

The complaint

Mrs D complains that Sainsburys Bank Plc rejected her claim under section 75 of the Consumer Credit Act 1975.

What happened

In August 2020 Mrs D purchased a mattress from a furniture store and paid using her Sainsburys credit card.

The mattress was delivered in October 2020, but Mrs D noticed that it wasn't the same as the one she'd ordered because the fabric was different. Mrs D was unable to resolve matters with the supplier, so she made a claim to Sainsburys under section 75.

Sainsburys asked Mrs D to provide an independent report to show that the material wasn't what she had ordered. Mrs D contacted the manufacturer who confirmed that the mattress wasn't covered in seacell fabric. The manufacturer offered to re-cover the mattress. Mrs D declined the offer as this would have left her without a mattress whilst hers was being re-covered.

Mrs D provided the report to Sainsburys. It contacted the manufacturer and advised Mrs D that the mattress would be replaced.

Mrs D received a replacement mattress, but it was still made from the wrong fabric. Sainsburys asked Mrs D to provide evidence that the fabric wasn't what she had originally ordered. Sainsburys has said that it didn't receive any evidence from Mrs D, so it rejected the section 75 claim. Mrs D referred her complaint to this service and, after the investigator had issued a view not upholding the complaint, provided further evidence to show that the fabric wasn't what she had ordered.

I issued a provisional decision in which I upheld the complaint. I was satisfied that the replacement mattress supplied to Mrs D wasn't covered in the fabric which she'd originally ordered. I concluded that there had been a breach of contract and said that Sainsburys should arrange to collect the mattress and refund the purchase price to Mrs D.

I invited both parties to let me have any further information or arguments they wished to raise.

Mrs D accepted my decision but asked whether she could retain the replacement mattress until she had been able to arrange for a new mattress to be delivered so that she wasn't left without a mattress. She said she would be prepared to arrange for the disposal of the mattress herself.

Sainsburys replied and said it had been told by the merchant that the replacement mattress supplied to Mrs D was the correct fabric. It said it hadn't received any evidence to dispute this. It also said it would find it difficult to collect the mattress from Mrs D and asked whether this service would consider allowing Mrs D to arrange for the mattress to be disposed of, either by collection by a charity or by asking her local council to collect and dispose of 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.

I've considered the further points made by both parties. My decision hasn't changed. Mrs D has been consistent throughout as to the reasons why the fabric wasn't what she ordered. The manufacturer provided incorrect information to Sainsburys when it advised that the fabric was what Mrs D had initially ordered.

Both parties have made comments about the collection/disposal of the mattress. I think there is merit in both parties' positions. I think the fairest resolution would be for Mrs D to arrange disposal of the mattress once she has obtained a new mattress for herself. She can either give the mattress to charity (some charities will collect items such as mattresses for free) or send it to landfill.

Putting things right

To put things right Sainsburys Bank Plc must refund the purchase price of the mattress and pay 8% simple interest on the amount refunded from the date of payment to the date of settlement.

My final decision

My final decision is that I uphold the complaint. Sainsburys Bank Plc must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 9 October 2022.

Emma Davy
Ombudsman