

The complaint

Mr W complains that Sainsburys Bank PLC has treated him unfairly in relation to a transaction on his credit card which paid a website for flights.

What happened

In January 2023 Mr W used his Sainsburys credit card to pay for international flights through a marketplace type website (which I'll call 'TU') for his daughter and a friend which cost £3008.52 (which he's made clear is the transaction he wished to dispute in his correspondence to Sainsburys). Mr W makes clear he wants this money back.

Sainsburys raised a chargeback which TU defended. Based on the defence Sainsburys didn't take the chargeback any further. It also considered Section 75 of the Consumer Credit Act 1974 (CCA for short) but decided that the requisite criteria (Debtor-Creditor-Supplier) for a successful claim hadn't been met. So it didn't refund Mr W this money. So Mr W who remained unhappy, brought his complaint here.

Our Investigator felt Sainsburys didn't have to do anymore. And Mr W remains unhappy and so this complaint comes to me for a 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.

Firstly I should add that across the entirety of the case there has been a distinct lack of clarity as to the facts. Mr W has made very clear he is challenging the payment to TU. In his letter of 04 September 2023 he says "*I now seek reimbursement of my £3008*" which corresponds to the bank statements of Mr W that I've seen which show a transaction on 09 January 2023 to TU for £3008.52. So I have considered this transaction as that which is complained about by Mr W and has been answered by Sainsburys. So I can give Mr W an answer on that.

However Mr W has also provided evidence of a slightly different booking made with a firm I'll call TM. TM is not TU; they are different legal entities and registered at different registered addresses. There is not an agency agreement between them in relation to these transactions. Mr W says they are one and the same-but they are clearly not the same legal entity. They have similar commercial offerings but are not the same. Mr W refers to the original booking being prevented by Covid and "*the belated trip was arranged in early 2023*" which corresponds with the TU booking for flights only.

The separate bookings made with TM and TU are both for London-Helsinki-Tokyo and return. I note that the booking confirmations with TM and TU for the Helsinki-Tokyo and Tokyo-Helsinki legs of the bookings are on the same flights. However I also note that the London-Helsinki flights (and return) are different between the booking confirmations with TU and TM. Mr W says in his letter to this service he refers to being dated 04 September 2023 "*my daughter and her friend made the trip as planned.*" It is not clear which bookings they

travelled on to 'make the trip as planned.' But I've not seen any persuasive evidence of either booking being cancelled. So it is clear that Mr W's daughter and her friend were booked on two separate bookings on the same days for largely similar flights to and from the same destination through different firms with different booking references.

I can also see an email from TM dated 6th February 2023 saying the flights now cost £4799 however this is after Mr W had paid TU £3008.52 on 09 January 2023. So it would seem clear the booking with TU was made prior to being told by TM that the price had changed.

I note that the email address used by both TU and TM is Mr W's daughter's. As Mr W says one booking was made pre-covid (presumably before March 2020) and then carried over, and the other was made in January 2023, it seems possible that Mr W's daughter has mistaken TM for TU, but this is only conjecture on my part. A review of Mr W's daughter's emails should provide clarity on the sequence of events here.

However the simplicity of the situation here is that there are two slightly different bookings departing on the same day for the same destination (and transfer) both with Mr W's daughter as a listed passenger but with two different companies. Whether the TM booking was later cancelled is unclear as is which booking Mr W's daughter and friend actually used to fly. But the TU booking was available for use.

I cannot comment on the TM booking as there is little information available about it. But as I've said I can comment on Mr W's complaint about TU as that's the transaction he's clearly disputing with this service. I hope the comments I've made above brings some clarity to the matter.

chargeback

Card Networks such as Visa and Mastercard have an internal dispute mechanism to resolve disputes between cardholders and merchants called chargeback. This is a voluntary process which this service considers good practice to use. Consumers don't have a right to a chargeback being made and at the final part of the process it is the Card Network who decide the outcome of the chargeback, not the card issuer (Sainsbury's here) nor the Merchant (TU). Chargebacks are also decided entirely on the rules of the scheme and do not consider broader laws and obligations. The chargeback scheme is voluntary scheme, has limited and prescribed chargeback reason codes and doesn't take into consideration wider evidence.

Here Sainsburys raised a chargeback against TU. TU responded with a large amount of evidence showing that it charged £3008.52 and this price had never been changed. It provided evidence that the booking was made in line with Mr W's wishes and that the flights flew. It also provided information showing that the flights were not cancelled, not refundable and as such no refund was available.

Sainsburys considered this and decided there was no longer a reasonable prospect of success with the chargeback so it didn't take the matter further. Having considered the matter I concur with Sainsburys consideration of the chargeback against TU. I see no persuasive reason for TU to make any refund. So Mr D hasn't lost out because Sainsburys didn't pursue the chargeback further.

Section 75

The CCA introduced a regime of connected lender liability under Section 75 that afforded consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "supplier").

However, in order to engage the connected lender liability under Sections 75 one of the pre-requisites is the existence of a relevant debtor-creditor-supplier agreement (often shortened to 'DCS Agreement').

This means that the debtor has a contract with the supplier and the creditor. This means that to be able to make a S75 claim Mr W has to show he has a contract with the creditor Sainsburys (which he does through his credit card account) and with the Supplier TU. But Mr W doesn't have a contract with TU as he wasn't due to fly on the booked flights. And TU's contract defines the contracting parties as *““You” mean all persons named on the booking (including anyone who is added or substituted at a later date) or any of them.”* Mr W wasn't named on the booking. And just because Mr W funded the transaction doesn't make a difference. He wasn't a defined participant in the contract for arranging or supplying these flights. So in no circumstance could a claim made by Mr W to Sainsburys under Section 75 be successful.

So, overall, having considered the matter and everything Mr W has said, I'm not persuaded Sainsburys has to do any more than it already has. So unfortunately for Mr W his complaint does not succeed.

It is possible that Mr W can complain to which ever bank he used to pay TM once he finds that evidence of that payment. But I'm satisfied Sainsburys treated him fairly in relation to his dispute with TU. I appreciate this isn't the decision he wishes to read and I hope email records provide clarity on TM for him so he can take that matter forward if he wishes.

My final decision

For the reasons set out above, I do not uphold the complaint against Sainsburys Bank PLC. It has nothing further to do in respect of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 June 2024.

Rod Glyn-Thomas
Ombudsman