

The complaint

Mr M is complaining that he's out of pocket after he contacted Sainsbury's Bank Plc to claim through his car insurance policy after he was involved in a non-fault accident.

What happened

In May 2022 Mr M was involved in a car accident with a third party and his car was damaged. So he contacted the telephone number in his car insurance documents – that was arranged by Sainsbury's – to look to claim for the damage to his car. The claim was subsequently handled by a third-party company – who I shall refer to as A.

Mr M was unhappy with the way A was handling the claim – in particular he said he was out of pocket because an issue with his car's tyre pressure monitoring system (TPMS) wasn't being resolved and he hadn't been refunded for the cost of his car seats which he said he needed to replace. So he raised a complaint with Sainsbury's. Sainsbury's said it had had nothing to do with the claim so it referred the complaint to another company – who I shall refer to as Z – which it said was the insurer. Mr M didn't agree with this as he said he'd had no involvement with Z and said his complaint was about Sainsbury's. So he referred his complaint to this Service.

Our investigator partially upheld this complaint. He explained that, when Mr M first called to report the incident, he was immediately put through to A who handled the call on Sainsbury's behalf. He said A then arranged to put him into an agreement known as credit hire and repair – whereby the repairs are carried out and a hire car provided on credit. A then looks to recover this cost directly from the third party's insurer.

However the investigator explained that this arrangement is separate to the insurance policy, which meant Mr M didn't claim on his policy. The investigator also explained that this Service didn't have jurisdiction to consider A's actions in handling Mr M's claim as said the type of agreement Mr M entered into with A wasn't a regulated agreement.

However, the investigator did explain that we could consider the actions of Sainsbury's. He said Sainsbury's were a broker, but also administered the policy on behalf of Z – who he explained were the insurer. He said Sainsbury's should have ensured that Mr M was given a choice as to whether he wanted to claim on his insurance policy or to use the credit hire facilities A provided. He explained that Sainsbury's had outsourced the handling of claim calls to A. But he thought A was essentially acting on behalf of Sainsbury's in handling the initial call A had with Mr M when he called to report the claim. So the investigator thought Sainsbury's could be held responsible for anything A did or didn't do during the call – including not giving Mr M enough information to make an informed choice, which he didn't think A had done.

The investigator didn't think Mr M would have chosen to enter into the credit hire arrangement had he been given a clear choice. And he thought Mr M had lost out as a result. He said there had been a lot of confusion around what service each company was providing, due to no fault of Mr M. He also said Mr M had lost the option of using this Service by entering into an unregulated credit hire arrangement as opposed to claiming through his

insurance policy. So he thought Sainsbury's should pay Mr M £350 in compensation for the distress and inconvenience Mr M had suffered from not being given the choice to use his insurance policy.

However the investigator didn't think Sainsbury's was responsible for the way A had handled the claim. He said A wasn't acting on Sainsbury's behalf and any concerns relating to A's actions – including the fact Mr M was out of pocket – needed to be directed to A. And he said he couldn't take these issues into consideration.

Mr M didn't agree with the investigator. He raised a number of reasons why, but in summary he said the following:

- He disagreed with the investigator that Z was the insurer. He maintained that his contract was with Sainsbury's and he said that there wasn't anything to show that it *wasn't* the insurer.
- He said he was out of pocket and he maintained that, as his insurer, Sainsbury's should cover these costs.
- He said £350 didn't come close to reflecting the level of distress and inconvenience this whole matter had caused him. He said he's spent hours having to manage the claim and get the matter resolved. He considered a fairer level of compensation to be around £1,000-£1,500.

Sainsbury's also disagreed with the investigator. It maintained that it didn't have anything to do with this claim so didn't agree it needed to pay compensation for anything that may have gone wrong in the call.

As neither party agreed with the investigator, the complaint's 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.

I intend to uphold this complaint for largely the same reasons as the investigator.

I should first set out that I acknowledge I've summarised Mr M's complaint in a lot less detail than he has presented it. Mr M has raised a number of reasons about why he's unhappy about what's happened regarding this matter. He's also provided detailed and extensive submissions about why he disagreed with the investigator's opinion and also why he thinks Sainsbury's is liable for all his losses. However, in this decision, I haven't commented on each and every point he's raised but, instead I've focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy about this, but it simply reflects the informal nature of this service. I assure Mr M, however, that I have read and considered everything he's provided.

