

## **The complaint**

Mr R complains Sainsbury's Bank Plc has failed to honour a claim he brought under section 75 of the Consumer Credit Act 1974 ("CCA").

## **What happened**

The background to Mr R's complaint, and my provisional findings on it, can be found in the provisional decision I issued on Mr R's case on 22 March 2024, a copy of which is appended to and forms a part of this final decision.

In brief, I said I was minded to decide that Mr R's complaint should be upheld as I thought Sainsbury's Bank hadn't treated him fairly by declining his claim under section 75 of the CCA. I reasoned that Mr R had been entitled under the provisions of the Consumer Rights Act 2015 ("CRA") to reject a new sofa which had defects, and had not been required to accept a repair from the retailer. Because he had part-paid for the sofa using his Sainsbury's Bank credit card, and due to the provisions of section 75, he could seek a remedy from the bank. I set out my reasoning in more detail in the appended provisional decision.

To put things right, I said I was minded to decide the bank should refund the price of the sofa plus compensatory interest, and make arrangements with Mr R for the return of the sofa to the retailer (or otherwise dispose of it) at no cost to him. I considered an amount of £150 compensation the bank had offered in respect of customer service issues was broadly fair and I wouldn't require it to pay more than this.

I then asked both parties to the complaint to let me have any further submissions they wanted me to consider. Both Mr R and Sainsbury's Bank were largely in agreement with the provisional decision, but had some comments.

Mr R said that he had been of the understanding that he needed to make a separate claim or complaint for misrepresentation in relation to a point he'd made about the retailer's failure to tell him that the sofa hadn't been tested to seat a man of his weight. He said he had made enquiries with the bank about beginning that process but hadn't got around to it yet due to ill health.

Sainsbury's Bank had some comments relating to the disposal of the sofa. It said that in its experience it would be quicker and easier if Mr R were to take the lead on selling or having the sofa collected, as he would have more local knowledge. It said that if Mr R sold the sofa it would want to deduct this from his refund, but it would pay for any collection costs.

I asked that the bank's comments be relayed to Mr R, and I now understand Mr R is intending to donate the sofa to a charity.

The case has been returned to me to make a final decision.

## **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.

Because both parties were in broad agreement with the provisional decision, this final decision is something of a formality and my findings remain the same as they were in my provisional decision, for the same reasons.

However, I do need to consider the comments and developments since issuing the provisional decision.

I understand Mr R has commented because he was not expecting me to make reference in my provisional decision to a misrepresentation point he had thought he would need to make a separate claim for.

In my provisional decision I limited myself to noting that Mr R had referred to omissions rather than false statements made by the retailer, and that omissions didn't generally amount to misrepresentations but that silence, in some circumstances, could amount to misrepresentation. I made no findings in my provisional decision specifically on whether the retailer misrepresented the sofa as having been tested to seat a man of Mr R's weight. I didn't think it was necessary to do so as I thought Mr R had a valid claim for breach of contract, and the redress for that would be essentially the same as if I had found he had bought the sofa as a result of a misrepresentation by the retailer.

It is of course up to Mr R if he wishes to pursue a separate claim in relation to this – although I would observe there may not be much point in doing so now as he will already have received redress as a result of this decision.

Both parties have put forward some suggestions or comments regarding the disposal of the sofa. I don't want to limit their options so I will not make overly specific directions in my decision on this point. However, donating the sofa to a charity sounds like a sensible idea – I'm aware many charities will collect furniture for no charge.

Sainsbury's Bank has said it wants to deduct any proceeds of sale from the refund it gives Mr R, if he sells the sofa. I think that's a reasonable approach, as it avoids a situation where Mr R ends up in a better position financially than before he bought the sofa, which wouldn't be reasonable. I am not sure if Sainsbury's Bank is intending to require proof of disposal of the sofa before providing any refund, but this would be a normal and reasonable request, so I'd recommend Mr R obtains a receipt or some other proof that the sofa is no longer in his possession, to avoid potential problems.

