)

Section 75 affords consumers, like Mr W, a right of recourse against lenders who provide finance to buy goods from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against HSBC under Section 75 essentially mirrors the claim Mr W could make against the Supplier itself.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. HSBC does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mr W, HSBC is also liable.

Mr W also asked HSBC to consider a couple of other issues in their Section 75 review. He said the car had been misrepresented as he'd been told there were two previous owners but there were three; and that the car wasn't of satisfactory quality as there were mechanical faults.

The relevant legislation explains that if goods are not of satisfactory quality (which would be a breach of contract) the consumer has a right to reject them within 30 days, and a right to have the fault repaired after that if the fault can be shown to have been present or developing at the point the goods were supplied. I'm not persuaded this car wasn't of satisfactory quality when supplied because I think the faults Mr W was worried about e.g. the corroded exhaust, loose anti-roll bar, and worn but roadworthy brakes and tyres, could only reasonably be considered normal wear and tear on a car of this age and mileage. So, I don't think HSBC were unreasonable not to support Mr W's claim on those grounds.

A misrepresentation is a false statement of fact, or of law, that is significant enough to influence a person's decision to enter into a contract. I'm not persuaded that the car was misrepresented to Mr W. The car did have a clean MOT, it wasn't advertised as having a full service history, but it did have a service history, and the invoice the Supplier has provided demonstrates that a timing chain was likely to have been fitted. So, I don't think Mr W was

given false statements of fact in relation to those matters or that HSBC were unreasonable to reject his claim on those grounds.

Mr W has pointed out that the date of the HPI check post dates the date of supply. It's his suggestion that the HPI hadn't been done and that the Supplier provided him with a false statement in that regard. But even if Mr W is right about that I don't think that would have been a significant reason to influence him not to proceed with the sale. I say that because the HPI that has been provided suggests there would have been no issues of concern.

Mr W also says he was given false information about the number of previous owners. The original advert said that the car had two previous owners and including the supplying dealership that would make three. So, I'm not persuaded Mr W was given false information in that regard but even if he was I don't think that would have been likely to have been a significant influence on his willingness to continue with his purchase. I don't think it would be unexpected for a car of that age and mileage to have three owners and I've not seen evidence that it would significantly impact the value of the car.

Ultimately, I don't think HSBC were unreasonable to reject Mr W's Section 75 claim and I think they were fair in their handling of his chargeback claim. HSBC have offered £904.60 to settle the claim and as I don't think they had to do that I think the offer is a fair one. HSBC were slow to convey their decisions on Mr W's claims, however, since this Service got involved they have offered a further £100 in compensation for the distress and inconvenience caused. That would make a total of £150 and, in the circumstances, I think that's fair and I'm asking HSBC to do that.

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 £150 to compensate him for the distress and inconvenience he's been caused. They may deduct any compensation they have already paid Mr W in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 August 2024.

Phillip McMahon
Ombudsman