

The complaint

Mr B is unhappy with Sainsbury's Bank Plc's response to a complaint about the outcome of claims he made under Section 75 of the Consumer Credit Act 1974 ('S75').

What happened

Mr B says his van broke down around March 2022 and was towed to a garage I'll refer to as 'X'.

X carried out various inspections and repairs to fix a gear selection issue. As part of these repairs, X said it found cross contamination of 'hydraulic and clutch fluid and swarf'.

While repairs were undertaken, the van was transported to another garage, which I'll refer to as 'Y', for some specific work to be completed. This included a clutch recalibration, clutch bleed, coolant top up and a diesel particulate filter regeneration. The van was then returned to X.

In May 2022 X told Mr B the van was ready for collection. The invoice total was £4,999.85 and Mr B paid on his Sainsbury's credit card.

Unfortunately, Mr B then says the van later broke down again and was towed to Y. Mr B says Y told him X had used incorrect oil in the van, which was what had caused the breakdown. Mr B paid £813.22 to repair the issue including replacing the hydraulic pump in October 2022.

Mr B also says Y separately charged him £392.59 for a new battery, which he says the van didn't need.

Both Y's invoices were also paid using his Sainsbury's credit card.

Mr B got in touch with Sainsbury's and raised S75 claims for all three transactions.

Sainsbury's gathered evidence and then explained to Mr B that all the claims had been declined. Mr B was unhappy with this and complained.

In August 2023, Sainsbury's issued its final response. This said, in summary, that there was no clear evidence who put the incorrect oil in Mr B's van or when this happened. So it said it was right to decline the claims under S75. But, Sainsbury's did say it had caused delays while looking into the S75 claims, and it offered £75 to reflect this.

Mr B then referred the complaint to our service. He reiterated that he thought X put the wrong oil in the van when it completed the initial work which led to the hydraulic pump failing. And he still thought Y put in a battery that the van didn't need.

Our investigator issued an opinion. She said, in summary, that she thought there was a lack of evidence to show how any contamination to the oil happened. And she didn't think Y had made an error when it replaced the battery.

Mr B disagreed. In summary, he said Y had confirmed that X put the wrong oil in the van. He said he'd provided photos and a video which proved this. And he said there was no mention of the 'oil codes' that he'd been invoiced for.

As Mr B disagreed, the complaint has 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.

Having done so, I don't think this complaint should be upheld. I'll explain why.

I should start by explaining to Mr B and Sainsbury's that I'm going to focus my decision on what I think are the key facts and evidence. Mr B has written at some length about this complaint and I know the strength of his feelings about it. I want to reassure both parties that I've carefully considered everything said and I've thought about all of what both parties provided.

But I may not comment on every specific point raised or every individual piece of evidence. Where I haven't mentioned something, this isn't because I haven't thought about it nor that I consider it unimportant. This just reflects the informal nature of our service.

Mr B complains about claims made under S75. So, S75 is relevant to this complaint. S75 explains, under certain circumstances, that the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

The first thing to consider here is whether Mr B had a valid claim under S75.

For a claim to be valid, there needed to be a debtor-creditor-supplier ('DCS') agreement in place. Here, there are some discrepancies on the invoices and there's a little confusion around some of the dates involved. But ultimately, I'm satisfied the work from both X and Y was carried out on Mr B's van. And I'm satisfied the amounts due under the invoices were paid to X and Y by Mr B on his Sainsbury's credit card. So, it follows I'm satisfied valid DCS agreements were in place.

There are also financial limits that apply to a S75 claim. A single item must cost over £100 but not more than £30,000. I'm satisfied in this case that the 'single items' can be classed as the work done under the three invoices from X and Y. I'm satisfied all of these invoices fall within the financial limits.

So, I'm satisfied Mr B had valid claims under S75. So, what I need to consider is whether Sainsbury's acted fairly when it declined those claims.

The Consumer Rights Act 2015 is also relevant to this complaint. This implied a term into the contracts with X and Y that services would be carried out with 'reasonable skill and care'. If they weren't, I would consider this a breach of contract.

I think there are two main questions I need to answer in this case. Firstly, did X or Y put incorrect oil in the van, or do anything else around May 2022 that would mean they acted without reasonable skill and care and/or caused the later breakdown? And, secondly, did Y act with reasonable skill and care when it installed a new battery?

I'll consider the issue with the oil first and any reason for the later failure. There isn't much reference to the oil being replaced in the invoices and other documents I've seen from the time. On an invoice from May 2022 from X, I can see "GEAR OIL 75W8" is listed, but no other details are given. On an invoice X noted:

"found clutch and hydraulic fluid cross contaminating"

Given the lack of other evidence from the time around this specific issue, I've considered the later information from when the van broke down again.

On an invoice from Y from October 2022 I can see:

"replenished gearbox oil"

From a 'health check' around the same time from Y:

"gearbox hydraulic pump at fault"

"vehicle has had previous work"

I've also looked at the photos Mr B provided. But I don't agree these show X or Y used the incorrect oil, or caused the van to break down.

