

## The complaint

Mr E complains that Sainsbury's Bank Plc hasn't fairly handled a claim he made to it for reimbursement for concert tickets he bought using his credit card.

## Background to this decision

I recently issued my provisional decision setting out the events leading up to this complaint and my intended conclusions on how I considered the dispute best resolved. I've reproduced that provisional decision here and it is incorporated as part of my overall findings. I invited both parties to let me have any further comments they wished to make in response, and I will address their responses later in this decision.

### ***"What happened"***

*Mr E was celebrating his anniversary. He made plans to attend an overseas concert. As it was a special occasion, Mr E decided to treat himself (and his wife) to premium tickets in an area close to the stage. He used the services of a secondary ticketing agency "A" to secure what were described as 'Golden Circle' tickets. Mr E paid a total of €1,434.56 using his Sainsbury's Bank credit card. This total comprised €1,051.20 for two tickets, €62.90 tax and €320.46 in booking and handling fees.*

*When Mr E received the tickets he immediately noticed that rather than being for the Golden Circle, they were for assigned seats in a block some distance from the stage. He attempted to engage with A, pointing out in several emails that the tickets were different from their description. A's responses didn't seem to grasp the reason for Mr E's dissatisfaction. As he'd already booked flights and a hotel, with little in the way of satisfactory engagement from A Mr E attended the concert. But he says the experience was significantly diminished, both by the problems he'd had with A and by the location of the seats.*

*Given his experience Mr E felt he should only have to pay the face value and handling fees of the tickets he received. He turned to Sainsbury's Bank to see whether he could recover his money through his card provider. Sainsbury's Bank raised a claim using the chargeback provisions of the card scheme, issuing a temporary credit to Mr E's account. But A submitted a defence to the claim. Based on A's response Sainsbury's Bank said it couldn't assist further, and it reversed the earlier credit.*

*Mr E complained to Sainsbury's Bank. But the bank maintained its stance. It said it couldn't progress the chargeback claim further. And it said section 75 of the Consumer Credit Act 1974 (which can give rise to connected lender liability) didn't apply to the transaction. However, Sainsbury's Bank did credit Mr E's account with £25 as a goodwill gesture.*

*Our investigator didn't think Sainsbury's Bank was right to say that section 75 didn't apply to the transaction. He acknowledged that A wasn't itself the supplier of the tickets. But A did provide a service that was part of the overall transaction and the sum Mr E had paid using his credit card. That service included the provision of the secondary ticketing*

platform and A's buyer's guarantee, which included providing replacement tickets or a refund in certain circumstances.

The investigator was satisfied A had a responsibility for the accuracy of the description of the tickets on its platform. That description was that the tickets were 'Golden Circle'. Based on Mr E's research of the venue, he understood that description to mean the tickets would be for the area closest to the stage. The photos he'd supplied showed the tickets supplied were for a different section of the venue.

Overall the investigator considered A's description amount to a misrepresentation for which Sainsbury's Bank could be liable to Mr E. He proposed that the bank credit Mr E's account with £969.50 (being the amount Mr E sought to claim and the sum it had previously attempted to recover via chargeback), backdated to the date he felt it should have accepted Mr E's claim. The investigator further recommended that Sainsbury's Bank rework Mr E's credit card account to reflect this, paying interest on any resultant credit owed to Mr E.

Mr E indicated he'd be willing to accept the investigator's findings and recommendation. But Sainsbury's Bank didn't agree. It maintained its position that section 75 didn't apply to Mr E's transaction, citing excerpts from A's terms and conditions and suggesting that they made the seller and not A responsible for the ticket listing. Sainsbury's Bank further pointed to the same terms and conditions to explain why its chargeback claim was unsuccessful. In addition, Sainsbury's Bank queried the amount proposed in resolution, noting that in buying from a secondary ticketing platform, Mr E was unlikely to have been able to purchase at face value the tickets he did get.

### **What I've provisionally 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.

Does section 75 apply to Mr E's transaction?

