

## **The complaint**

Miss P complains that Sainsbury's Bank Plc ("Sainsbury's") hasn't refunded her money she paid for a holiday cottage rental.

## **What happened**

In August 2023, Miss P used her Sainsbury's credit card to pay £721 to a marketplace type website for the rental of a cottage for a week. She says there were several problems with the cottage when she arrived, including:

- Dog mess in the garden.
- Main entrance stairs were dangerous with several loose top slabs.
- Ramp leading to the front entrance and steps leading to the back garden were slippery.
- Dirtiness throughout the property including dead flies and spiders.
- Kitchen chairs and lounge seats/chairs were dated and uncomfortable.
- Beds were very soft and bouncy which led to a disturbed night's sleep on the first night.
- Lack of kitchen equipment.
- Only two parts of the four slice toaster worked.
- Front door was difficult to open.
- Tile hanging off a wall.
- Cracked walls with plaster hanging off.

Miss P stayed in the cottage on the first night but decided that she couldn't stay for the rest of the week. She called the company from whom she made the booking who offered to send cleaners round, however some of the problems with the cottage required greater attention and she says this would have disrupted her stay.

Miss P asked the website to refund her the money she'd paid. They contacted the owner of the cottage who offered Miss P £200 as a full and final offer. She wasn't happy with this and so made a claim to Sainsbury's under section 75 of the Consumer Credit Act 1974 (s.75).

Sainsbury's said that Miss P hadn't met the necessary criteria for making a s.75 claim. They considered raising a chargeback but didn't proceed with this as they felt it wouldn't have been successful. They told Miss P that the booking that she had paid for was available for her to use. And they said that, as the owner had made an offer of £200, the chargeback condition relating to an adjustment of price hadn't been met.

Miss P didn't agree and referred her complaint to our service. One of our investigators looked at what happened. She said that Miss P likely couldn't make a valid s.75 claim but felt that Sainsbury's didn't act fairly in not raising a chargeback. She said that although the owner had made an offer of Miss P, this didn't mean that Sainsbury's couldn't have taken the matter further as it would have depended on whether the amount offered was reasonable and if there was reasonable evidence that Miss P might be entitled to a greater amount, or a full refund.

Our investigator felt it was likely that a chargeback would have resulted in a higher refund than the owner had offered, bearing in mind the evidence Miss P had sent and her actions in only staying one night, although she also felt that some of the problems with the cottage could have rectified reasonably quickly. And she felt that some of the problems highlighted by Miss P were her opinion rather than being fact. She felt it was likely the card scheme would have agreed that Miss P was entitled to a 50% refund.

Neither Miss P nor Sainsbury's felt this was fair. So, 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.

I'd like to make it clear that my decision isn't about the owner of the cottage, or the website used by Miss P to book the cottage, who aren't financial services providers and don't fall within my remit regarding either chargeback or s.75. My decision is only about whether Sainsbury's acted fairly by not raising a chargeback and by not considering a claim under s.75.

I note Miss P has said that, not only should she get a full refund of her booking, but she should be given compensation for 'loss of earnings/holiday' and travel costs she incurred. These are consequential losses and would potentially be something that could be considered under a s.75 claim (but not a chargeback). So, I've firstly considered how Sainsbury's dealt with the s.75 claim.

#### **s.75**

In short, this allows Miss P to make a like claim against Sainsbury's for breach of contract and/or misrepresentation on the part of the supplier of goods or services. But this can only be made if certain requirements are met. One of those requirements is for a 'debtor-creditor-supplier' agreement to be in place. The easiest way to explain this is by saying that to make a s.75 claim against a credit card provider, the person who owns the credit card account needs to have a claim for breach of contract or misrepresentation against the company which was paid using the credit card.

Here, Miss P paid the marketplace website, not the owner of the cottage. I've looked at the terms and conditions of the website and this makes it clear that there were two contracts agreed. The first is the 'rental' contract, which is between Miss P and the owner of the cottage. The second is the 'booking' contract which is between Miss P and the website.