### **My final decision**

For the reasons explained above, and in my appended provisional decision, I uphold Mr R's complaint and direct Sainsbury's Bank Plc to take the following actions:

- A) Pay Mr R £2,490, this being the price he paid for the sofa. The CRA allows for a deduction to be made for the use a person has had of goods which have been rejected. I do not think it would be reasonable to make such a deduction in this case as Mr R has been trying to reject the goods since November 2022.
- B) Pay 8% simple interest per year\* on the amount in A), calculated from the date Sainsbury's Bank wrote to Mr R declining his section 75 claim, to the date the refund is paid to him.
- C) Make arrangements with Mr R for the sofa to be returned to M or otherwise disposed of, at no cost to him. If Mr R sells the sofa Sainsbury's Bank can deduct the proceeds

of sale from the amount calculated at the end of steps A) and B).

D) Pay Mr R £150 compensation, to the extent that it hasn't already done so.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 3 May 2024.

Will Culley  
**Ombudsman**

## **COPY OF PROVISIONAL DECISION**

*I've considered the relevant information about this complaint.*

*Having done so, I've reached different conclusions to our investigator, so I need to give all parties to the complaint an opportunity to provide further submissions before I make my decision final.*

*I'll look at any more comments and evidence that I get by 5 April 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.*

### **The complaint**

*Mr R complains Sainsbury's Bank Plc has failed to honour a claim he brought under section 75 of the Consumer Credit Act 1974 ("CCA").*

### **What happened**

*Mr R ordered a sofa from a company I'll call "M" on 18 April 2022. He paid a £490 deposit on his Sainsbury's Bank credit card on the day, and a balance of £2,000 by bank transfer on 28 July 2022.*

*The sofa was made to order and it was some time before it was delivered to Mr R, on 22 August 2022. It appears the sofa was put together by M's delivery team. On 30 August 2022 Mr R contacted M by email to report a number of defects:*

- One of the legs seemed to be tilted under the sofa, and/or the leg was misaligned.*
- The right armrest had become misshapen and the foam was poor quality.*
- One side of the sofa had dropped relative to the other, and the mechanisms were making creaking noises.*

*In his email Mr R said he thought the leg and possibly an arm needed to be replaced, and asked that M "send someone over to look at it please".*

*Mr R says members of M's delivery team came back two days later and agreed there were problems with the sofa. Mr R understood further action was being taken by M, but the next evidence of something happening was on 25 October 2022, when someone called to arrange an appointment. A technician visited on 8 November 2022. There was a lack of clarity on whether he had been instructed by M or the sofa manufacturer. In any event, in his report the technician made the following findings:*

- The foot on the front left hand side was out of alignment.*
- The foam padding in left hand arm was very soft and an internal mechanism could be felt through the foam.*
- Although one side appeared lower, this appeared normal for this particular sofa, which had a recliner on one side and a fixed seat on the other.*

*Mr R says he was chasing M for a copy of the report, and by 16 November 2022 he was complaining about the slow pace that things were proceeding at. By 18 November 2022 in emails to M he was stating that he now wanted a refund for the sofa.*

*It appears M had been consulting with the manufacturer in the background, and the manufacturer's opinion was that any issues were minor and easily rectified. On 26 November 2022 M relayed an offer from the manufacturer to fix the leg, add more padding to the arm and refund £180.*

*There was a lot of back and forth between Mr R and M from this point. It's not necessary to go into all the details, however a director of M became involved and Mr R and M reached an impasse: Mr R insisted on rejecting the sofa and that this was his right as a consumer, while M insisted that Mr R had to give it (or the manufacturer) an opportunity to repair the sofa first. Mr R says that the condition of the sofa continued to deteriorate while he was at loggerheads with M.*

