

The complaint

Ms B complains that Sainsbury's Bank Plc didn't do enough to help her when she told it about a dispute she had with a merchant over goods paid for using her Sainsbury's credit card.

What happened

On 20 February 2023 Ms B's credit card was used to make payment for photography equipment. The purchase was in Ms B's son's name (Mr R) and the total cost of the transaction was £4,456.43. On 28 February 2023 a package was delivered, addressed to Mr R. Inside Ms B and Mr R found confectionary and correspondence for another party. Mr R contacted the merchant (I'll call "X") reporting the issue and providing photographs of the items sent.

Mr R continued to correspond with X before contacting Sainsbury's on Ms B's behalf on 18 May 2023 to see if it could help recover the money paid. Sainsbury's then wrote to Ms B on 19 May 2023 asking her to provide a completed Dispute Declaration Form and all relevant information detailed on this form such as any correspondence between Ms B and X, invoice/sales receipts and any other information she thinks is relevant. Sainsbury's didn't receive a response to this letter and has said it chased a response on 5 June 2023.

On 12 June 2023 Sainsbury's received further information from Ms B, however it was in a format which was difficult to read. Sainsbury's has said it tried to contact Ms B via the telephone but was unable to get through and so it wrote to Ms B again requesting further information. Ms B and Mr R dispute that a call was attempted at this time. In its letter requesting further information Sainsbury's asked for a response by no later than 27 June 2023. Sainsbury's has said it didn't receive a response to this and it was now out of time to raise a chargeback as the deadline was 27 June 2023.

Mr R called Sainsbury's on 4 July 2023 asking if the payment was still in dispute and he was told it was. In addition, Sainsbury's referenced information being received on 29 June 2023, however Mr R was clear that the information he provided was sent on 8/9 June 2023.

Sainsbury's wrote to Ms B in August 2023 explaining that she was out of time for a chargeback, but if further information was received it could consider a claim under s.75 of the Consumer Credit Act 1974 (CCA). Ms B re-supplied the documentation she had previously provided and Sainsbury's said it received this on 30 August 2023. However Sainsbury's concluded the transaction was for business use and the name on the email chain with X (Mr R) is an owner of a limited company. So it didn't think a s.75 CCA claim could be made in these circumstances.

Unhappy with Sainsbury's reply, Ms B referred her complaint to this service. Our investigator considered the complaint but didn't uphold it. She thought that Ms B had failed to provide sufficient evidence to show what had been purchased (including the original sales receipt/invoice) and so the chargeback couldn't be raised within the required timeframe. She also didn't think the s.75 CCA claim would have been successful as she didn't think there was evidence of a breach of contract or misrepresentation. Ms B made a number of points in response and provided evidence to demonstrate what had been purchased. The investigator

considered the information provided but concluded that Ms B hadn't provided this evidence within the time frames set out by the chargeback scheme operator. In addition, she didn't think there was a valid debtor-credit-supplier ("DCS") relationship which is needed for a s.75 CCA claim. Ms B didn't agree with the investigator's findings and so the complaint has been passed to me to consider.

I issued a provisional decision setting out my thoughts and why I was currently minded not to uphold the complaint. In my provisional decision I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

There are two ways Sainsbury's could have attempted to recover the payment for Ms B. This was raising a chargeback or a s.75 CCA claim. I'll address both in turn below.

Chargeback

A chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants, under the relevant card scheme rules. It allows customers to ask for a transaction to be refunded in a number of situations, some common examples being where goods or services aren't provided, where goods or services are defective, or where goods or services aren't as described.

There's no automatic right to a chargeback; the chargeback process doesn't give consumers legal rights; and chargeback is not a guaranteed method of getting a refund because chargebacks may be defended by the merchant. This is because the rules, set out by the card scheme lay down strict conditions which must be satisfied for a chargeback claim to succeed. If a financial business thinks that a claim won't be successful, it doesn't have to raise a chargeback. But where there's a reasonable chance of success, I'd expect a financial business to raise a chargeback.

It's important to note that chargebacks are decided based on the card scheme's rules – in this case Mastercard's – and not the relative merits of the cardholder/merchant dispute. So, it's not for Sainsbury's – or me – to make a finding about the merits of Ms B's dispute with X. Sainsbury's role was to gather the appropriate evidence and follow the rules set out by the relevant scheme provider.

