

## **The complaint**

Mr K complains that Sainsbury's Bank Plc ("Sainsbury's Bank") has treated him unfairly in relation to a purchase that he made in part by using his Sainsbury's Bank credit card.

## **What happened**

Mr K is represented in his complaint by a family member - but for ease of reading, I'll refer to everything as if Mr K had said it.

I set out below Mr K's version of events and Sainsbury's Bank's version of those same events.

### *Mr K's version of events*

Mr K employed a third party supplier who I'll refer to as "N" to supply and install a conservatory. Mr K used his Sainsbury's Bank credit card to pay N in part.

Mr K is dissatisfied with the conservatory for a number of reasons. I've summarised those reasons below.

1. Mr K considers that the conservatory has not been built in line with what he agreed with N. Specifically, the conservatory floor was meant to be level with both the adjoining floor in the house and with the exit to the garden. But that is not what he got because N built the conservatory with a 5" step down into the garden. This requirement was of particular importance to Mr K due to his wife having a disability which means she'd be unable to manage something she had to step over.
2. But he also says (seemingly in the alternative) that the agreement with N was to build the floor of the conservatory as low as possible. In particular, this was to be achieved by laying the concrete blocks used on their sides.
3. The damp proofing and insulation have been incorrectly fitted.

Whilst the work was in progress Mr K told N he was unhappy with it. Mr K wanted N to sort it out to his satisfaction. N declined to do so. Instead N said if Mr K paid it the final £2,000 he owed it then his conservatory would be covered by a guarantee with a government authorised certification body to which N belongs, I'll refer to this body as "C". N also told Mr K that he'd be able to complain to C about the conservatory.

Therefore Mr K went ahead and paid N the final £2,000 only to find that the conservatory is not covered by N's membership with C. Mr K thinks that N misled him into paying it £2,000 and he wants that money back. In any event, he considers that the only way to put things right is to take down the conservatory and start all over again.

Mr K got nowhere with N, so he complained to Sainsbury's Bank. However, in his opinion it has not carried out a thorough investigation, for example it has not followed up on some of the points he considers to be key. Moreover, Mr K considers Sainsbury's Bank has taken far too long to look into things.

### *Sainsbury's Bank's version of events*

Sainsbury's Bank responded that because Mr K had used his credit card to pay in part for the conservatory Mr K could look to it to help him with his complaint about the conservatory.

This is because Mr K has the benefit of the Consumer Credit Act 1974 (the “CCA”) and in particular he benefits from Section 75 of the CCA.

The general effect of Section 75 is that if Mr K has a claim for misrepresentation or breach of contract against the supplier he can also bring a like claim against Sainsbury’s Bank provided certain conditions are met. It follows that potentially in this instance Mr K had a claim under Section 75 against Sainsbury’s Bank.

According to Sainsbury’s Bank Mr K did raise a claim under Section 75. But Mr K only asked it to look at a single issue under that claim. That issue is whether N gave Mr K false information about its membership of C that induced Mr K to pay the remaining £2,000 he owed it under the contract.

Sainsbury’s Bank did not agree that N most likely gave Mr K false information. Rather it said as far as it could tell N was an “*active and certified*” member of C. Specifically, complaints about it can be referred to C under the Competent Person Scheme run by C. Therefore any statement N made about its membership and the benefits of that membership was correct. In any event the contract between Mr K and N does not refer to the conservatory being covered by any scheme run by C, which it indicates suggests N most likely never made such a statement anyway.

Sainsbury’s Bank did not agree it had taken too long to respond to Mr K’s complaint about his claim under Section 75.

Therefore, for all of these reasons, Sainsbury’s Bank declined to uphold Mr K’s claim under Section 75.

Dissatisfied, Mr K complained to our service.

Once Mr K’s complaint was with us Sainsbury’s Bank provided further information. It told us at first it was unsure what Mr K’s complaint was about. Specifically, it did not know if Mr K was complaining about what he sees as misrepresentation and/or about N’s workmanship. So it checked this out with Mr K and told him if he wanted it to look at the quality of the work done by N it’d need to see an expert’s report. Mr K responded that he couldn’t understand why he was being asked to provide this when all he was complaining about was what N had told him about its relationship with C.

