

## **The complaint**

Mr T complains that Sainsbury's Bank Plc rejected his claim under section 75 Consumer Credit Act 1974 ("CCA") in respect of a timeshare purchase.

## **What happened**

In February 2018 Mr T and his wife purchased a timeshare while on holiday. A deposit was paid with Mrs T's credit card and the remaining balance of £6,473.47 was paid by Mr T with his Sainsbury's credit card.

Shortly afterwards Mr T says they were unhappy with the purchase and he contacted Sainsburys. He listed a number of concerns and said that they had been pressurised into making the purchase and had been misled. It wrote to him in May 2018 asking for further information. The bank made a chargeback but this was rejected by the merchant. It told the bank that Mr T was made aware he was buying a timeshare product and that the cancellation period was five days. It said the contract explained that no accommodation could be booked until 2019.

Sainsbury's Bank has told this service that it wrote to Mr T on 9 August 2018 with its decision to decline the claim. When Mr T first made his claim Sainsburys credited his account with the disputed sum. However, it didn't recredit it when the claim was declined. Mr T closed his credit card around October 2018, but the bank notified him in August 2019 that he had to pay the disputed sum.

Mr T complained and Sainsburys offered him £150 compensation for its handling of the matter, but it did not consider the claim could be upheld. Mr T brought his complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. However, he considered the compensation should be increased to £300. He believed that the delay in notifying Mr T of the recrediting of the account caused significant distress.

Mr T didn't agree and said that Sainsburys should have questioned the large purchase. He said they had been duped by the timeshare seller.

## **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.

There are three issues I must consider, the chargeback, the section 75 claim and the handling of the re-crediting of Mr T's account.

It may assist if I begin by explaining very briefly how chargebacks work. Chargeback is a process that is provided by the Card Scheme - in this case MasterCard. It allows customers to ask for a transaction to be reversed if there's a problem with the goods or services they've paid for. There's no automatic right to a chargeback. Nor is chargeback a guaranteed method of getting a refund. MasterCard checks the nature of the problem against the

possible chargeback reasons to see whether the claim will be successful. If the bank feels that a claim won't be successful, they don't have to raise a chargeback.

The bank raised a chargeback, but this was rejected and I do not consider it could have done anything more to persuade the merchant's bank to agree to it. It was not in Sainsbury's power to require the merchant's bank to refund the money.

A second option was a refund under section 75 CCA. This offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

For section 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier chain to an agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

There is no dispute that the chain is intact and so I have to consider if there has been a breach of contract or misrepresentation.

A misrepresentation is when a false statement of fact has been made and that false statement of fact induced a consumer to purchase the goods or services. In order to find a misrepresentation has occurred, there must be proof that a false statement of fact has been made and it needs to be decided that that false statement induced the consumer to enter into the agreement.

I have read Mr T's testimony about the events which led to him making the purchase. It is quite possible that high pressure tactics were used, but I have to be clear that there was misrepresentation or a breach of contract. Mr T made his claim in 2018 and at that time the agreement he signed stated that no accommodation could be booked until 2019 so I fear he may have been a little premature in making his claim on those grounds.

As regards the other issues he has said caused him to make the claim I do not have sufficient evidence to allow me to require the bank to make a substantial payment to him. The product may not be suitable for him and he may well have been presented with a rosy and glowing perspective by the sales representative, but that does not of itself amount to misrepresentation. I am not aware of any documentary material which shows there was either misrepresentation or breach of contract.

I note that Mr T thinks Sainsburys should have done something at the time he made the purchase, but it was not obliged to so and the onus is on customers to ensure they wish to make the payment. Once it is made the bank cannot simply stop it.

However, I agree with our investigator that the bank didn't handle the re-crediting of the account as well as it could. It delayed doing so and gave Mr T an expectation that he would not have to pay. That will have caused him distress and inconvenience and I consider compensation of £300 is merited.

### **Putting things right**

The bank should increase the compensation to £300.

**My final decision**

My final decision is that I uphold this complaint, but only to the extent that I direct Sainsbury's Bank Plc to pay £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 18 November 2022.

Ivor Graham  
**Ombudsman**