The website goes on to say:

*'Our obligations to you are limited to those in connection with the Booking Services and (our) Other Services. Accordingly, we accept no liability for any defects or unavailability of Rental Services, the Property or any other problems with your holiday. Your rights under these Booking Terms and the Rental Contract for issues with Rental Services, a Property or your holiday are only against the Owner (unless we have done something wrong in relation to the Booking Services or (our) Other Services which caused that problem). Also, we accept no responsibility for the acts or omissions of third parties who provide Third Party Other Services to you when your contract is with the relevant third party and not ourselves'.*

In my view, this makes it clear that problems with the cottage that Miss P experienced are covered by the contract between her and the cottage owner and that the website isn't liable for these issues.

I appreciate that referral to two, separate contracts on the website might not be as clear as it could have been. And I note that the terms and conditions set out that the owner of the cottage would accurately describe the property and ensure it was clean, properly maintained and in good repair. But this is in reference to the contract between Miss P and the cottage owner and is clearly described as such under the heading 'owner's responsibilities'. This means that those obligations didn't form part of the contract between Miss P and the website. And even though the website describes themselves as 'agents' of the owner of the cottage, that doesn't mean the website took on the responsibility of the owner as well when, as happened here, Miss P agreed to enter into a contract with the website which specifically makes clear that they aren't responsible for any failing by the property owner.

Miss P's card financed the transaction for the booking and she paid the website to do this. The issues that occurred with the cottage relates to the contract Miss P had with the owner of the cottage. As a result, I'm satisfied that the requirements for a debtor-creditor-supplier agreement weren't met due to the contractual inter-relationship of the various parties here. So, the necessary criteria for a successful s.75 claim against Sainsbury's weren't met. It follows therefore that I don't consider that Sainsbury's acted unfairly by declining the s.75 claim.

However, Sainsbury's could have potentially considered raising a chargeback for Miss P. I will now look at this aspect of the complaint.

### *Chargeback*

In certain circumstances, when a cardholder has a dispute about a transaction, as Miss P does here, Sainsbury's (as the card issuer) can attempt to go through the chargeback process.

Chargebacks are decided with reference to the relevant card scheme rules. I consider it to be good practice for a bank to raise a chargeback where the right to do so exists and where there is a reasonable chance of it succeeding.

Here, the relevant chargeback scheme rules were the dispute codes for where services were not as described or defective. The conditions of this dispute code included that Miss P had attempted to resolve the dispute with the merchant (here, the website), that they had refused to adjust the price or issue a credit and that goods and services didn't conform to their description or the merchant didn't honour the terms and conditions of the contract with the cardholder.

It's clear from the fact that Miss P e-mailed the website that she had tried first to resolve her dispute with them. And Miss P provided evidence to Sainsbury's in the form of photographs and descriptions which she said supported her claim that the cottage wasn't as described or was defective. Having seen this, I think Sainsbury's should have attempted a chargeback. I note that Miss P received a financial offer and that the cottage owner offered to clean the cottage. But, given her evidence about the condition of the property and given that she felt the offer made didn't adequately cover what she felt was entitled to, I think Sainsbury's should have considered that there was at least a reasonable prospect of her receiving a further refund bearing in mind she only stayed in the cottage for one night due to her strength of feeling of the matter. I'd add here as well that the fact an offer was made doesn't mean that was the end of the matter – for example what if Miss P was only offered £20 for what had happened?

However, I suspect the chargeback would have been defended anyway bearing in mind the owner made an offer that they had made clear was a full and final one. That would have left Sainsbury's with the option of deciding whether to proceed to arbitration. That is where the position is less clear in my view. The owner had offered to clean the property. And some of the things Miss P was unhappy about were subjective. For example, she has said the beds and chairs were uncomfortable. Judging by the reviews for the cottage on the website, these aren't things that everyone complained about in their feedback, nor were there concerns about the slipperiness of the ramp and steps. As such, I think it's very difficult to know who the card scheme would have found in favour of had Sainsbury's pursued the matter further. So, I don't think it's beyond the realms of possibility that this would have been found as a 50/50 split, as our investigator has said.

### **Putting things right**

Sainsbury's should pay Miss P £360.50 and add 8% simple interest to this each year from 14 November 2023, which was the date they decided not to raise the chargeback, to the date of settlement.

### **My final decision**

For the reasons I've set out above, I partially uphold this complaint. I direct Sainsbury's Bank Plc to carry out the instruction I've set out in the 'putting things right' section of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 27 November 2024.

Daniel Picken  
**Ombudsman**