

The complaint

Mr H is unhappy because Sainsburys Bank Plc didn't uphold his chargeback claim and didn't investigate his claim under section 75 of the Consumer Credit Act 1974.

What happened

In April 2022 Mr H ordered a hot tub and paid a deposit of £200 using a credit card. He paid the balance in May 2022 using his Sainsburys credit card. The hot tub was delivered in May 2022.

Mr H wasn't happy with the condition of the hot tub and contacted the merchant. The merchant visited Mr H to replace the tub but found the existing hot tub to be in satisfactory condition. Following a conversation with Mr H, the merchant collected the hot tub and offered to refund £4529.00, being the purchase price less £500 costs of return.

Mr H contacted Sainsburys and raised a chargeback claim for a partial refund. Sainsburys reviewed the claim and declined it on the grounds that the merchant's terms and conditions stated that the costs of return were to be borne by the customer.

Mr H wasn't happy with the chargeback decision and was unhappy that Sainsburys hadn't considered his claim under section 75.

Sainsburys acknowledged that there had been some service failings in the time it had taken to deal with the claim. It offered Mr H compensation of £125 in recognition of the service failings but said it stood by its decision to decline the chargeback. Sainsburys said it hadn't raised a claim under section 75 because Mr H hadn't provided sufficient information and documentation to support and raise a claim under section 75.

Mr H remained unhappy and brought his complaint to this service.

Our investigator didn't uphold the complaint. He said that although Mr H had said that the goods weren't of satisfactory quality, he hadn't seen any evidence to support this. The investigator said that the purchase price of the goods had been refunded less the delivery costs, which was in line with the merchant's terms and conditions.

Mr H didn't agree. He said he purchased the hot tub as new but when he received it, he could see that it was clearly second hand. He said the merchant had accepted this and had agreed to replace it, but then after months of delay the merchant refused to replace it and instead removed the hot tub. Mr H said that the letter he'd received from Sainsburys led him to believe that it wouldn't help him and said that this made him feel compelled to accept the offer from the merchant.

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.

When dealing with chargebacks, banks and providers of credit need to do so within the remit

of the rules set by the relevant card scheme.

Chargebacks are a voluntary scheme. The card issuer checks the complaint against the possible chargeback reasons to see what sort of evidence is required and under what timescales. This is so it can decide whether or not it can make a successful claim for the customer. Card issuers don't have to submit claims and will only do so if they believe they have evidence which will back up a chargeback claim so it will be successful. This service expects card issuers to help if they can, but we don't expect them to raise a chargeback if there is little prospect of success.

I've looked at Mr H's request to Sainsburys to raise a chargeback to see if it acted reasonably when it declined the chargeback.

Mr H has said that the hot tub wasn't of satisfactory quality. I haven't seen any evidence to suggest that the hot tub had a fault or a defect. Nor have I seen any evidence that the merchant initially agreed that the hot tub wasn't of satisfactory quality.

Based on the information that was available to Sainsburys at this time, I don't think it acted unfairly by not upholding the chargeback claim. I don't think there was enough evidence to show that the hot tub wasn't of satisfactory quality, so I don't think the chargeback claim would've been successful.

I can see that Mr H received a refund from the merchant for the purchase price of the hot tub, less £500 for the costs of return. The merchant's terms and conditions say that goods can be returned for any reasons within 14 days of receipt for a full refund or exchange, and that the costs of returning the goods shall be borne by the customer. So I can't say that the merchant has breached the contract here because it has acted in line with its terms and conditions.

Section 75

This service would expect a card issuer to consider whether there was a claim under section 75 if it declines to process a chargeback. In this case, Mr H has said that Sainsburys wrote to him and told him that it couldn't help. He says that this letter implied that Sainsburys couldn't help with the chargeback or a claim under section 75. Mr H says this led him to accept the merchant's offer.

Sainsburys has acknowledged that the letter it sent to Mr H declining his chargeback claim could've been clearer. It has paid Mr H compensation of £125 in recognition of the service failings.

I've thought about whether Sainsburys acted unfairly by not investigating the claim under section 75. I can see that Sainsburys requested further information from Mr H in November 2022 as part of its initial consideration of a section 75 claim, but it didn't receive a response from Mr H. Because a section 75 claim requires evidence to show that there's been a breach of contract or a misrepresentation, I don't think it was unreasonable of Sainsburys to request further information from Mr H.

In the absence of any evidence to show that there's been a breach of contract or a misrepresentation by the merchant, I'm not persuaded that the outcome would've been any different had the section 75 claim been investigated.

Taking everything into account, I haven't seen anything to persuade me that Sainsburys acted unfairly when it declined the chargeback. The section 75 claim could've been looked in to sooner, however, I'm not persuaded that a section 75 claim would've been successful in

this case. I think the compensation paid to Mr H for service failings is fair and reasonable. I won't be asking Sainsburys to do anything further.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 September 2023.

Emma Davy
Ombudsman