

The complaint

Mrs D complains Sainsbury's Bank Plc have failed to honour a claim she brought under section 75 of the Consumer Credit Act 1974 ("CCA").

What happened

The background to this complaint is well known to all parties, so I will summarise only briefly:

- Mrs D used her Sainsbury's credit card on 10 June 2016 to pay £2,873 to a company I'll call "R", to release her from a timeshare she held with another company, "C", and claim compensation for the mis-sale of the timeshare. The total price of the service was £9,576 and Mrs D paid the remaining balance of £6,703 using cards she or her husband hold, or held, with other banks. The agreement Mrs D signed with R said that R would release her from her timeshare within 12 months of 10 June 2016, or it would provide a full refund.
- Mrs D says R failed to perform the services she had paid it for. She says she remained responsible for her timeshare with C, no compensation claim was made against C, and she didn't receive a refund from R.
- Mr and Mrs D successfully claimed refunds of the amounts they had paid on their other cards, from their respective banks. A section 75 claim was also raised with Sainsbury's in January 2019 on Mrs D's behalf through a claims management company ("CMC"). In this claim, Mrs D sought a refund of the amount she had paid on her Sainsbury's card.
- Sainsbury's didn't agree to uphold Mrs D's section 75 claim. It didn't feel there was enough evidence there had been a breach of contract or misrepresentation by R. Mrs D complained about this decision, but the bank wouldn't change its position, and so the complaint about Sainsbury's decision was referred to this service for an independent assessment. Sainsbury's maintained, in its initial submissions to this service, that it had got its decision about Mrs D's claim correct, but offered £50 compensation for having taken a long time to deal with the matter.

One of our investigators recently looked into the complaint. She issued findings in which she recommended the complaint should be upheld as R had breached its contract with Mrs D, who could hold Sainsbury's liable for this under section 75 of the CCA. So she thought the bank had got its decision wrong and should provide a refund of the amount Mrs D had paid on her Sainsbury's credit card, plus compensatory interest. She thought Sainsbury's offer of £50 compensation in respect of its delays, was fair.

Mrs D accepted the investigator's findings but Sainsbury's did not agree that it should provide a refund.

Although the bank didn't appear to disagree that R had breached its contract with Mrs D or had owed her a refund, it expressed concerns about the involvement of Mrs D's CMC. It noted the CMC had been appointed by R to release Mrs D from her timeshare and were R's

agents. It said it felt the CMC had provided it with false information and that it had made the right decision about Mrs D's claim at the time based on what it had been told. Ultimately, it wouldn't agree to meet the investigator's recommendations and asked for an ombudsman to review the matter.

The case has now 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.

Section 75 of the CCA gives consumers a degree of protection where they pay for goods or services using a credit card. So long as certain technical criteria are met, a consumer can claim against their credit card issuer in respect of breaches of contract, or misrepresentations, by the supplier of the goods or services.

It appears all parties now accept in principle that there was a breach of contract by R for which Sainsbury's would be liable to Mrs D under section 75 of the CCA, so I will not go into great detail on this point.

However, based on the evidence I've seen, R gave a clear guarantee in its agreement with Mrs D that she would be entitled to a full refund if she was not released from her timeshare within 12 months of entering the contract. During its investigation of the claim, Sainsbury's wrote to C, who wrote back to confirm on 14 August 2019 that Mrs D's timeshare was still active. So it is apparent that R did not release Mrs D from her timeshare within the 12 months promised. Mrs D was not refunded by R either, and she will not be now due to the fact that R went into liquidation some time in 2018. She is able to hold Sainsbury's liable for R's breach of contract in failing to release her from the timeshare, and subsequently failing to refund her as promised under the guarantee.

The point of contention in this case stems from the rather unusual context to the claim: that Mrs D's CMC is the company R employed to release Mrs D from her timeshare with C. Sainsbury's enquired with the CMC about this on 15 April 2019, noting that it was "...aware that [the CMC] were contracted by [R] to undertake these relinquishments." The CMC replied to Sainsbury's on 2 May 2019, confirming that it "...wrote to C in 2016 to relinquish the timeshare contract. To date, C have never acknowledged our instructions." Sainsbury's says the CMC provided false information in this letter because it also claimed *not* to have been acting for R's clients, but I think Sainsbury's may have misunderstood the wording of the letter. I think it's apparent that the CMC was admitting having been employed by R to release Mrs D from her timeshare (albeit without success), but denying that it had *also* been employed to take on the compensation claim Mrs D had complained didn't go ahead.

While I can understand why Sainsbury's would have wanted to be careful before making a decision based on the information it had received without further verification, on 14 August 2019 it received confirmation from C that Mrs D's timeshare was still active. At this point there shouldn't have been any doubt that there had been a breach of contract by R and what this meant for Sainsbury's with respect to the section 75 claim.

The bank appears to consider the CMC's involvement with this complaint to be improper given its connection to the non-performance of services which Mrs D brought her section 75 claim about. I'm unable to comment on this, other than to say that I don't think the CMC's involvement means Mrs D ceases to have a valid complaint against Sainsbury's in respect of its handling of her section 75 claim. Ultimately, Mrs D is free to choose whichever person or company she wants to represent her in her complaint against Sainsbury's. If the bank has

concerns about a particular CMC then it would need to pursue these via the appropriate channels.

Because I think Mrs D had a valid section 75 claim, it follows that I don't think Sainsbury's treated her fairly by declining her claim once it had received confirmation from C that she was still in possession of her timeshare. It should treat her as though it had handled her claim fairly, which means it should refund the amount she paid on her Sainsbury's card, along with compensatory interest. I also agree with our investigator that the £50 Sainsbury's has offered for its delays in handling matters is broadly fair in the circumstances, and I say this because she was not having to deal with the claim and subsequent complaint herself, but has had representatives handling matters for her. This will have lessened the impact on Mrs D.

My final decision

For the reasons explained above I uphold Mrs D's complaint and order Sainsbury's Bank Plc to:

- Pay Mrs D £2,873, adding 8% simple interest per year* to this amount calculated from the date it should reasonably have honoured her section 75 claim (14 August 2019), to the date she is reimbursed.
- Pay Mrs D £50 compensation for the impact on her caused by its poor handling of the case, as it has already agreed to do.

*If Sainsbury's Bank Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs D how much it's taken off. It should also give Mrs D a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 15 March 2022.

Will Culley
Ombudsman