

The complaint

Mr W complains that Sainsbury's Bank plc won't refund to him the amount that he's claimed in relation to some flights.

What happened

Mr W used his Sainsbury's Bank credit card in December 2020 to pay £1,284.36 to an airline for some flights. He used the outbound flights but at least one of the return flights was cancelled so he claimed a refund from the airline. It refunded £395.50 to him and he then made a claim to Sainsbury's Bank under section 75 of the Consumer Credit Act 1974. Sainsbury's Bank declined his claim and said that it couldn't accept his claim for a full refund because there was insufficient evidence to show that the merchant had breached its contract.

Mr W complained to Sainsbury's Bank about its response to his claim but it said that it didn't agree that it had made an error with its decision to decline his claim. It said that the onus was on Mr W to provide all off the required information and evidence to support his claim to determine if there had been a breach of contract or misrepresentation by the merchant. Mr W wasn't satisfied with its response so complained to this service.

His complaint was looked at by one of this service's investigators who, having considered everything, didn't think that Sainsbury's Bank had acted fairly in declining Mr W's section 75 claim. She didn't believe that the refund given to Mr W was in line with the airline's refund policy and she didn't think that the customer service was as good as it should have been. She recommended that Sainsbury's Bank should pay Mr W £246.88 to bring the total refund to 50%, with interest, and pay him £75 compensation for the distress and inconvenience caused.

Mr W said that he thought that that was a fair outcome and that he was happy with the investigator's findings. Sainsbury's Bank didn't accept the investigator's recommendation and has asked for this complaint to be considered by an ombudsman. It has responded in detail and says, in summary and amongst other things, that:

- Mr W's claim was declined because no evidence to support a breach of contract has been provided and one service purchased couldn't be used due to the country's red listing which was outside of the airline's control and its responsibility was to refund the unused service as per the agreed terms and conditions and no evidence to support an entitlement for a 50% refund has been supplied by Mr W;
- it isn't correct to assume that the cost of inbound and outbound flights are the same and Mr W would have been made aware at the time of the purchase of those costs;
- Mr W says that he's received an expected top up refund to total 50% from other card providers in relation to other tickets, but no details have been provided to show that that has happened and how it was justified;
- the burden of proof is on Mr W and the investigator's recommendation is changing the burden of proof to the bank which is not how section 75 is designed to work;
- it's not reasonable to assume that the weighting of each flight is 50% as flights are of differing lengths, going through different airspaces with different rules, time zones,

prices etc and the airline is the expert in the industry so, unless there's clear evidence that it's wrong, it would be reasonable as a starting point that it knows how much flights would cost;

- it has reached out to the airline which said that it would be reasonable to deduct the amount refunded from the total and it's done reasonable checks to ensure that the refund provided by the merchant is fair;
- the role of this service is to ensure that Sainsbury's Bank has dealt with the claim fairly and not necessarily to reach the outcome that a court would but to check that it has considered the information fairly and its view is that it has; and
- given the level of interaction between Mr W and the airline, it doesn't consider that it should be liable for any further distress and inconvenience for the time taken to respond to Mr W.

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.

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. To be able to uphold Mr W's complaint about Sainsbury's Bank, I must be satisfied that there's been a breach of contract or misrepresentation by the airline and that Sainsbury's Bank's response to his claim under section 75 wasn't fair or reasonable (but I'm not determining the outcome of Mr W's claim under section 75 as only a court would be able to do that).

Mr W used his Sainsbury's Bank credit card to pay £1,284.36 to the airline for return flights from London to Auckland. Mr W used the outbound flights in December 2020 to fly from London to Dubai and Dubai to Auckland. The return flights were booked to fly from Auckland to Dubai and Dubai to London in March 2021 but the airline cancelled the Dubai to London flight which it said was "*due to operational reasons*". Mr W says that when he was in New Zealand, Dubai was placed on the UK's "*Red List*" so flights from Dubai to London weren't permitted so he had to book alternative flights, on a different route, from New Zealand to London.

