

The complaint

Ms R complains that Sainsburys Bank Plc has not met its obligations in regard to a transaction she made on her credit card to purchase timeshare relinquishment services.

What happened

In May 2021 Ms R's representatives say she paid on her credit card a total of £6500 to a company I'll call 'Firm A' to get her out of a timeshare product she had. Firm A's contract said that if it didn't get her out of her timeshare within twelve months it would fully refund her. After twelve months having not received a refund or confirmation of being out of her timeshare contract Ms R wanted to complain. Her representatives say Firm A is no longer trading so she took her complaint to Sainsburys.

Sainsburys asked Ms R's representatives for more information repeatedly so it could consider her dispute under a claim under Section 75 of the Consumer Credit Act 1974. No such information was forthcoming, so Sainsburys didn't refund her. Still unhappy she brought her complaint to this Service.

Our Investigator considered the matter and felt that Sainsburys hadn't treated Ms R fairly and concluded twice over two assessments that Sainsburys should refund Ms R in full. But Sainsburys didn't agree so this decision comes 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.

There is no dispute here regarding the processing of the transactions themselves that Ms R made in May 2021. Accordingly I can now move on to considering how Sainsburys treated Ms R in her dispute with Firm A.

could Sainsburys challenge the transaction through a chargeback?

In certain circumstances, when a cardholder has a dispute about a transaction(s), as Ms R does here, Sainsburys can attempt to go through the chargeback process. Chargeback isn't a right, but this service does consider it good practice to raise a chargeback, if within the time limits and if there is a reasonable prospect of success. I don't think Sainsburys could've challenged the payments on the basis Ms R didn't properly authorise the transactions, given what I've already set out.

Within the card scheme rules there are time limits set out for when chargebacks can be raised by card providers. I note here that Ms R was in contact with Sainsburys in July 2022 which was both within the 540 'long-stop' time limit and 120 days from the expected date of delivery. I say this because the end date for either confirmation of exiting the timeshare or making the refund under the contract term of full refund if not exited within twelve months was twelve months after the transaction, namely May 2022. So had Sainsburys treated her fairly it could have raised the correct chargeback in time considering the evidence here.

Sainsburys clearly didn't consider chargeback here. It makes no persuasive mention of considering it in its final response letter to Ms R, nor does it do so in its submission to this service. Considering chargeback is both good practice and this services position, oft repeated to all card providers, that when disputes are raised about suppliers by card holders that card providers should consider both chargeback and Section 75. It seems clear Sainsburys didn't follow our stated approach of good practice here for reasons unclear. I've considered the scheme rules in force at the time, namely the Mastercard rules. Under the chargeback code relating to 'goods or services not provided' the rules make clear that the chargeback can be raised when the date for provision has passed (applicable here), and or when it becomes clear the good or service isn't going to be provided when for example the trader has gone out of business (Ms R says Firm A had gone out of business). It goes on to say at the first raising of the chargeback no supporting documentation is required. So it seems clear that the chargeback could have been raised at the point Sainsburys received the dispute from Ms R.

Sainsburys arguments around chargeback include the following. It says Ms R specifically spoke about Section 75. This is far from persuasive. This is because firstly Sainsburys knows its good practice to consider chargeback in such circumstances. And secondly in the case of a successful chargeback taking place Firm A or the card scheme would have borne the cost of the transaction whereas under a successful Section 75 claim it would be Sainsburys that bore the cost. So it's in Sainsburys financial interest to consider chargebacks wherever possible.

Sainsburys says the information it received in July was very limited and doesn't satisfy the Mastercard chargeback guide. As I've said the guide makes clear no supporting documentation is needed. Furthermore the letter from Ms R's representatives makes clear that Firm A are no longer trading and cannot provide the service sold. Which is enough to satisfy the chargeback reason I've pointed to earlier in this decision. It goes on to say the timeshare remains 'unterminated' which is clearly the service required. So I think Sainsburys arguments here about not having enough to raise a chargeback are far from persuasive considering what it had received within the time limits of the scheme for chargeback and the chargeback rules applicable.

The fact that Sainsburys could and should have raised a chargeback is clarified by its own comments:

"At the beginning of the claim we only had the letter from (Ms R's representatives), contract with (Firm A) stating that the fees paid were for the services of nullification of a timeshare where it states that the expected timeframe for this to be completed would be no longer than 12 months and that (Firm A) will offer a full refund should the ownership not be nullified within the above stated time period providing the client complied with the terms of the contract."

This statement makes clear that Sainsburys had a wealth of information upon which it had ample to fulfil the Mastercard rules regarding what was needed to raise a chargeback. Not only do I consider Sainsburys to have acted unfairly in not raising a chargeback I find that its defence of this position was equally unfair.

I'm satisfied on balance had Sainsburys raised the chargeback it would have been successful. Ms R paid for a service she didn't receive, and she didn't receive the refund contracted therein. It also seems likely that Firm A was no longer trading by then, so no defence to the chargeback would have been raised by it. And even in the unlikely event that a defence was raised, the facts are clear cut to my mind, and I'd have expected Sainsbury to

pursue the chargeback vociferously to its conclusion, where I'm satisfied on balance it would have been successful in recouping Ms R's funds.

And as Sainsburys didn't follow good practice or our oft repeated position of it being good practice to pursue chargebacks, and such a chargeback is now impossible due to being out of time, it is fair for Sainsburys to refund these transactions to Ms R. Because had it treated her fairly originally I'm satisfied the chargeback would have been successful and Ms R would have been refunded. And as it treated her unfairly she's lost out on these funds and the use of them. So I uphold this complaint it should redress this loss.

For completeness I've not considered Section 75 here in any detail as this complaint has been upheld on chargeback. Nevertheless it is of note that to my mind there is a clear breach of contract here. So I think it likely had I considered Section 75 I could have upheld Ms R's complaint on this also.

In summary I'm satisfied that Sainsburys treated Ms R unfairly by not raising a chargeback on receipt of Ms R's representatives' letter to it in July 2022. Had it done so I'm satisfied on balance Ms R's funds would have been recouped. So Sainsburys should correct this unfairness by refunding Ms R these funds. Its arguments on the matter are far from persuasive.

Putting things right

So it is my decision that Sainsburys Bank Plc should pay a total £6500 to Ms R plus 8% interest simple from the date of its final response letter to Ms R's representatives until it settles this dispute.

My final decision

I uphold this complaint against Sainsburys Bank Plc for the reasons set out above. Once it has put things right (as described above) it has nothing further to do on this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 12 February 2024.

Rod Glyn-Thomas
Ombudsman