Looking at the Mastercard scheme rules I think "goods and services not as described" seems to be the most applicable reason code in the circumstances Ms B has described. It isn't disputed that items were received, however Ms B argues that what was received wasn't the items which have been purchased. The longest time frame which would be applicable in these circumstances to raise a chargeback was "between 15 and 120 – calendar days from the delivery/ cancellation date". The chargeback rules also require "sufficient detail to enable all parties to understand the dispute".

Sainsbury's has argued that Ms B didn't provide sufficient information and evidence within that time frame to enable it to raise a chargeback. It argued that Ms B waited a significant amount of time to raise the dispute with it and didn't provide sufficient information. Ms B argues that sufficient information was provided in the initial conversation Mr R had with Sainsbury's on 18 May 2023. I have reviewed this call and I'm not satisfied Mr R (on Ms B's behalf) did provide sufficient details to raise the chargeback. In addition, the call handler at Sainsbury's was clear that they were only passing "the basics" to the dispute team. They advised Mr B that he needed to send the completed declaration form and any and all evidence including, any communication and receipts/invoices. The call handler asked Mr R to "give us everything you've got." So I think it's clear at this time that Sainsbury's had stressed the importance to Mr R of providing additional information and evidence.

Sainsbury's has said it sent a declaration form to Ms B the following day (19 May 2023) however by 5 June 2023 it didn't receive a response and so sent a letter chasing the information. Further information was then sent to Sainsbury's which it said was received on

12 June 2023. However, Sainsbury's has argued this information wasn't legible so it still couldn't pursue the chargeback. I can't know why it was illegible. This could have been due to the quality of the documentation provided, the quality of the scanner used when it was received or a combination of both. Ms B and Mr R have emailed a digital copy of the information provided to our service, but this doesn't show me the quality of the documentation which was posted to Sainsbury's. What is clear is that at this time I don't think Sainsbury's had sufficient evidence to raise a claim.

Sainsbury's has argued it attempted to call Ms R to clarify this on 13 June 2023, but it was unable to get through and so it wrote to Ms R to again request further information. Ms R disputes that a call was attempted at this time and has provided a screen shot of her call history for this period which doesn't show the call in question. In addition, she's asked why Sainsbury's failed to leave a voicemail. Sainsbury's has said the call didn't go through, but it has provided call notes which suggest to me that a call was attempted by Sainsbury's. In addition, I think it's possible that if the call didn't go through to Ms B, this would've been why a voicemail wasn't left.

I have reviewed the letter Sainsbury's sent dated 13 June 2023 chasing this information. I think it's fair to conclude that this is largely a generic letter and it doesn't detail that documentation has been received but isn't legible. However, it does list the evidence needed and it states if it doesn't hear back by 27 June 2023 Sainsbury's will assume Ms B no longer wishes to pursue her claim. On balance I think Sainsbury's should have taken steps at this time to explain that the documentation received wasn't legible. Equally though Ms B could have contacted Sainsbury's to confirm this. I note that Mr R did contact Sainsbury's on 4 July 2023 however this was mainly to check the payment was still in dispute and it was after the chargeback time frame had expired.

In any event I don't think the outcome would have been different even if Sainsbury's had specified that the documentation received wasn't legible. I say this because the information provided to Sainsbury's didn't include an invoice or sales receipt. I think this would have been important information that would have been needed for the chargeback – it evidences what was originally purchased and so is key to demonstrating Ms B's argument that she didn't receive what she purchased. Ms B resubmitted the evidence to Sainsbury's at a later date (in a legible format and after the chargeback timeframe had expired) and again the invoice/sales receipt wasn't included in that document. So it seems likely that if Ms B was made aware that the documentation wasn't legible (and if she had replied within the required time frame) she would have submitted the same documentation as she subsequently did and this was unlikely to be sufficient.