Mr W claimed a refund from the airline and it said that the total refundable amount was £395.50. The airline has been asked to provide further information about the cost of each of the flights included in the £1,284.36 but it hasn't done so. I haven't seen any evidence to show that the airline had cancelled the Auckland to Dubai flight and I consider it to be more likely than not that the refund that it offered to Mr W was a refund for the Dubai to London flight that it had cancelled.

Mr W had booked a flight from Auckland to London which went via Dubai but there was no stop-off in Dubai and there was only two and a quarter hours between the arrival time of the flight from Auckland and the departure time of the flight to London. As the airline had cancelled the Dubai to London flight, I consider that the Auckland to Dubai flight was of no use to Mr W and that the airline should also have refunded to him the cost of that flight. I consider that its failure to do so was a breach of contract for which Sainsbury's Bank would be liable under section 75.

Even if I'm wrong about that and the refund of £395.50 from the airline wasn't for the Dubai to London flight, I consider that the airline should have refunded to Mr M the amount that he'd paid in total for the Auckland to London flight and that its failure to do so was a breach of contract for which Sainsbury's Bank would be liable under section 75.

Sainsbury's Bank said in its May 2024 letter to Mr W in which it declined his section 75 claim: *"You have been unable to provide a breakdown of costs for each aspect of the flights. The merchant has advised that the return purchase is at a lesser value than a one-way ticket, they have also provided a breakdown of the refund that was to be provided. We can see the amount refunded was higher than the breakdown, however there is no evidence to show this was not the correct value for the refund"*.

I'm not persuaded that it's likely that the cost would have been £888.86 for the outbound flights and £395.50 for the return flights. In the absence of any evidence to show the cost of each of the flights that were included in the £1,284.36, I consider that it's fair and reasonable to conclude that the cost of the outbound and return flights would each be 50% of the total amount, so £642.18. Of that the airline has refunded £395.50 to Mr W and I consider that it would've been fair and reasonable for Sainsbury's Bank to have refunded the balance of £246.68 to Mr W. I don't consider that it was fair or reasonable for Sainsbury's Bank to have declined Mr W's section 75 claim because the amount paid for the flights that couldn't be used hadn't been specified by the airline and wasn't known by Mr W. I don't consider that Sainsbury's Bank's response to Mr W's section 75 claim was fair or reasonable. I find that it would be fair and reasonable in these circumstances for Sainsbury's Bank to refund £246.68 to Mr W and to pay interest on that amount.

Sainsbury's Bank says that no details have been provided to show that Mr W received payments from other card providers in relation to other tickets. Mr W has now provided evidence to show that he received a payment of £405.76 from another credit card provider and that his wife received a refund of £284.48 for claims arising from the same issue.

Mr W made a section 75 claim to Sainsbury's Bank in June 2023 but it didn't decline his claim until May 2024. Sainsbury's Bank says that given the level of interaction between Mr W and the airline it doesn't consider that it should be liable for any further distress and inconvenience for the time taken to respond to Mr W. I don't consider that it should have taken eleven months for Sainsbury's Bank to have made a decision on Mr W's claim and I agree with the investigator that that wasn't the level of service that Mr W would reasonably have expected. The delay in responding to his claim will have caused distress and inconvenience for Mr W. I find that it would also be fair and reasonable in these circumstances for Sainsbury's Bank to pay £75 to Mr W to compensate him for that distress and inconvenience.

Putting things right

Mr W said that he thought that the investigator's recommendations were a fair outcome and that he was happy with her findings. I find that it would be fair and reasonable for Sainsbury's Bank to take the actions described above and as set out below.

My final decision

My decision is that I uphold Mr W's complaint and I order Sainsbury's Bank plc to:

1. Refund £246.68 to Mr W.
2. Pay interest on that amount at an annual rate of 8% simple from the date that Mr W's section 75 claim was declined to the date of settlement.
3. Pay £75 to Mr W to compensate him for the distress and inconvenience that he was caused.

HM Revenue & Customs requires Sainsbury's Bank to deduct tax from the interest payment referred to above. Sainsbury's Bank must give Mr W a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 March 2025.

Jarrold Hastings
Ombudsman