Under section 75 there are several criteria that must be met for a successful claim against the creditor (or lender), which include that:

- the agreement with the lender is a debtor-creditor-supplier agreement falling within section 12(b) or (c) of the Consumer Credit Act 1974 ("CCA")
- the agreement with the lender is not a non-commercial agreement
- the debtor has, in relation to a transaction financed by the agreement, a claim against the supplier in respect of a misrepresentation or breach of contract
- that claim relates to any single item to which the supplier has attached a cash price of more than £100 but not more than £30,000

Here, Mr E's transaction involved more than one activity. There was the supply of goods by the seller (the tickets), and the supply of services (operating the secondary ticketing platform) by A. I accept, for the purposes of this decision, that A didn't contract to supply the tickets itself.

There's no question whether the overall transaction or its individual elements were financed by the credit agreement between Mr E and Sainsbury's Bank. Mr E's credit agreement with Sainsbury's Bank is not a non-commercial agreement; that is, it's not a consumer credit agreement not made by Sainsbury's Bank in the course of its business. And looking at the breakdown of the transaction, even accounting for the currency

exchange rate the services supplied (and charged for) by A fall within the financial limits of section 75.

So the remaining questions here are a) whether the agreement with Sainsbury's Bank meets the definition of a debtor-creditor-supplier agreement falling within section 12(b) or (c) of the CCA, and b) whether Mr E has, in relation to the arrangements with A, a claim against A in respect of a misrepresentation or breach of contract.

Section 12(b) of the CCA says that a debtor-creditor-supplier agreement is a regulated consumer credit agreement being "a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier". And section 11(1)(b) says that "a restricted-use credit agreement is a regulated consumer credit agreement to finance a transaction between the debtor and a person (the "supplier") other than the creditor".

As I understand it, Mr E's agreement with Sainsbury's Bank is a regulated consumer credit agreement. It was made by Sainsbury's Bank in the knowledge that Mr E might use the credit card with suppliers such as A who accept it. As I've already said, A was supplying its services to Mr E. It charged him handling fees of more than €320 for its services. That the card was also used to finance a transaction with the seller of the tickets doesn't render the rest of the arrangements invalid for the purposes of Section 12(b) or Section 11(1)(b).

Does Mr E have a claim in misrepresentation or breach of contract?

Our investigator's assessment focused on whether there had been a misrepresentation over the way the tickets were described in the listing. He considered that A was responsible for the way ticket information – the venue, date, time and seating information – was displayed to potential buyers, and that where such information was incorrect, that could amount to a misrepresentation. While not expressed in precisely those terms, that was the essence of Mr E's claim.

It's important to note that it's not necessary, for the mere purposes of engaging section 75, that the debtor's claim is successful. It should go without saying that not all claims that are pursued are successful; for example, they may be defended on their merits or dismissed on procedural grounds. Sainsbury's Bank's response to Mr E's claim is not, in my view, sufficient to demonstrate that Mr E has no claim. The fact that A's terms and conditions require a seller to warrant ownership and the accuracy of any description of the tickets doesn't mean a claim cannot be brought against A (and by extension, Sainsbury's Bank) on the basis of the ticket information shown on A's website.

The information A displayed on its website about the tickets amounts to a statement of fact about the location of the tickets. Mr E states that he was induced to buy the tickets because of the statement that they were 'Golden Circle' and the expectation of their location. He argues that the tickets were in fact not for the Golden Circle and that the description as such was misleading. So I'm satisfied that he has a claim, albeit one that might be open to a range of defences.

There is a further point to consider, which is that a section 75 claim is not limited to misrepresentation. There is also the possibility of a claim in breach of contract. While what Mr E describes might be viewed as a misrepresentation argument, that doesn't exclude a breach of contract claim.