*Sainsbury's Bank says it first heard from Mr R on 28 November 2022, with a view to making a claim under section 75 of the CCA. Mr R sent in further information to support his claim in December 2022, and the bank began investigating in earnest from February 2023 and was engaged in communications with both Mr R and M. Mr R complained about how the claim was progressing on 17 March 2023 and then again on 5 April 2023. On 30 May 2023 the bank rejected the section 75 claim on the grounds that Mr R had to accept a repair from M before he could return the sofa for a refund. Mr R complained about this decision but Sainsbury's Bank stood by it. The bank did however offer £150 compensation in respect of customer service failings associated with the section 75 claims process.*

*Dissatisfied with this response, Mr R referred his complaint to the Financial Ombudsman Service for an independent assessment. One of our investigators looked into the matter and reached essentially the same conclusions that the bank had:*

- It didn't seem to be in dispute that there were some issues with the sofa.*
- Mr R had not rejected the sofa within the 30 days allowed under the Consumer Rights Act 2015's "short term right to reject".*
- Because of this, M was entitled to an attempt to repair or replace the sofa first.*

*Because there was a fair offer on the table from M to repair the sofa and refund £180, our investigator didn't think Sainsbury's Bank needed to do anything further to honour its liabilities under section 75. He also considered the £150 offered by the bank was fair compensation for the service Mr R had received.*

*Mr R asked to appeal our investigator's assessment. I think it would be fair to say that Mr R considered that he still had the right to reject at the point he had first tried to exercise it. He also said that, additionally, he thought the sofa had been mis-sold as the salesperson had not advised him that it had not been tested to seat a man of his weight.*

*Ultimately no agreement could be reached, and so the case has been passed to me to decide.*

### ***What I've provisionally 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.*

*Section 75 of the CCA allows a consumer to claim against their credit card issuer, so long as certain conditions are met, in respect of any breach of contract or misrepresentation by a supplier of goods or services they have made a purchase from using the card.*

*In this case, Mr R purchased a sofa from a supplier, M, paying a deposit on his Sainsbury's Bank credit card.*

*I've considered the key technical conditions which need to be met for section 75 to apply – namely that there needs to be a “debtor-creditor-supplier” (“DCS”) agreement in place, and that the claim must relate to an item which has a cash price of more than £100 and no more than £30,000. I'm satisfied that these conditions have been met, so it's necessary next to consider whether there has been a breach of contract or misrepresentation by M, the supplier.*

### Misrepresentation

*In the context of Mr R's case, a misrepresentation would be a false statement of fact or law made by M and which caused Mr R to enter the contract to buy the sofa.*

*Mr R has made two points which are relevant to the question of misrepresentation:*

- *Not being informed that one side of the sofa would look different to the other due to the presence of a power reclining mechanism on one side.*
- *Not being informed that the sofa was not tested to seat a person of his weight.*

*Mr R is referring here to omissions, rather than statements made by M. In general, failing to tell someone something does not amount to misrepresentation. After all, no statement has been made. There are circumstances where silence can amount to misrepresentation, but it hasn't been necessary to analyse this for reasons which should become apparent later on.*

### Breach of contract

*A breach of contract occurs when one party to a contract fails to honour its obligations under the contract. These obligations can come about as a result of the express terms of a contract or as a result of implied terms. Implied terms are terms which are treated as included in the contract, for example as a result of legislation.*

*Mr R's contract with M was a contract for the supply of goods. He was acting as a consumer when he purchased the sofa, meaning the Consumer Rights Act 2015 (“CRA”) applies to the purchase.*

*Under the CRA, in contracts for the supply of goods, a term is implied that goods will be “satisfactory quality”. This means the quality a reasonable person would consider satisfactory, taking into account the description of the goods, the price and any other relevant circumstances. Importantly, aspects of quality under the CRA include the following:*

- *fitness for all the purposes for which goods of that kind are usually supplied*
- *appearance and finish*
- *freedom from minor defects*
- *safety; and*
- *durability*

*It doesn't seem to be in dispute that the sofa Mr R bought was delivered with defects. Mr R reported problems just over a week from delivery, and these were allegedly confirmed two*

*days later, with some defects definitively confirmed when a technician visited on 8 November 2022.*

