

The complaint

Mr M complains that Sainsburys Bank Plc won't do enough to help him with his dispute regarding a scooter.

What happened

In August 2021 Mr M used his Sainsburys credit card to make to pay the Supplier £4574 for a scooter and some additional items. The scooter cost £3195. In the summer of 2022 Mr M says the scooter started having problems. I can see emails between him and the supplier in July 2022. The supplier then made some alterations and replacements to the scooter. But Mr M said he wasn't persuaded the scooter was fixed. So having reached deadlock with the Supplier he approached Sainsburys.

Sainsburys looked into the matter and has said it didn't consider Mr M's dispute should be successful through either chargeback or Section 75 of the Consumer Credit Act 1974 (CCA). It pointed to the Supplier making repairs and just in case replacements to the Scooter free of charge and that there was no independent report showing any fault with the Scooter. So Sainsburys didn't refund him.

Mr M didn't think this was fair, so he brought his complaint to our service. Our investigator looked into the matter. Overall, he didn't think Sainsburys had acted unfairly by declining Mr M's request for a refund. Mr M 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 Supplier here as it doesn't fall within my remit regarding chargeback or Section 75. Whatever the issues there maybe with the Supplier and just because Mr M says he has lost out here, it doesn't necessarily follow that Sainsburys has treated Mr M unfairly or that it should refund him. And this decision is solely about how Sainsburys treated Mr M. I hope this point is sufficiently clear.

There's no dispute that Mr M used his Sainsburys card to make the transaction. So I think it was fairly allocated to his account with Sainsburys.

In certain circumstances, when a cardholder has a dispute regarding a transaction, as Mr M does here, Sainsburys (as the card issuer) can attempt to go through a chargeback process. I don't think Sainsburys could've challenged the payment on the basis Mr M didn't properly authorise the transaction, given the conclusion on this issue that I've already set out.

Sainsburys is required to consider whether there is a reasonable prospect of success when it is considering whether to go through the chargeback process or not. If it does go through the process, then it must do so properly. And if Sainsburys takes the chargeback as far as it can then the scheme provider (not Sainsburys) will then make an independent determination

on the matter. So Sainsburys isn't solely responsible for the decision whether to refund or not, when going through the chargeback process. And it can fairly decide to not proceed at any stage if it doesn't think there is a reasonable prospect of success.

Here Sainsburys didn't raise a chargeback. Mr M brought his complaint to Sainsburys in November 2022. Within the chargeback rules there are a number of time limits for disputes being raised and for the purchase of goods such as in this instance it is 120 days from the purchase/taking delivery of the Scooter. Clearly Mr M raised his dispute with Sainsburys substantially after this time limit had expired. Bearing in mind the card scheme sets these time limits and not Sainsburys and that Sainsburys wasn't aware of this dispute until after the time limit expired, I don't think Mr M lost out due to what happened here in relation to chargeback. I say this because even if Sainsburys had tried to raise a chargeback when Mr M first contacted it, such a chargeback would have been unsuccessful because it was out of time.

There are some requirements set out in the CCA under Section 75 which have to be met before deciding whether there was a breach of contract or misrepresentation by the accommodation. I'm satisfied the financial limits and DCS relationship requirements are met here. So if Mr M has demonstrated a breach of contract or a misrepresentation here then Sainsburys can be held to a 'like claim'.

Bearing in mind Mr M didn't raise the issues with the Scooter until well after six months had elapsed then the burden of proof lies with him to show the Scooter wasn't of satisfactory quality when he bought it (not when the issues he says happened took place). I note from the correspondence between the parties that the Supplier points to Mr M having covered more than 3,500 miles on the Scooter before any issue presented. So it clearly worked for a significant time and covered significant mileage.

I can see Mr M has said he's not going to provide an independent report demonstrating that the Scooter was unsatisfactory quality, that is, insufficiently durable to be precise, when he purchased it. I can also see commentary about Mr M dropping the bike and it being suggested this could be the source of the issues Mr M says the Scooter has. I'm not minded that this event should have substantial weight added to it in my thinking on the matter, nevertheless I cannot completely discount it either bearing in mind the lack of persuasive evidence showing an issue with the Scooter at the point of sale.

From the significant amounts of correspondence available between the Supplier and Mr M, I note that the Supplier has said it has looked at and or replaced the Controller, Handlebar Switch Panel and the Throttle Assembly. It noted that these efforts it made came at a cost in excess of £300 to it and it hadn't charged Mr M. So its clear to me that the Supplier has liaised significantly with Mr M on the issues he says are present. I can see it also offered to buy the Scooter back from Mr M, which he didn't agree to. So I can't say the Supplier dismissed Mr M's concerns out of hand.

Ultimately it is clear this Scooter covered a significant mileage and was used for a significant period of time without issue. There is no independent evidence of the Scooter being of unsatisfactory quality through being insufficiently durable. The Supplier has taken to address potential causes of the issues Mr M points to and considers the Scooter to have been and remain of satisfactory quality. So considering the sale agreement here and the implied terms of the Consumer Rights Act 2015 and fairness more broadly I'm not persuaded Mr M has been treated unfairly here. I say this because I'm not persuaded a breach of contract has been made out here. And although Mr M hasn't pointed to any material misrepresentations in this matter I've considered whether this is the case here and I'm not persuaded there was any false statements of fact made here which Mr M relied on to his detriment.

I've considered how Sainsburys looked at the matter and I can see it asked Mr M for further supporting evidence of issues with the Scooter. And it has noted it would reconsider the matter and its stance if persuasive evidence was submitted to it. So although Mr M has clearly spent a lot of time and effort on this matter there is, other than his say so, a dearth of evidence demonstrating that the Scooter was unsatisfactory quality at the point of sale. And persuasive evidence that it worked fine for a significant period of time covering significant mileage. And the Supplier couldn't identify the cause of the issues Mr M points to.

In summary I think that Mr M hasn't lost out here due to what Sainsburys did. I don't think Mr M lost out because Sainsburys didn't pursue a chargeback. And I don't think it could be held responsible under S75 either as I'm not persuaded a material misrepresentation or breach of contract has been made out for the reasons I've described. So I don't think I can fairly require Sainsburys to refund Mr M. So this complaint is unsuccessful.

I do appreciate that this isn't the decision Mr M wants to read. But I don't think Sainsburys treated him unfairly.

My final decision

For the reasons set out above, I do not uphold the complaint against Sainsburys Bank Plc. It has nothing further to do in this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 May 2024.

Rod Glyn-Thomas
Ombudsman