I've also watched the video Mr B sent in. I know he feels strongly that this video shows Y explaining that X are at fault. But I disagree. Someone says *"as you can see, it's the red hydraulic oil"*. But this is all the commentary the video contains. It is only eleven seconds long and I can't see it visually shows any issues. So I'm satisfied this doesn't show X or Y used the incorrect oil, nor does it give the opinion from X that Mr B says it does.

I do appreciate Mr B's point that the van broke down following the work done by X. But I've also considered the fact that this was several months after the first repair, during which the van covered around 3,500 miles. So I don't think this automatically means X did anything wrong.

I know Mr B strongly feels this is a simple case. But, there is a lack of evidence here from both the first set of repairs and the second to explain what or who caused the van to fail for the second time. So, I've gone on to consider what X and Y directly say about the situation.

In an email from October 2022, X gives its opinion on what happened, discussing when it sent the van to Y:

"They (Y) also completed a final check of the vehicle at our request before return (18th May 2022, Invoice attached). Whilst coolant and PAS levels were amended along with some minor advisory notes no other defects/issues were found. This highlights that aside from us being satisfied we have not put Incorrect fluid in the transmission reservoir neither did (Y) report Incorrect fluid In the transmission reservoir at this time. This concurs all was OK as of May 2022."

"Since repair In May you have travelled 3,500 miles without failure. Should the system have been filled with incorrect fluid we do not believe this would have been possible"

Mr B has been adamant that Y found X at fault for the later breakdown and he said Y specifically confirmed that X put the wrong oil in the van, causing the hydraulic pump to fail. But, I've seen testimony from the service manager of Y that directly contradicts this:

“We cannot categorically state where the contamination occurred, weather (sic) by the previous owner or (Mr B), or even the garage. However, it was delivered to us in that state.”

So I haven't seen enough to persuade me that X believes Y caused the issue. And Y denies that it did anything wrong.

In her view, our investigator went into some detail about possible causes for the second breakdown, such as cross contamination of fluids, the work done by garage's X and Y including what they did to the clutch and flywheel and other repairs. And she went into details of the colours of various oils, fluids etc. and what might have happened to these when each garage worked on the van. But I don't think I need to make any specific findings on the technical nature of what *might* have happened.

It's important to reiterate the key questions I'm answering here. I need to decide if X or Y acted without reasonable skill and care and if Sainsbury's fairly declined the S75 claim.

I know how strongly Mr B feels about this issue. And I appreciate he's sent in a lot of testimony, photos and documents. I've reviewed these, along with all of the health checks, invoices and other information from X and Y.

But having reviewed everything provided, I haven't seen enough to persuade me X or Y did anything that caused the later breakdown nor acted without reasonable care and skill when they worked on Mr B's van.

Mr B said in response to the investigator's view that we should supply further information to him about the 'oil codes' from X and gather further information about the technical details of the invoices. But I need to consider the information that would've been reasonably available to Sainsbury's when it made its decision on the S75 claim. So in this specific case, I don't think it would be appropriate for me to now gather further information on Mr B's behalf, and this doesn't change my opinion.

I've then gone on to consider the battery issue. Mr B says the van didn't need a battery and it had no effect.

I've thought about the information from the time. I've seen a 'health check' from Y that explains:

“battery showing signs of poor health, advise new and then test”

Mr B says he later found out the issue was with the starter motor, not the battery. But, this doesn't mean the work was carried out without reasonable skill and care. Frustratingly, repairs can sometimes take multiple stages of eliminating possible causes and issues. I think, based on the very limited information I have, that it's likely Y were attempting a repair in good faith. The end result, while unfortunate, does not point towards Y doing something 'wrong'.

Mr B says he specifically told Y not to fit a new battery to the van, when he was on holiday. But, I haven't seen enough to make me think it's most likely that Y understood Mr B didn't want it to supply and fit a battery but then decided to do it anyway against his wishes.

In summary, I haven't seen enough to make me think it's most likely that a breach of contract or misrepresentation occurred from either X or Y for any of the transactions. It follows that I don't think Sainsbury's did anything wrong when it declined all of Mr B's claims under S75.

I have considered if Sainsbury's should also have raised a chargeback for the three transactions. Potentially, time limits may apply here that meant this wouldn't have been possible. But, either way, I'm satisfied any claim would not have had any reasonable chance of success due to the lack of compelling evidence as I've explained above. So, Sainsbury's doesn't need to take any action on this point.

There isn't a set time limit for a business to deal with a claim under S75. However, Sainsbury's has accepted it caused delays and the service Mr B received fell short of what he could've expected. It offered £75 to reflect this. I think this is fair and reasonable under the circumstances. Sainsbury's confirmed this has already been paid to Mr B. So it doesn't need to take any further action.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 June 2024.

John Bower
Ombudsman