*Freedom from minor defects is a relevant consideration under the CRA and, although it does seem that the issues with the sofa were quite minor, I note this was a brand new made to order sofa, and it was not inexpensive. I think a reasonable person would consider defects of the kind reported by Mr R to mean the sofa was not satisfactory quality as supplied.*

*This meant M, as the supplier, was in breach of contract.*

#### *Was Mr R entitled to reject the sofa?*

*The CRA prescribes certain remedies where goods are not satisfactory quality. Whether Mr R was entitled to one of these remedies has been the most fiercely-disputed aspect of his case. As such, I think it's worth setting out the relevant parts of the legislation.*

*Section 19(3) of the CRA provides as follows:*

*"If the goods do not conform to the contract because of a breach of any of the terms described in sections 9<sup>1</sup>, 10, 11, 13 and 14, or if they do not conform to the contract under section 16, the consumer's rights (and the provisions about them and when they are available) are—*

- (a) the short-term right to reject (sections 20 and 22);*
- (b) the right to repair or replacement (section 23); and*
- (c) the right to a price reduction or the final right to reject (sections 20 and 24)."*

*Section 22 deals with the time limit for the short-term right to reject and the relevant parts are worded as follows:*

*"(1) A consumer who has the short-term right to reject loses it if the time limit for exercising it passes without the consumer exercising it, unless the trader and the consumer agree that it may be exercised later.*

*...*

*(3) The time limit for exercising the short-term right to reject (unless subsection (4) applies) is the end of 30 days beginning with the first day after these have all happened—*

*(a) ownership or (in the case of a contract for the hire of goods, a hire-purchase agreement or a conditional sales contract) possession of the goods has been transferred to the consumer,*

*(b) the goods have been delivered, and*

*(c) where the contract requires the trader to install the goods or take other action to enable the consumer to use them, the trader has notified the consumer that the action has been taken.*

*...*

*(6) If the consumer requests or agrees to the repair or replacement of goods, the period*

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<sup>1</sup> Section 9 contains the terms relating to "satisfactory quality".

mentioned in subsection (3) or (4) stops running for the length of the waiting period.

(7) If goods supplied by the trader in response to that request or agreement do not conform to the contract, the time limit for exercising the short-term right to reject is then either—

(a) 7 days after the waiting period ends, or

(b) if later, the original time limit for exercising that right, extended by the waiting period.

(8) The waiting period—

(a) begins with the day the consumer requests or agrees to the repair or replacement of the goods, and

(b) ends with the day on which the consumer receives goods supplied by the trader in response to the request or agreement.”

*Section 23 details the right to repair or replacement, and says the following:*

“(1) This section applies if the consumer has the right to repair or replacement (see section 19(3) and (4)).

(2) If the consumer requires the trader to repair or replace the goods, the trader must—

(a) do so within a reasonable time and without significant inconvenience to the consumer, and

(b) bear any necessary costs incurred in doing so (including in particular the cost of any labour, materials or postage).

(3) The consumer cannot require the trader to repair or replace the goods if that remedy (the repair or the replacement)—

(a) is impossible, or

(b) is disproportionate compared to the other of those remedies.

(4) Either of those remedies is disproportionate compared to the other if it imposes costs on the trader which, compared to those imposed by the other, are unreasonable, taking into account—

(a) the value which the goods would have if they conformed to the contract,

(b) the significance of the lack of conformity, and

(c) whether the other remedy could be effected without significant inconvenience to the consumer.

(5) Any question as to what is a reasonable time or significant inconvenience is to be determined taking account of—

(a) the nature of the goods, and

(b) the purpose for which the goods were acquired.

(6) A consumer who requires or agrees to the repair of goods cannot require the trader to



replace them, or exercise the short-term right to reject, without giving the trader a reasonable time to repair them (unless giving the trader that time would cause significant inconvenience to the consumer).

...

(8) In this Chapter, “repair” in relation to goods that do not conform to a contract, means making them conform.”

*Finally, section 24 details the consumer’s right to a price reduction or the final right to reject:*

“

...