I also need to make clear that, in this decision, I'm only considering Sainsbury's liabilities towards Mr M. I'm aware that there have been a number of other business's involved in this incident – particularly A and Z. But, apart from where A or Z could reasonably be held to be agents of Sainsbury's, I'm not able to comment on anything A or Z did or did not do.

I think there's a confusion from all parties about what's happened and who is responsible for what in regard to the performance of Mr M's insurance contract. So I shall set this out first. Mr M took out the insurance policy through Sainsbury's – a broker. I note Mr M has set out that he believes Sainsbury's is the insurer, but it is not. All the policy documentation, clearly sets out that the insurer is Z. Critically, in this regard, I note the following:

- The Certificate of Insurance is a document that an insurer issues and verifies that the policyholder has the minimum level of cover for their vehicle as required by law. And it sets out who can drive the car and what type of driving (such as social, domestic and pleasure cover and also whether it will be used for business purposes). Crucially this document must be issued by the insurer. Mr M's Certificate of Insurance is issued and signed by Z.
- The schedule of insurance specifically says the policy was underwritten by Z. It also confirms that it was arranged & administered by Sainsbury's.
- Z has also confirmed to this Service that it is the insurer of the policy.

I note Mr M has provided a lot of documentation and comments about why he considers Sainsbury's to be his insurer. And I do not dispute that he was clearly under the impression that Sainsbury's was his insurer, but it does not mean that it was. I've considered all of his comments in detail and reflected upon them, but for the reasons I've set out above, Sainsbury's was clearly the broker and administered the policy on Z's behalf.

I also note that Sainsbury's says it has had no involvement in this matter, so it has queried why it's being held responsible. But, as I said above, the schedule of insurance sets out that it's Sainsbury's responsibility to administer the policy. I've also reviewed the policy's terms and conditions which set out:

"Making a claim

Once you have called, we will:

- *register your claim;*
- *provide you with a claim number to quote in future correspondence;*
- *talk you through the process, including confirming what you're covered for;*
- *arrange next steps."*

The terms define "we" as Sainsbury's. So, when a policyholder – i.e. Mr M in this instance – calls to make a claim, Sainsbury's was required to register the claim, explain what they were covered for and arrange to move the claim forward. However, Sainsbury's has explained its claims line was administered by A. I don't dispute that, but, as I said above, Sainsbury's was ultimately required under the contract to perform this function – albeit on behalf of Z. And A was, in essence, acting as an appointed representative of Sainsbury's in the handling of the reporting of the claim. In this case, Mr M reasonably thought he was calling Sainsbury's to report the claim. So I think A would be considered to have been acting as an agent of Sainsbury's when handling this call.

It's important to set out that, when Mr M first looked to contact Sainsbury's following the accident, he was doing so with the intention to claim for the damage to his car through his insurance policy. However, following the call, A took over the handling of the claim by entering Mr M into a "credit hire" agreement. This was an arrangement outside of the terms of the insurance policy – i.e. no claim was ever made under the insurance policy and Z has confirmed this. Mr M says he wasn't told this was happening and says he wouldn't have entered into such an agreement and also wanted to claim through his insurance policy. And he says he's out of pocket as a result of this. I'm persuaded by what Mr M has said here.

A is not a party to this complaint, so I cannot comment on the way it has handled Mr M's claim. We also do not have jurisdiction over the provision of credit hire services, as these are not 'regulated activities' covered by our dispute resolution rules. Mr M is adamant that he believes A was acting on Sainsbury's behalf in the handling of his claim. But it wasn't. As I said above, Mr M entered into a credit hire agreement with A. This is an entirely separate contract to his insurance policy. He didn't claim through his insurance policy, so neither

Sainsbury's or Z is liable for anything A did or did not do as part of the credit hire arrangement – including repairing Mr M's car and its acts of recovering losses from the third party.

We can, however, look at how a consumer entered into such an arrangement instead of claiming through their insurance policy. In short, I need to think about whether Mr M was given enough information to make an informed choice about whether he wanted to claim through his insurance policy or to have the repairs carried out through the use of credit hire and repair. In particular I would have expected, as a minimum, that Mr M would have been told the following:

- In entering into a credit hire agreement, he wasn't claiming through his insurance policy, but he had the option to do so. And he should have been given a clear choice about whether he wanted to claim through his insurance policy instead.
- The credit hire provider was a separate business to the insurer.
- He may be liable for any outlay – including hire charges – if they're unable to recover the costs from the third party.
- As he was stepping outside of his regulated insurance policy he may not be able to refer any complaint he may have to this Service.