Further, Sainsbury’s Bank pointed out that anything N might have said about its membership of C was said after Mr K had already entered into the contract with N. Misrepresentation, in this context, is a false statement of fact that induced Mr K to enter into the contract. Therefore anything N said after Mr K had already entered into the contract can’t be misrepresentation.

Sainsbury’s Bank added even if Mr K’s complaint was about the step to the garden, it would not have upheld the complaint as there was no breach of contract. This is what Sainsbury’s Bank said about this point:

*In addition, contrary to what Mr K advised the purchase agreement confirms a step was to be in place, and it states to the lowest possible threshold it does not specify a height requirement. There were also limitations due to the type of door that Mr K had chosen which had been communicated.*

*Furthermore, the merchant explained the conservatory was to be installed with a damp course, insulation, and timber wall therefore the blocks cannot be laid on their side and they must be installed in an upright position. In view of this and given N are a reputable company it would appear unlikely that they would inform Mr K to the contrary”.*

However, despite its stance that the only complaint point it had been asked to look at was about what N said to Mr K about C, Sainsbury’s Bank agreed to let us look at the points numbered 1 and 2 above, as part of this complaint. I mention this because this service only has the power to look at complaint points that the respondent business has had a chance to

look at first. If a consumer raises one thing with a respondent business as a complaint and then raises new issues only once they come to us we have no power to look at those new issues, without the consent of the respondent business.

Mr K told us about why he had not supplied an expert's report. He indicated it was because he could not afford to pay for one, and when he asked Sainsbury's Bank to pay for it, it would not. Sainsbury's Bank denied that it had refused to pay for it.

One of our investigators looked into Mr K's complaint. Our investigator did not recommend that Mr K's complaint be upheld.

Sainsbury's Bank accepted our investigator's recommendation, but Mr K did not. In rejecting our investigator's recommendation Mr K repeated his previous stance. Mr K also mentioned work that is not covered by this complaint that N had done for him previously under a separate contract.

Mr K asked that an ombudsman review his complaint.

### **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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Mr K and Sainsbury's Bank disagree about all the key points in this complaint. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

In relation to this complaint I think, amongst other things, both the CCA and specifically Section 75 and the Consumer Rights Act 2015 (the "CRA"), are relevant law.

I've already set out above what Section 75 covers. The CRA implies terms into contracts between consumers and traders and if these terms are not met this will be a breach of contract. I'll talk more about this below.

I'll look first at misrepresentation and then at breach of contract.

Mr K says there has been a misrepresentation by N about its membership of C and what this covers. However, as Sainsbury's Bank pointed out, according to Mr K, N told it about its membership of C after the contract had been made. Here misrepresentation means a false statement of fact that induced Mr K to contract. Therefore, what N said about its membership of C cannot be misrepresentation as it did not induce Mr K to enter into the contract.

I anticipate that Mr K might argue that N's statement induced him to pay it the remaining £2,000 but that is not misrepresentation in this context.

As I've already mentioned, Sainsbury's Bank would only be liable to Mr K under this complaint point if he could demonstrate that N's misrepresentation led him to enter into the

contract with it. He has not shown that for the reasons I've set out. It follows I've no fair or reasonable basis to say Sainsbury's Bank has to take responsibility for what Mr K says N said. It also follows that I don't uphold this part of Mr K's complaint.

Because I've found that N's statement did not induce Mr K to enter into the contract, I don't need to look at what it most likely said or whether what it said was true.

Moreover, in any event, I'll add for completeness without making any finding about this particular point, that Mr K was obliged to pay N the £2,000 under their contract that obligation did not simply arise due to whatever N said to him about C. In other words, Mr K was always going to have to pay N the £2,000 for its work, regardless.