There has been some confusion about whether additional information was received by Sainsbury's on 29 June 2023 in relation to this matter. Sainsbury's has made reference to this at a later stage of the complaint, however it is not referenced in its business file or timeline of events and Mr R has not raised that he provided additional information at this time. I asked Sainsbury's for further clarification about this which hasn't been provided. However, I can see Mr R called Sainsbury's on 4 July 2023 to discuss whether or not the payment in dispute was still recorded as being in dispute. During this call, the call handler also referenced that documentation was received on 29 June 2023. However, Mr R queried this as the information he'd provided was in early June 2023 (and as explained above Sainsbury's recorded this as being received on 12 June 2023 and was the illegible documentation). I think if Mr R had provided additional further information which was received by Sainsbury's at the end of June 2023 it's likely he would still remember it by 4 July 2023. So I think it's unlikely further information was sent by Ms B and Mr R at this time. In any event, the date Sainsbury's has said it was received was just after the deadline to raise a chargeback had expired, so even if there had been further information provided it wouldn't have made a difference to the chargeback outcome in this case.

So taking everything into consideration and for the reasons explained above, I don't think Sainsbury's had sufficient information to raise a chargeback within the time limits set out by the scheme operator. The incorrect items were received on 28 February 2023, providing 120 days from this point to raise a chargeback. However, Ms B didn't initially contact Sainsbury's about the dispute until 18 May 2023 and further information wasn't received until 12 June

2023 which Sainsbury's needed to chase to receive. At this point there was a very limited time frame remaining to raise the chargeback by the deadline of 27 June 2023. I accept the request for further information which was sent wasn't specific and didn't detail the information received was illegible. However, I can't see Ms B took any action as a result of this letter. And I think if she had, it's unlikely this would have made a difference as when the documentation was later resent it still didn't include the invoice/ sales receipt to evidence what had been purchased. So I don't think Sainsbury's acted unfairly in not raising the chargeback on Ms B's behalf.

S.75 CCA claim

A s.75 CCA claim was another avenue which could have been explored to recover the funds paid. I can see Sainsbury's did consider this (when it subsequently received documentation it could read) however it concluded that as Mr R was using the items for business purposes and was previously the director of a limited company there was no DCS.

When something goes wrong with goods or services and the payment was made, in part or whole, with certain types of credit, it might be possible to make a s.75 CCA claim. This section of the CCA says that in certain circumstances the borrower under the credit agreement can make a like claim against the credit provider, as they can against the supplier, if there's been a breach of contract or misrepresentation.

In order for s.75 CCA to apply there are a number of criteria which need to be satisfied. One of which is a valid debtor-creditor-supplier (DCS) agreement between the parties. This means that the party who paid for the goods needs to have a contractual relationship with X, as well as the party which provided the credit (in this case Sainsbury's). It's clear the payment took place on Ms B's credit card, but the purchase is in Mr R's name and it's Mr R who contacted X after the purchase when the incorrect goods are delivered. So I think that whilst Ms B provided the means for payment (her credit card), it was Mr R who contracted with X and not Ms B. Therefore, Ms B doesn't have the required debtor-creditor-supplier relationship needed to raise a s.75 CCA claim. Whilst it was unhelpful and potentially confusing for Sainsbury's to conclude Mr R was a director of a company (when Companies House shows he hasn't been one for a number of years), Sainsbury's was right that a s.75 CCA claim couldn't be raised in these circumstances. So I can't say Sainsbury's acted unfairly in reaching the overall outcome that the claim should be declined.

Additional points

I can see Ms B has raised that it's unreasonable that Sainsbury's required documentation over to be sent via the post and that our service should tell it to stop this practice. However, it's for Sainsbury's to decide on how it receives supporting documentation in these matters. In addition, the Financial Ombudsman Service doesn't regulate Sainsbury's (this is the role of the Financial Conduct Authority). And so it's not the role of the Financial Ombudsman Service to tell Sainsbury's to stop a particular practice. I can only look at the individual merits of a complaint and in this complaint I don't think it was unreasonable that Ms B was asked to provide information via the post. I'm also not persuaded that postal delays were the reason why the chargeback couldn't be raised (although I accept Sainsbury's did reference this in his call on 4 July 2023). As explained above, I think delays in referring this matter to Sainsbury's, together with a lack of responsiveness on Ms B's part and failure to provide the sales invoice/ receipt were ultimately the reasons for Ms B being out of time to raise a chargeback.

I appreciate this will be disappointing for Ms B however neither a s.75 or chargeback claim is guaranteed to recover the funds paid. Ms B is still free to continue to try and resolve this matter with X directly.