In short, I would have expected Mr M to have had explained to him what the benefits and risks of using credit hire were, as well as explaining his rights under the insurance policy. In addition to this, I would expect there to have been a consideration of whether Mr M had a need for credit hire. In particular, it should have considered whether Mr M needed to be provided with a like for like replacement car, taking into account what he was entitled to under his own policy.

Sainsbury's hasn't given us a copy of the call recording for when Mr M reported the claim, so I have to base my decision on what I think's most likely to have happened. I think it's clear from Mr M's actions and testimony that he didn't understand the agreement he was entering into. And, on balance, I think he was of the genuine belief and understanding that it was his insurer, or at the very least the agent of his insurer, who was dealing with his claim. I haven't seen anything to show that he was informed of all the potential pit falls of having his claimed handled through credit hire services or that he was given sufficient information to make a clear and informed choice.

So I now need to think whether Mr M has lost out because of what went wrong and, if so, to what extent I think Sainsbury's is required to compensate him for his losses. But I should reiterate again, that I can only consider any upset or losses that Sainsbury's (or any actions carried out by a separate business acting on Sainsbury's behalf) have caused – i.e. losses that are a direct consequence of him not being given an informed choice.

As I said above, I'm persuaded by what Mr M has told us that he wouldn't have chosen to enter into a credit facility arrangement, such as the one, he entered into with A. But it doesn't automatically follow that Sainsbury's is liable for all losses that Mr M may have suffered as a result of entering into the agreement with A. In thinking about this, I've asked the following questions:

1. Is the loss a direct result of what went wrong and, if so;
2. Is it reasonably foreseeable that such a loss would flow from this?

In essence, Mr M says he's lost out because he hasn't been refunded for the cost of his car seats and also he had a continual issue with the TPMS. He's also recently set out that issues arose in the latest MOT his car had. But, I don't think I can fairly say that it would be reasonably foreseeable that, the passing of claim to credit hire, may have the effect that a

repair may not be carried out correctly – i.e. the issues with the MOT and TPMS. Ultimately, I think these losses arise from the way A has handled the credit hire agreement as opposed to the way the first call was handled. So I can't say Sainsbury's is liable for these losses.

However, while I don't think Sainsbury's is liable for the way the car was repaired, I do think it's liable for other losses. Mr M has set out that he's required to replace his car seats after an accident and he's unhappy he hasn't had the cost of the seats paid to him. I've thought about whether this situation would be different had he claimed through his insurance policy and I think it would have, as the terms of the policy say:

“Child car seats

If you have a child car seat fitted to your car and your car is involved in an accident, damaged by fire or theft or is stolen and not recovered, your insurer will cover you for the cost of replacing the child car seat with a new one of a similar standard, even if there is no apparent damage.”

This means that, had Mr M claimed through his insurance policy, he would have received the cost of his car seats at the start – i.e. he wouldn't be out of pocket. As I think Mr M would have claimed on his policy if he'd been given an informed choice, I think he's lost out here and he's out of pocket as a result of the way the first claim call was handled. So, unless it can show that Mr M has already received this money from A, I think Sainsbury's should refund this cost. However, I also think Sainsbury's can require Mr M to assist it to recover this cost from the third party's insurer if needed.

Finally, I think Mr M has suffered a fair amount of distress and inconvenience as a result of what's happened. I do think a large amount of this distress stems from the way A has handled the claim, which Sainsbury's isn't liable for. That said, Mr M has lost out in not being given sufficient choice as to whether to use his insurance policy. This has resulted in a lot of confusion and him being out of pocket. He's also felt he had the need to communicate extensively to resolve this matter. The investigator recommended that Sainsbury's paid £350 in compensation, which is in line with what I would have awarded. So I think it's fair.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Sainsbury's Bank Plc to do the following to put things right:

1. Settle Mr M's claim for the car seats as if he'd claimed on his car insurance policy. It should pay 8% simple interest on this amount from the date of loss until he gets it back or the date Mr M received the funds as part of his claim through A, whichever comes first*. Sainsbury's can require Mr M to assist it to recover this cost from the third party's insurer; and
2. Pay Mr M £350 in compensation for the distress and inconvenience he's suffered as a result of not being given an informed choice as to whether to use his car insurance policy to claim for his losses.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 October 2023.

Guy Mitchell
Ombudsman