*As I've already noted, A was supplying Mr E with a service. Under the Consumer Rights Act 2015 ("CRA"), A's contract with Mr E is to be treated as including a term that it would perform its service with reasonable care and skill<sup>1</sup>. Explanatory notes to the CRA say that it is generally accepted that relevant to whether a person has met the standard of reasonable care and skill are industry standards or codes of practice.*

*I further note that Chapter 5 of the CRA contains specific provisions dealing with secondary ticketing. These provisions have the effect of placing an obligation on both the seller and the operator of the secondary ticketing facility to ensure that (among other things) the buyer has the information they need to identify where their seat or standing area is located within the venue. Where applicable that information includes the row and seat number.*

*Failure to meet this obligation might not amount to a breach of contract in itself. But depending on the surrounding circumstances it might point towards a failure to perform the secondary ticketing service with due care and skill. So Mr E might also have a claim in breach of contract.*

*Taking all of this into account, I'm currently minded to find that the necessary elements of section 75 are met, such that Mr E does have a misrepresentation or breach of contract claim against Sainsbury's Bank.*

*Did Sainsbury's Bank have due regard for its potential liability to Mr E under section 75?*

*In light of my previous findings I'm minded to say that in concluding section 75 didn't apply, Sainsbury's Bank didn't have due regard for its potential liability. I accept the bank was entitled to take a view on this aspect, but I don't think in doing so it had sufficient regard for the relevant test or the specific circumstances at play in this particular case.*

*However, as I've noted above, the fact a claim (or claims) can be brought doesn't mean such claims would be successful. Rather than direct Sainsbury's Bank to reconsider the claim as if section 75 applied, I think at this stage it would be more helpful to suggest the way in which I think matters are best resolved.*

*I've thought about how Sainsbury's Bank might have responded had it concluded that section 75 did apply. It's reasonable to say the bank's response would have been along the lines it referenced in extracts from A's terms and conditions. That was, after all, the basis for its decision not to pursue the chargeback claim and for its responses to our investigator's assessment.*

*The extracts Sainsbury's Bank reproduced say:*

*"Section 1.2 Ticketing Exchange. [A] provides a service that allows members who want to buy tickets ("Buyers") to find members who want to sell tickets ("Sellers"). [A] does not take title to the underlying ticket (to the extent such title exists), and the actual transactions are between the Buyers and Sellers.*

*Section 2.4 Listing. To sell tickets, a Seller lists the tickets in the Site database. As part of the listing process, the Seller assigns a price to the tickets and provides information including but not limited to the event, date, section, seat, and row, and sale end date, all in accordance with the process outlined in the help pages... You also grant Us a non-exclusive, transferable, worldwide, paid-up, royalty-free right and license to reproduce, modify, adapt, publish and display on the Site and on the sites of our*

---

<sup>1</sup> see section 49(1) of the Consumer Rights Act 2015

*marketing partners your descriptions of tickets listed for sale. This is so we can promote the sale of tickets and items that You list for sale. You further represent that you have purchased or been issued the ticket(s) or have a right to purchase or be issued the ticket(s) prior to listing such ticket(s) for sale.*

*Section 2.13 Ticket Information. Event dates, times, venues, and subject matter, which are listed on the ticket, may change. It is up to the Buyer to verify the most recent changes.*

*Section 3.1 Accurate Descriptions. For all tickets You list as the Seller, you warrant that Your descriptions of the tickets accurately detail and describe the tickets offered for sale. You also warrant that you own the tickets."*

*I'm not persuaded by Sainsbury's Bank's arguments that the wording of A's terms and conditions removes any liability it might have for the accuracy of the information it publishes on its platform. The terms cited do place obligations on the seller in relation to the ticket description. But they also create a term under which A appears to be entitled to modify the description given. That's not really consistent with A merely being the conduit by which the seller can list their tickets without A having any responsibility for the description. It also doesn't address the obligation Chapter 5 of the CRA imposes on A as the operator of the secondary ticketing facility.*

*Even if A were able to rely on the seller's warrant in respect of the accuracy of their description of the tickets in defence of the misrepresentation (for example, that it was an innocent misrepresentation), the relevant legislation gives the court discretion to award damages in lieu of rescission. So there would still be a liability for Mr E's losses.*

*In considering the service that A was providing to Mr E, I'm minded to find that it extended beyond merely providing the mechanism by which he could acquire tickets from a third party seller. A's service included, as the investigator noted, its buyer guarantee. This says:*

*"2.15 [A] Guarantee. When You purchase tickets on [A], [A] guarantees that You will receive the tickets You paid for in time for the event. In the rare instance that a problem arises and the original ticket Seller does not provide You with the tickets listed for sale, [A] will, in its discretion, review comparably priced tickets and offer You replacement tickets at no additional cost, or [A] will issue You a refund for the cost of the tickets. "Comparably priced" replacement tickets are determined by [A] in its discretion...*

