

## **The complaint**

Mr L is unhappy because Sainsburys Bank Plc declined his chargeback claim and his claim under section 75.

## **What happened**

Mr L's daughter booked a wedding venue in 2022 for a wedding to take place on 12 August 2023 and paid a deposit of £1,300 in cash.

Mr L paid the balance of £3,850 on 19 July 2022 using his Sainsburys credit card. The balance wasn't due until 4 weeks before the event, however, Mr L chose to pay early using his credit card, so he had time to pay off the debt.

Mr L's daughter cancelled the wedding on 10 May 2023, around 3 months before it was due to take place.

Mr L contacted the merchant and asked for a refund of £3,850. The merchant refused.

Mr L contacted Sainsburys and raised a chargeback dispute. Sainsburys declined the chargeback but went on to look at the claim under section 75. The section 75 claim was subsequently declined.

Mr L raised a complaint about the outcome of the claim, and about the length of time it had taken Sainsburys to determine the claim.

In its final response Sainsburys said it wasn't able to uphold the section 75 claim because no breach of contract or misrepresentation had been established. Sainsburys acknowledged that there had been delays in the handling of the claim and paid £50 compensation.

Mr L was unhappy with the response and brought his claim to this service.

Our investigator didn't uphold the complaint. He said that Sainsburys decision not to pursue the chargeback was fair because the merchant's evidence in defence of the chargeback meant that the chargeback had no reasonable prospect of success. In relation to the section 75 claim, the investigator said there was no evidence of a breach of contract or a misrepresentation and that the decision by Sainsburys to decline the claim was reasonable in the circumstances.

Mr L didn't agree. He said the contract he'd entered with the merchant wasn't legally binding because it was incorrectly dated and contained contradictory terms.

## **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.

### *Chargeback*

When dealing with chargebacks, banks and providers of credit need to do so within the remit of the rules set by the relevant card scheme.

Chargebacks are a voluntary scheme. The card issuer checks the complaint against the possible chargeback reasons to see what sort of evidence is required and under what timescales. This is so it can decide whether it can make a successful claim for the customer. Card issuers don't have to submit claims and will only do so if they believe they have evidence which will give the claim a reasonable prospect of success. This service expects card issuers to help if they can, but we don't expect them to raise a chargeback if there is little prospect of success.

I've looked at Mr L's request to raise a chargeback to see if Sainsburys acted fairly and reasonably when it declined the chargeback.

I've reviewed all the relevant information, including the contract and the correspondence between Sainsburys and the merchant. Based on what I've seen, the merchant indicated an intention to defend the chargeback on the basis that Mr L was bound by the terms and conditions of the contract. These terms and conditions stated that in the event of cancellation by the customer, no refunds would be given.

In the circumstances, I think the decision by Sainsburys to decline the chargeback claim was fair. The contractual position meant that the chargeback didn't have a reasonable prospect of success.

### *Section 75*

In certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods or a provider of credit if there's been a breach of contract or a misrepresentation. A misrepresentation is an untrue statement of fact which induces a consumer to enter into a contract.

In order to uphold Mr L's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that Sainsburys response to the claim under section 75 wasn't fair or reasonable.

Mr L hasn't said that there's been a breach of contract or a misrepresentation here. But he's made the point that the merchant has received payment in full for hire of the venue and other services which it was no longer required to provide. Mr L has said that any loss of earnings incurred by the merchant were adequately covered by the deposit. Mr L has said that because of the length of notice given of the cancellation (3 months) the merchant wouldn't suffer any losses in respect of staff pay or food and drink. Mr L also said that the length of notice given meant that the merchant had sufficient opportunity to re-advertise the date to alternative customers.

I don't disagree with any of the points Mr L has made. They are arguments which may be raised if the claim were to be pursued in a civil court. However, as I've explained above, section 75 only applies in cases of breach of contract or misrepresentation. In Mr L's case, I cannot see evidence of either.

For the sake of completeness, I've reviewed the contract, focussing on the terms and conditions relating to payment terms and cancellation. Under the heading "payment terms" the contract states that a 25% non-refundable deposit is required on booking. Mr L appears to accept that the deposit he paid (£1300) is non refundable so I won't comment further on it. Under the heading "cancellations" the contract states that in the event of cancellation (by the customer), all monies paid to date are non-refundable.

The terms of the contract are, in my view, clear. In circumstances where the contract is cancelled by Mr L, no refund is due. This is irrespective of when the cancellation is made. The fact that Mr L cancelled 3 months prior to the event doesn't alter the effect of the contractual term. I appreciate that Mr L feels that this is unfair. However, I am not required to apply a fairness test when considering section 75.

Having reviewed the contract, I haven't found any evidence of a breach of contract by the merchant. Nor have I seen evidence that the merchant misrepresented anything. For the reasons I've explained, I don't think Sainsburys acted unfairly or unreasonably when it declined the section 75 claim.

### **My final decision**

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 22 August 2024.

Emma Davy  
**Ombudsman**