Ms B disagreed with my decision and made a number of comments in response. I have summarised this below:

- Ms B argues that the information including the invoice/sales receipt was sent to Sainsbury's in early June (received by Sainsbury's on 12 June 2023). In addition, she

says she sent another copy of this information to Sainsbury's on 19 June 2023. She's provided a screenshot to show on Sunday 18 June another tracked letter postage was purchased to be sent to Sainsbury's. The screenshot shows the collection took place from Ms B's address on 19 June 2023.

- Ms B argued that that invoice/ sales receipt was included within the documentation provided to Sainsbury's. She argues she reviewed the metadata of the PDF file she created on 1 June 2023 which shows the sales receipt was included. She says she ensured every page was present before printing and sending the documentation to Sainsbury's.
- Ms B claims it's unfair that she is being penalised for trying to resolve the matter with X directly before raising a dispute with Sainsbury's. And that the email correspondence between Mr R and X demonstrates that X agreed a refund so she can't see why this is still in dispute.
- Ms B has provided evidence to show she is struggling financially including with priority debts. So she feels it would be difficult to repay this purchase.

Sainsbury's also replied to my provisional decision. It agreed with my decision and confirmed that additional information was not received by Sainsbury's on 29 June 2023 and that this was an error by one of its representatives. I replied and explained Ms B had sent screen shots which suggest that a second letter/ correspondence was sent later in June 2023. It disagreed and confirmed that in relation to this dispute it had only received the following:

- Correspondence dated 9 June 2023 (received 12 June 2023 which wasn't legible).
- Correspondence received 29 August 2023 (in response to it's request for further information which was sent 15 August 2023)
- The response to the "*case being declined*" received 10 November 2023.

Additionally, Sainsbury's disputed that the tracking number Ms B provided for the second June 2023 correspondence wasn't valid. It said that unlike the tracking numbers it has for the early June and August correspondence, the later June tracking number isn't recognised.

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 have carefully reviewed all the evidence I've been provided with including the responses to my provisional decision. And having done so, whilst I appreciate this will be disappointing to Ms B, I'm still not going to uphold her complaint. I'll explain why below.

Above is an extract of my provisional decision. In it I explained there were two ways Sainsbury's could attempt to recover the funds paid. A chargeback or a s.75 CCA claim.

Chargeback

The chargeback dispute turns on whether or not Ms B provided sufficient information within the chargeback timeframes for Sainsbury's to be able to raise a dispute. Ms B and Mr R argue they did. They argue they provided all the relevant information to Sainsbury's in a call on 18 May 2023, followed this up with correspondence received on 12 June 2023 by Sainsbury's and re-sent this information later in June 2023. Sainsbury's argues that it only received the correspondence sent in early June 2023 and this wasn't legible. Whilst there's been some inconsistency on this point, Sainsbury's argues that further information in late

June was not received by it.

As I explained in my provisional decision, I don't think Sainsbury's had sufficient information based on the 18 May 2023 call to raise a chargeback. I also think Sainsbury's made that clear to Mr R during this call. The information sent in early June wasn't legible so again I don't think Sainsbury's could have used this to process the chargeback. I also note that the copy of this correspondence which was provided to our service by Sainsbury's doesn't include a copy of the invoice/ sales receipt. As explained in my provisional decision this would have been key information which would've been needed to raise a chargeback – Ms B was arguing she hadn't received the goods purchased so she would have needed to evidence what she did purchase.

Mr R and Ms B have argued that they re-sent the documentation again in late June. They have provided a screenshot from Ms B's online Royal Mail account to show that a second recorded delivery postage was purchased to be sent to Sainsbury's address and that this was collected on 19 June 2023. However, as explained in my provisional decision, having reviewed a call between Mr R (who has been handling the dispute on his mother's behalf) and Sainsbury's on 4 July 2023, the call handler states Sainsbury's received correspondence on 29 June 2023. Mr R doesn't seem to be aware of another letter being sent in June and states that the correspondence was sent in early June (the 9 June correspondence). I find it strange that Mr R doesn't recall having re-sent documentation in mid-June (received late June), during a telephone conversation with Sainsbury's under a month later. However equally Sainsbury's has also said this was an error and that no subsequent information was received in late June. Sainsbury's has also disputed the tracking number from the 19 June correspondence which I shared with it, taken from the screenshot of Ms B's Royal Mail account.