*...2.16 Claims under the [A] Guarantee. If You receive tickets from the Seller that are not the tickets you ordered, or, are tickets that are invalid and are not honoured at the venue, or, in the case where we did not tell you about a restriction on the ticket which could result in you being prevented from using the ticket, we strongly advise you to Contact Us to report the issue. Issues relating to the tickets which are apparent prior to the event must be reported within 10 working days after receiving the tickets, otherwise this will no longer be covered by the [A] Guarantee..."*

*The tickets were described by the seller and on A's platform as 'Golden Circle'. The tickets Mr E received didn't bear that description. They did, however, specify the block, row and seat number. Mr E was immediately able to identify these as a part of the venue some way distant from the stage and from where the commonly understood description of 'Golden Circle' tickets would usually be situated. Having drawn this to A's attention immediately on receipt as required by the terms and conditions, he might reasonably*

*have expected A to have adopted a similar approach to the problem and take appropriate action.*

*Instead, over several communications A persisted in making the argument that the tickets were consistent with the description. Setting aside the factual information of the seat numbers and the fact they weren't on the listing as required by Chapter 5 of the CRA, A appears to have adopted an inaccurate interpretation of the wording on the ticket, causing Mr E further frustration. Poor customer service alone doesn't necessarily amount to a failure to exercise due care and skill in performing a service, but I can quite understand why Mr E was unhappy with the responses he received from A even after pointing out how the tickets he received were different from the selling description.*

*I can also see how a failure to apply the guarantee provisions might amount to a breach of contract by A. Although the relevant term affords A discretion in considering what might be 'comparably priced' tickets, the courts have said that discretionary power in a contract must be exercised reasonably, without being irrational, arbitrary or capricious. A's proposal that Mr E keep the tickets he did receive and have a refund of their face value (not their cost) doesn't meet either of the remedies set out in its guarantee.*

*Based on this, I think it's reasonable to conclude that Sainsbury's Bank does have a liability to Mr E in respect of his claim, and that it didn't have due regard for this when it declined to reimburse him. That's the case even if the original contractual responsibility to supply the tickets didn't sit with A.*

*Because of this, I haven't gone further into the question of Sainsbury's Bank's decision not to progress the chargeback claim, although for similar reasons as I've set out here, I'm not sure A's response was sufficient to overcome the claim. In any event, I'm minded to direct Sainsbury's Bank to pay Mr E compensation to resolve his complaint.*

### **Putting things right**

*I don't think this means Sainsbury's Bank is responsible for paying the full sum Mr E paid for the tickets; he did, after all, attend the concert. He has had some value. I recognise the bank's argument that it is by no means certain that Mr E would have been able to buy the tickets he received at face value. He might have had to pay rather more if the concert was in demand, as it appears to have been. But I also recognise the power of the court to award damages for the reduced value or 'loss of enjoyment' that Mr E suffered in paying for an experience he didn't receive as planned.*

*I consider that an appropriate remedy should recognise Sainsbury's Bank's potential liability for what appears to be a misrepresentation or breach of contract (and could possibly be both). It should consider the impairment of Mr E's enjoyment of the concert in comparison to the price he paid for the anticipated 'Golden Circle' experience. It should also take into account that this was a special occasion Mr E had been planning and looking forward to for several months. And it should reflect the distress and inconvenience he's experienced as a result of Sainsbury's Bank's handling of his claim.*

*While I'm conscious our investigator sought to incorporate interest, rework the account and backdate payment as part of his proposed remedy, I'm not minded to complicate things unnecessarily. Having carefully considered what Mr E has said in this respect, I propose that Sainsbury's Bank pays him a total of £1,200 as a fair way of settling matters and to avoid the need for any further action."*

I invited both parties to let me have any further comments they wished to make in response to my intended conclusions.

