

The complaint

Mr W complains that Sainsbury's Bank Plc did not uphold his chargeback claim and did not consider his claim under section 75 of the Consumer Credit Act 1974 for compensation about a mis-sold kitchen.

What happened

In November 2021 Mr W paid about £9,900 with his Sainsbury's Bank credit card to a third party ("the merchant") for the supply of a kitchen. He later complained that this kitchen had been misrepresented to him, and that he was not given the opportunity to reject it. He says he had therefore gone along with his purchase of different kitchen units as he had had no realistic alternative. In July 2022 he asked Sainsbury's Bank for a refund.

Sainsbury's Bank raised a chargeback dispute, and in the meantime it temporarily re-credited the payment to Mr W's account. The merchant defended the claim, saying that it had replaced some larder units with different ones and had refunded Mr W the price difference (the new units being somewhat cheaper than the originals). The bank accepted this evidence and re-debited the disputed amount. Mr W complains that the bank did not do this within 45 days, being the time in which he thought that a chargeback had to be resolved, and so he had treated the money as his own to spend; the unexpected re-debit had caused him some financial problems. But his main complaint is that his request for a refund should have been treated as a claim under section 75, rather than a chargeback, and that such a claim should have succeeded. He says that the larder units were misrepresented to him, due to a glitch in the merchant's visual rendering software. He referred this complaint to our service.

The bank says it actually did begin to consider Mr W's claim under section 75, but he had come to our service before it could finish. It said that the chargeback had failed because the merchant had already resolved the issue by replacing the relevant units and refunding the price difference, and Mr W had accepted that remedy at the time. The kitchen had been installed. The bank argued that a section 75 claim would have failed for the same reason. Our investigator agreed, and for those reasons he did not uphold this complaint. He also said the 45-day time limit was for the merchant to respond, not for the bank to consider the evidence and resolve the dispute.

Mr W did not accept the investigator's opinion. He said he had never received the refund, and he had only accepted the amended kitchen because he felt that he had been left with no other choice. The kitchen had been kept in storage for over five months before being installed, and as he has a family he could not wait for a new kitchen to be supplied by some third party. He asked for an ombudsman to review his case. He suggested that a refund of 50% of the cost of the kitchen would be a fair alternative to rejecting it.

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.

Having done so, I do not uphold it, for broadly the reasons I have outlined above. I will elaborate a little further.

While I understand Mr W's reasons for accepting the amended order instead of rejecting it, this does not mean that it would be fair to let him reject the kitchen now, or to refund the price or half of the price as an alternative to rejection. Although rejecting or cancelling the order at the time would have been inconvenient for him, it would not have been impossible, but instead he chose not to exercise that right. I don't think that is the same thing as being denied the right, or the opportunity to exercise the right. In an email dated 9 May 2022 he accepted the change to his order, and asked whether the price would go up or down. The merchant replied to say that there would be a refund of £151.87 plus VAT. The kitchen, as altered, was supplied and installed.

In another email dated 4 July, Mr W confirmed that he had received a refund of £677.22 and requested a breakdown of what this was for. It appears from other emails that a little over half of that amount was for an unrelated issue (some items which were damaged in storage and needed to be replaced). But it seems more likely than not that the rest of it included the difference between the prices of the original and replacement larger units. So on the balance of probabilities, I am satisfied that the merchant accepted that the original units had been misdescribed and that they would not be satisfactory, offered to replace them with suitable (and slightly cheaper) alternatives and to refund the difference in price, and then paid that refund once Mr W had accepted that offer. Mr W appears to have confirmed as much in a phone call with Sainsbury's Bank on 1 September 2022 (according to the bank's internal notes).

That information would certainly have been fatal to a chargeback claim. I can see in Sainsbury's Bank's internal notes that the bank also opened a section 75 case on 1 January 2023, although its case handler was doubtful that this would succeed either. In March (by which time Mr W had approached our service), which is as far as my copy of the notes go up to, no decision about that had been made yet, but since then the bank has told us that it does not think that it is liable under section 75.

Section 75 applies to Mr W's purchase, so I have taken it into account. That section makes the bank jointly liable for any misrepresentation made by the merchant. A misrepresentation is a false statement (which can be made by an image as well as by words) which induces someone to enter into a contract which they would not have entered into otherwise.

However, although one remedy for misrepresentation is to unwind a contract and put the parties back in the position they would have been in if the contract had not been made, I think that would be disproportionate in this case because Mr W did not ask for this at the time, but agreed to accept the modified order. And the kitchen has since been installed.

As an alternative to rejection, Mr W recently proposed a refund of 50% of the price, in case an ombudsman thought that removing the whole kitchen was asking too much. But I think that would still be disproportionate too, for the same reason. Instead, I think that the remedy which the merchant and Mr W agreed at the time – amending the order, and adjusting the price to reflect the change – was fair.

For that reason, I do not think that Sainsbury's Bank reached the wrong decision about Mr W's claim.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 November 2023.

Richard Wood
Ombudsman