(5) A consumer who has the right to a price reduction and the final right to reject may only exercise one (not both), and may only do so in one of these situations—

(a) after one repair or one replacement, the goods do not conform to the contract;

(b) because of section 23(3) the consumer can require neither repair nor replacement of the goods; or

(c) the consumer has required the trader to repair or replace the goods, but the trader is in breach of the requirement of section 23(2)(a) to do so within a reasonable time and without significant inconvenience to the consumer.

(6) There has been a repair or replacement for the purposes of subsection (5)(a) if—

(a) the consumer has requested or agreed to repair or replacement of the goods (whether in relation to one fault or more than one), and

(b) the trader has delivered goods to the consumer, or made goods available to the consumer, in response to the request or agreement.

...”

*Mr R argues that he has always retained the short term right to reject. Mr R first appears to have clearly expressed that he wanted to reject the sofa on 18 November 2022, when he began asking for a full refund. This was clearly more than 30 days after the sofa had been delivered to and assembled at his home, but I have to consider whether the 30 days had stopped running under section 22 (6-8).*

*The CRA says that if Mr R had requested or agreed to a repair or replacement of the sofa, then time is effectively stopped until such time as a repair or replacement has been completed.*

*In his email of 30 August 2022, which was within the 30 day time limit, Mr R asked M to send someone to look at the sofa and said that he thought a leg and possibly an arm needed to be replaced. My interpretation of this email was that he was requesting the sofa be looked at with a view to repairing it, and that this would “stop the clock”. If the clock did not stop at this point, then I think it would have stopped after the delivery team visited two days later – as it seems to have been Mr R’s understanding following this visit that the issues would be reported back to M’s office to resolve.*

*In light of this, I think that on 18 November 2022 it’s likely Mr R’s short term right to reject*

*was still intact and he was able to exercise it and reject the sofa. But even if that isn't right, I think it's likely that he could have exercised his final right to reject in any event, because M had failed to carry out repairs in a reasonable time as per section 23 of the CRA. While I appreciate a supplier may need to liaise with other parties, I don't think taking more than two months to arrange a further visit was reasonable.*

*I can appreciate M, and Sainsbury's Bank, may consider that rejecting the sofa in the circumstances seems somewhat disproportionate, but ultimately Mr R was within his rights to do so. He was entitled to reject the goods and, because of section 75, he can seek an equivalent remedy from Sainsbury's Bank. In rejecting his claim, I think the bank treated him unfairly.*

### Customer Service

*Sainsbury's Bank accepts that the level of service it provided during its investigation of the section 75 claim fell short, and it offered £150 compensation to Mr R to reflect the impact of this. The bank does seem to have experienced delays in dealing with the claim, and occasionally caused more confusion with its interventions than assistance. I think compensation of £150 is broadly fair in the circumstances so I don't intend to require the bank to pay more than this.*

### **Putting things right**

*I'm currently minded to decide that Sainsbury's Bank should take the following actions to resolve Mr R's complaint:*

- E) Pay Mr R £2,490, this being the price he paid for the sofa. The CRA allows for a deduction to be made for the use a person has had of goods which have been rejected. I do not think it would be reasonable to make such a deduction in this case as Mr R has been trying to reject the goods since November 2022.*
- F) Pay 8% simple interest per year\* on the amount in A), calculated from the date Sainsbury's Bank wrote to Mr R declining his section 75 claim, to the date the refund is paid to him.*
- G) Make arrangements with Mr R for the sofa to be returned to M or otherwise disposed of, at no cost to him.*
- H) Pay Mr R £150 compensation, to the extent that it hasn't already done so.*

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

### **My provisional decision**

*For the reasons explained above, I'm currently minded to uphold Mr R's complaint, and direct Sainsbury's Bank Plc to take the actions outlined in the "putting things right" section of this provisional decision.*

*I now invite both parties to the complaint to let me have any further submissions they want me to consider, by 5 April 2024. I will then review the case again.*

Will Culley  
**Ombudsman**