## Responses to my provisional decision

Mr E accepted my intended conclusions and had no further comments to make. But Sainsbury's Bank didn't agree. It said:

- A's terms and conditions made clear that it supplied the platform and wasn't responsible for the description of the tickets. This was a misrepresentation on the seller's part for which the bank wasn't responsible even if A changed the description, as there was no debtor-creditor-supplier arrangement with the seller
- A's terms and conditions explained that it may intervene and assist if a supplier does misrepresent. A offered a resolution and therefore fulfilled its obligations in line with the terms and conditions. In its view, a breach of contract and or misrepresentation by A hadn't been evidenced. A's guarantee wasn't binding either and it clearly stated that any applicable remedy will be provided at [A's] discretion.
- The proposed costs were unreasonable; there were handling and booking fees to consider and section 75 doesn't have a provision for compensation. If [the proposal] was considering consequential losses, it didn't explained what they were or provide a breakdown. Mr E was taking his wife abroad for their anniversary, therefore he was always going to incur travel costs

## 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.

In my provisional decision I set out in some detail the reasons why section 75 applied to the transaction, and the extent to which the CRA brought into the contract terms that A had most likely breached. Sainsbury's Bank's response makes no comment on why that analysis of section 75 is incorrect, or why I should disregard what is clearly relevant legislation.

The bank hasn't provided any persuasive reasoning or evidence in support of its argument that A's guarantee is not binding. The guarantee is part of the terms and conditions of A's agreement with Mr E and creates a secondary obligation on A either to provide 'comparably priced' replacement tickets or a refund in the event of a failure on the seller's part. A's ability to exercise discretion is over which of these alternatives it offers, and what is meant by 'comparably priced'. It doesn't mean that A could decide entirely for itself whether or not to meet its obligation.

Sainsbury's Bank has referenced A's proposal suggesting that this fulfilled its obligation. I've previously noted that the options A did propose weren't in line with the guarantee. But even if they were, it's of note that A's proposal was only made after extensive efforts on Mr E's part and was immediately followed by four further emails from A in which it returned to its original assertion that Mr E had been supplied with the correct tickets. In the circumstances I don't believe it would be right to say that the evidence supports that A met its obligation.

That leaves the question of the proposed redress. Sainsbury's Bank has said that the proposal is unreasonable, noting the overall transaction included handling and booking fees. It has also made comments regarding compensation provisions of section 75 and references to consequential loss.

In my provisional decision I explained that my proposed award reflected various aspects that I considered it would be appropriate to take into account when determining a fair and reasonable sum for the bank to pay in settlement. Not all of the €1,434.56 (including the

fees) that Mr E paid is being reimbursed. A proportion of that proposal reflects the distress and inconvenience Mr E was caused by the way the bank handled his claim. The bank should bear this in mind when contemplating the substance of the claim itself.

I remind the bank that our money awards aren't limited to financial loss<sup>2</sup>, and that we make them under statutory powers derived from the Financial Services and Markets Act 2000<sup>3</sup>, rather than under section 75 of the CCA.

Section 75 provides the mechanism by which Mr E is able to bring a claim against Sainsbury's Bank. Mr E's claim, whether in breach of contract or in misrepresentation, permits him to seek (among other things) damages in restitution<sup>4</sup>. The damages referenced here – the reduced value of the tickets he did receive and the impairment of his enjoyment – flow directly from A's obligations to him, rather than being consequential (or indirect) loss. While Mr E's travel costs might be an example of a consequential loss, I can't see why Sainsbury's Bank has highlighted them, given that I haven't proposed the bank covers these.

Having carefully considered Sainsbury's Bank's response, I don't find that its submissions persuade me to reach a different conclusion from the findings and redress proposal I set out in my provisional decision, and so I adopt them in full into this final decision.

### **My final decision**

My final decision is that I uphold this complaint. To settle it, I order Sainsbury's Bank Plc to pay Mr E £1,200, within 28 days of receiving his acceptance of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 13 November 2023.

Niall Taylor  
**Ombudsman**

---

<sup>2</sup> see DISP 3.7.2R in the Financial Conduct Authority (FCA) Handbook

<sup>3</sup> see section 229 of the Financial Services and Markets Act 2000

<sup>4</sup> see section 54(6) of the Consumer Rights Act 2015