Mr K had a contract with N for the supply of goods and services, therefore he had what is known as a mixed contract with N. Mr K does not complain about the quality of the goods supplied, rather he complains about the services supplied by N. It follows that what I've got to look at is what the CRA says about the delivery of services, The CRA says that with regard to services these will be delivered with reasonable skill and care.

Mr K tells us it was an express term of his agreement with N that either the conservatory floor would be level with the exit to the garden or alternatively the conservatory would have the lowest possible threshold. This was not achieved, in his opinion, therefore the work was not done with reasonable skill and care, and this is a breach of contract. Sainsbury's Bank indicates that N did not agree to make the floor of the conservatory level with the exit to the garden. Moreover, N did build the lowest possible threshold, so the contract has been fulfilled rather than breached.

Clearly what the parties contracted for is key to this complaint. I think it is appropriate to look at what the contract says when I'm trying to establish what the parties to it agreed. The difficulty for Mr K is that when I look at the contractual documents I've got there is nothing that says that the floor of the conservatory has to be level with the exit to the garden.

That said, Mr K's alternative argument is that N agreed that the exit to the garden would have the lowest possible threshold. The contractual documents do say this. But although Mr K tells us this has not been achieved, I'm not persuaded that he is correct. His point seems to be if the concrete blocks had been turned on their side he'd have got what he wanted and contracted for. However, the information from the builder indicates that the concrete blocks could not be turned on their sides as this would have compromised other aspects of the conservatory. That in turn leads me to think that N would never have agreed to this. In the circumstances, I'm not persuaded that just because the threshold is higher than Mr K wants, this demonstrates that the conservatory does not have the lowest possible threshold.

It would have been helpful to have an expert's report. Then I would have had an opinion from an impartial expert third party which would have told us whether the conservatory had been built with the lowest possible threshold. I realise Mr K has told us he could not afford to pay for one and Sainsbury's Bank refused to pay for one. Sainsbury's Bank says it did not refuse to pay for one. However, I don't need to go into the ins and outs of this. I say this because the point is this, it is Mr K who is expected to provide evidence to support his complaint. The onus is not on Sainsbury's Bank. So it does not matter if Sainsbury's Bank did refuse to pay for the expert's report, it is entitled to do that.

I've also thought about whether the term about the floor of the conservatory having to be level with the exit with the garden was something the parties agreed verbally, which could explain why it is not in the written contract. Or whether they agreed verbally that the concrete blocks would be turned on their sides. Given what Mr K tells us about his wife's disability I do find it likely Mr K and N did talk about the floor height in the conservatory when negotiating their contract. Moreover, it is possible in some instances that contracting parties do not capture all the terms that they've agreed in the written contract, but I don't think this is the case here. I say this because it does not seem it would have ever been possible for the exit to garden to be level with the garden without substantial extra work. I think that extra work, if

agreed, would have been documented. Moreover, I don't think N would have agreed to the concrete blocks going on their sides if that would have undermined other features of the conservatory.

For all of these reasons I don't uphold this part of Mr K's complaint.

I've also thought about whether Sainsbury's Bank ought to have considered carrying out a chargeback. Chargeback is a mechanism for claiming a refund (in full or in part) of a payment made on a plastic card such as Mr K's credit card. But in this case, I don't think this would have been appropriate. I say this because chargebacks are subject to rules set by the card scheme to which the card belongs, and those rules, would not on balance have allowed Sainsbury's Bank to raise a successful chargeback. I therefore think it is fair and reasonable that Sainsbury's Bank did not seek to raise a chargeback.

I recognise that Mr K is unhappy about how Sainsbury's Bank went about investigating his claim. But I can see there was a lot of back and forth which took time. And whilst Sainsbury's Bank might not have investigated every point in the way Mr K wanted it to do, that does not mean it treated him unfairly. It is entitled to use its own discretion about how it looks into matters. It follows that I have no proper basis for saying that Sainsbury's Bank has to do anything further in relation to this part of Mr K's complaint.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 1 November 2023.

Joyce Gordon  
**Ombudsman**