In my provisional decision I concluded additional information wasn't sent in late June and that any postal delays wouldn't have affected this dispute. Given the new and conflicting information, it's very difficult to safely conclude whether or not information was re-sent later in June or when it may or may not have been received. I also think that given the passage of time it's difficult to safely conclude whether or not the tracking number is accurate. However, even if I were to accept information was sent a second time in June, I don't know if it was legible (bearing in mind the previous information wasn't) or if it included enough information for Sainsbury's to raise a chargeback. I'm also mindful that the copy of the documentation I've been provided with by Sainsbury's which it received in early June (Sainsbury's has said June 12) doesn't include a copy of the sales receipt/ invoice. Nor does the copy Sainsbury's has provided of the August 2023 documentation (where Ms B and Mr R resubmitted the information for a s.75 claim to be considered). Furthermore, when Ms B and Mr R initially submitted this complaint to our service in February 2024, the copy of the documentation they provided also didn't include a copy of the sales receipt/ invoice. This information was received via email so documents couldn't have been overlooked during scanning. So I think the evidence suggests that even if information was provided for a second time in June 2023 (and was received before the deadline with enough time for Sainsbury's to process and action it) it's unlikely it would have contained all the information Sainsbury's needed to raise a chargeback. So I don't think this changes my decision as ultimately I don't think that Sainsbury's had sufficient information to raise a chargeback and I don't think it treated Ms B unfairly by not raising one.

Ms B and Mr R have said the PDF document of the dispute correspondence included the sales invoice and that this was created on 1 June 2023. However, as explained in my provisional decision, this doesn't evidence what was actually sent to Sainsbury's. And for the reasons explained above, I think it's more likely than not that the information provided to Sainsbury's wasn't sufficient to raise a chargeback.

I appreciate that this will be disappointing to Ms B but as I explained in my provisional decision, neither a chargeback or s.75 CCA claim guarantee the funds will be recovered. And whilst I appreciate she and Mr R have argued that X confirmed it would pay a refund (but subsequently hasn't), the merits of the dispute is not what I have to consider. As explained above, the central point to this complaint is whether or not Ms B and Mr R provided sufficient information within the applicable time frames for Sainsbury's to raise a dispute and I don't think they did. The information Sainsbury's received on 12 June 2023 wasn't sufficient. And even if I accept a second set of information was sent in June and received prior to the deadline with enough time to action it, the evidence I have available suggests this also wouldn't have included sufficient information to raise the chargeback.

Ms B and Mr R argue they're being penalised for trying to resolve the matter with X. I don't agree this is the case. The scheme rules require Ms B to attempt to resolve things with the merchant before raising a chargeback. However, the scheme rules (which aren't set by Sainsbury's) also provide for between 15-120 calendar days from delivery date (of the incorrect item) to raise a chargeback. Ms B and Mr R waited a significant amount of time before contacting Sainsbury's on 18 May. The documentation they subsequently provided, together with the Dispute Declaration Form wasn't received until 12 June which was only a few weeks before the expiry of the deadline and wasn't sufficient to raise the dispute. Ultimately for the reasons already explained, I don't think they provided sufficient information within the deadline which is stipulated by the scheme provider.

As explained above Ms B has provided details of her current financial circumstances and the problems she is experiencing paying priority debt. She's said she will have difficulties repaying the payment amount in dispute. I'm sorry to hear of Ms B's circumstances and I'd like to remind Sainsbury's of its responsibility to treat Ms B positively and sympathetically while she is experiencing financial difficulties. I'd encourage Ms B to speak to Sainsbury's about this directly and agree a way forward.

S.75 CCA claim

Neither party has provided anything to dispute my provisional findings in relation to the s.75 CCA claim. So as explained in my provisional decision, I don't think Ms B has the required DCS relationship needed to make a claim. I think Mr R contracted with X and Ms B only provided the means of payment. I therefore don't think Sainsbury's acted unfairly in reaching the overall outcome to decline the claim.

To summarise I don't think Sainsbury's were given sufficient information to raise the chargeback in line with the scheme rules. I also don't think Ms B met the requirements for a s.75 CCA claim. So unfortunately I'm not able to uphold this complaint.

My final decision

For the reasons explained I don't uphold Ms B's complaint against Sainsbury's Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 26 January 2025.

Claire Lisle
Ombudsman