

## The complaint

Mrs B complains about the way Sainsbury's Bank Plc dealt with a claim she made relating to the sale of a TV that she bought using her credit card.

## What happened

Mrs B bought a TV from an online retailer C. It was described as coming with a three-year warranty. However, after the TV was delivered Mrs B discovered the warranty ran for only one year. She contacted C to return the TV, on the basis it wasn't correctly described. C confirmed the sales listing was wrong and told Mrs B it could be returned for a refund. But C didn't do anything to facilitate the return. So Mrs B asked Sainsbury's Bank to step in as she'd used her credit card with the bank to make the purchase.

Sainsbury's Bank asked Mrs B to complete a form with a view to attempting to raise a chargeback of the card payment. She duly did so, providing the background and evidence from C that she should be entitled to a refund. Sainsbury's Bank sought further documents from Mrs B to evidence the warranty description, which she didn't have. The bank said it couldn't assist further and Mrs B raised a formal complaint about its handling of her claim.

In response Sainsbury's Bank said it had been unable to help because the correspondence from C was insufficient in the absence of documentation relating to the warranty and the agreement between Mrs B and C. The bank added that it had been unable to deal with the claim under the connected lender liability provisions of section 75 of the Consumer Credit Act ("section 75"). It said this was because of the involvement of a third party P in the way payment was processed. Sainsbury's Bank said it could have explained this sooner and acknowledged its handling of the claim had led to delays. It paid Mrs B £100 in recognition.

Our investigator didn't think Sainsbury's Bank had dealt with matters fairly, and that it hadn't correctly interpreted P's role in matters. He considered the bank was liable for the representations made by C in respect of the warranty, and that she was entitled to reject the TV as a result. The investigator proposed that Sainsbury's Bank collect the TV from Mrs B, refund – with interest – what she paid for it and pay her £50 further in compensation.

Sainsbury's Bank didn't agree to this proposal, instead proposing an alternative resolution under which it would effectively 'make good' the shortfall in the anticipated warranty term by covering the costs of any repairs needed in the three years since purchase. Mrs B didn't find this proposal acceptable, and the matter was passed to me for review and determination.

On an initial review of the case papers, I felt the resolution our investigator proposed was a fair way to resolve the dispute. I invited Sainsbury's Bank to reconsider its position before making a final determination. Sainsbury's Bank came back with a further counter-proposal. It said it was unable to collect the TV from Mrs B, but she would be in a better position than she should be if she were to receive a full refund and keep the TV. The bank asked if Mrs B was willing to sell the TV for a reasonable price and obtain a receipt for the sale. It would then refund Mrs B the difference between what she'd paid and the sale price achieved.

Mrs B didn't find this alternative proposal acceptable either. She pointed out the additional difficulties this would cause her, and questioned why Sainsbury's Bank didn't have the resource to collect the TV.

As the parties haven't been able to reach an agreed settlement, I've proceeded with my formal determination.

### **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.

Sainsbury's Bank says it originally considered Mrs B's claim under chargeback. I can see the bank asked her to supply documentary evidence to support her statement of facts, saying that the MasterCard scheme rules meant it couldn't progress the claim without this. Having examined the relevant chargeback rules, they don't support the position the bank took. There's no requirement in the card scheme rules that prevented Sainsbury's Bank from raising the chargeback on the evidence Mrs B supplied at the outset.

That evidence included correspondence from C that appears to support her claim. I don't share Sainsbury's Bank's view that it was insufficient to demonstrate what she was saying. It confirms that the listing was wrong and that the TV could be returned for a full refund. So it seems entirely possible that C wouldn't have defended the claim had the bank submitted it. And even if it had, such a defence was open to challenge.

I also note that Sainsbury's Bank subsequently agreed that section 75 applied to the transaction and that this gave rise to a potential liability in line with Mrs B's rights as a consumer. The proposals the bank has put forward in response are to a large extent in mitigation of liability, rather than suggesting it has no liability.

Under the Consumer Rights Act 2015, Mrs B's right to reject goods that aren't as described can't have a deduction made for use where she had them only because the retailer didn't collect them. From what I can see Mrs B made efforts to engage with C about rejection and collection, and she did so within the first six months of receiving the TV. That means no deduction can be made for use.

Taking all of this into account, I find that Sainsbury's Bank hasn't treated Mrs B fairly in dealing with her claim. It gave incorrect reasons for declining her section 75 claim and its actions in failing to raise a chargeback in the circumstances have also contributed towards her not recovering her money. I think it only fair that Sainsbury's Bank takes suitable steps to address this, which I'll set out below.

### **Putting things right**

As a starting point, Mrs B was entitled to return the TV and get a full refund of the £347.85 she paid for it. C's evidence acknowledges this position before Mrs B first contacted Sainsbury's Bank in July 2020.

Allowing a reasonable period for the bank to deal with the claim properly, I'm satisfied it should have identified its liability much sooner than it did. The bank has recognised delays in the £100 it has already paid Mrs B, so for the purposes of calculating any interest on the sum Mrs B was due as a refund, I think it's fair to use the 6 November 2020 date our investigator suggested. However, I do think the £100 was a little light in reflecting the frustration and difficulty to which Mrs B has been put in pursuing her claim. Like the investigator, I consider the bank should increase this amount by £50.

That leaves the issue of what to do with the TV. Mrs B has been clear from the outset that she wanted to reject the TV. I can't see she's done anything that's stopped this from happening. I don't see that she should be put to any expense in terms of that collection, or to any further difficulty in efforts to sell the TV on Sainsbury's Bank's behalf simply because the bank says it can't come up with a way of collecting it.

I appreciate the bank's concerns about the possibility of betterment. It can address those concerns by arranging for collection of the TV, either directly or perhaps by instructing a courier. If the bank genuinely cannot find a suitable way of recovering the TV, then it should treat it as abandoned and Mrs B can keep or dispose of the TV as she sees fit. In order not to prolong matters further, on receipt of Mrs B's acceptance of this decision Sainsbury's Bank should promptly inform her whether it intends to collect or abandon the TV.

### **My final decision**

My final decision is that I uphold this complaint. To settle it, Sainsbury's Bank Plc should within 28 days of Mrs B's acceptance of this decision take the following steps:

1. pay Mrs B £347.85, representing the cost of the TV
2. pay interest on the amount in 1. at a rate of 8% simple per year calculated from 6 November 2020 until the date it pays this settlement. If the bank deducts tax from this interest it should provide Mrs B with the appropriate tax deduction certificate, if she requests it, so that she can reclaim any overpayment from His Majesty's Revenue and Customs
3. pay Mrs B £50 (in addition to sums already paid) in recognition of her distress and inconvenience
4. contact Mrs B to tell her whether it will be collecting the TV and arrange a mutually convenient collection arrangement, which should be at no additional cost to Mrs B, or whether it is abandoning any claim it has on the TV. If the bank elects to abandon the TV to Mrs B, it should confirm in writing that it will make no future attempt to recover the TV or any residual value from her

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 19 May 2023.

Niall Taylor  
**Ombudsman**