DRN-3997428

The complaint

Mr W complains that Sainsbury's Bank plc didn't fairly deal with a claim he made under Section 75 (S75) of the Consumer Credit Act 1974 (the 'CCA') in relation to a purchase he made with a supplier.

What happened

Mr W purchased two laptops from a supplier, M, on 22 April 2022 for £4,808. He said they arrived on 29 April. He said the delivery driver knocked on his door and left the parcel on the doorstep. Mr W noticed the box was crushed and looked saturated, like it had been dropped in a puddle. He said he called the delivery driver back and refused the delivery due to the electrical and expensive nature of the products. He said he wasn't willing to accept the shipment and the delivery driver took the parcel back to his van.

Mr W said he contacted M which said it would investigate the situation. M rejected Mr W's refund request with no reason given. Mr W said he then brought the issue to Sainsbury's on 1 June 2022 and made a S75 claim on the purchase.

At first Sainsbury's advised that the parcel was 'rescheduled for delivery' and it put the claim on hold for 30 days so the parcel could be re-delivered back to him or he could provide proof that he returned the parcel to M. Mr W said the tracking information showed that he rejected the parcel on 29 April and despite the tracking showing rescheduled for delivery he had not received the damage parcel nor any replacement from M. Mr W said he has a right to refuse delivery if the delivery is damaged.

After waiting some time to hear back from Sainsbury's Mr W raised a complaint with Sainsbury's.

In its final response Sainsbury's said Mr W hadn't provided any evidence there was a breach of contract or misrepresentation by M, or that the goods were damaged as Mr W had suggested. It also said Mr W hadn't provided any evidence that he had rejected the goods and returned them to the delivery driver. Sainsbury's also said it hadn't received any evidence from M that it had received the rejected goods. Mr W wasn't satisfied and brought his complaint to this service.

Our investigator said she didn’t think Sainsbury’s had dealt with Mr W’s dispute unfairly. Mr W didn’t agree and asked for a decision from an ombudsman.

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 realise this will come as a disappointment to Mr W but having done so I won’t be asking Sainsburys to do anything further.

In deciding what I believe to be fair and reasonable in all the circumstances, I'm required to consider relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.

S75 of the CCA is relevant here. It protects consumers who buy goods and services on credit. It says, in certain circumstances, the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier. To be able to uphold Mr W's complaint about Sainsbury's, I must be satisfied there's been a breach of contract or misrepresentation by M, and that Sainsbury's response to Mr W's claim under S75 wasn't fair or reasonable. But I'm not determining the outcome of Mr W's claim under S75 as that is for a court to decide.

From what Mr W has said he ordered two laptops. He says they were delivered but he did not accept the delivery because the package looked crushed and was saturated in one corner and was wet to touch, so he gave them back to the delivery driver to return them. Mr W says the delivery driver took the package away. Non receipt of items would be considered a breach of contract

In its response to this service Sainsbury's said it spoke with M in order to confirm whether the laptops were received by it. M confirmed it had not received the laptops. M also provided Sainsbury's with a copy of the 'Proof of Delivery' document that it took from the delivery company's website using Mr W's tracking reference. Sainsbury's said this document is sent to the customer by the delivery company as a proof of delivery for the shipment. It said the document confirms that the package was delivered at 9.15am on 29 April 2022 to Mr W's house.

Sainsbury's said that the document does not however provide any evidence the package was rejected by the customer and returned to the delivery driver. It said Mr W provided a screenshot in his initial S75 request from the delivery company which has the tracking information as 'Returning to Sender'. Sainsbury's said M provided it with a copy of this tracking information in further detail which they again obtained using Mr W's tracking reference. It said under the 'Returning to Sender' tracking details, the screenshot confirms this was logged at 4.26pm in Canada. It said the tracking information says 'the receiver refused the package that requires a Package Release Code'.

Sainsbury's went on to say Mr W claims he refused the package when it was delivered, at 9.15am UK time. It said given the discrepancies between Mr W's account and the tracking information provided by the delivery company, it did not consider the tracking information provided by Mr W to be sufficient evidence the package was rejected and returned to M. Sainsbury's said Mr W also has not provided evidence that he returned the goods to the delivery driver. It said its understanding is that delivery drivers will not accept packages returned in this way. As per the delivery company's website, in order to return the goods, the customer must take the item to be returned to a drop point near the customer's home or schedule a collection.

Mr W provided this service with a copy of the screenshot saying 'reschedule of delivery confirmed' then 'returning to sender'. The tracking reference number matches that provided on the invoice for the laptops. So I'm satisfied that the delivery on the screenshot is connected to this particular parcel. But there is no further update as to whether the delivery reached either Mr W or M.

Mr W said the delivery company website states he could not refuse delivery for damaged items as this is not the correct process and he should have accepted the items and returned them to a parcel shop and advised them there he wanted to reject delivery. Mr W said this is not what happens and that whatever the standard text on the delivery website says, is not proof that he hasn't returned the items. He said he did not take legal ownership of the items in the first place, and the actual tracking information for the parcel M sent to him, shows he refused the delivery and the package was returning to sender.

I've looked on the website for the delivery company. I note that if a customer has a problem with a parcel they can file a claim. In the section ‘managing your claim’ there is a flagged note which says if customers submit a damage claim they must retain the damaged item, packaging and all contents until the claim is resolved.

When the evidence is incomplete, inconclusive, or contradictory, I must make a decision based on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances. I'm not disputing Mr W's testimony and I can fully understand his frustration at not receiving the laptops he’s paid for. As I mentioned above my role is to determine whether Sainsbury's acted fairly in how it handled Mr W's S75 claim.

M provided evidence that it believed supported its case, namely evidence that showed the goods were delivered to the address that Mr W provided, and evidence from the delivery company showing the time and date the items were delivered. It also says it has no record of receiving the laptops back. Mr W has provided a screenshot tracking the parcel but the tracking data is unclear and Mr W hasn't provided evidence the box was damaged when it was delivered.

For a valid claim to be made, Sainsbury’s would need to have enough evidence to show that there had been a breach of contract, i.e. that the laptops weren’t delivered to Mr W’s address. And in the absence of sufficient evidence to contradict the information provided by M, I can’t fairly conclude that Sainsbury’s should have provided a refund under S75.

I've seen correspondence between Sainsbury's and M and I'm satisfied it investigated the complaint and sought evidence of breach of contract. I understand this will disappoint Mr W but I’m satisfied Sainsbury’s has acted fairly and reasonably when dealing with his claim and I won’t be asking it to do anything further.

We are an informal dispute resolution service so if Mr W chooses not to accept my decision, he is of course free to pursue his complaint through the courts, though this will come with additional cost and risk.

My final decision

My final decision is that I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 30 May 2023.

Maxine Sutton
Ombudsman