

The complaint

Mr T complains that Sainsbury's Bank Plc will not accept a claim he made under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

In May 2022 Mr T engaged a business, which I'll call "C", to supply and fit a new bathroom, at a cost of £6,750. Mr T paid £6,500 of that using his Sainsbury's Bank credit card.

Mr T was unhappy with the work. There were various leaks, which caused damage to walls, floors and ceilings, as well as other instances of poor workmanship. In some respects, the work done did not comply with Mr T's instructions. He arranged for some remedial work to be carried out, at his own expense, but says that fixing everything will cost several thousand pounds.

In July 2023 Mr T submitted a claim under section 75 to Sainsbury's Bank. It asked him to provide an independent report on the work. That report identified a number of issues with the bathroom installation.

Sainsbury's Bank contacted C for its comments, no doubt in part because, if it met Mr T's claim, it would look to C to indemnify it under section 75(2). C did not accept what Mr T had said about the work. It also said that Mr T had accepted a resolution of the matter in April 2023 – when he had agreed to accept a payment of £2,000 to resolve things. C had made the payment as agreed.

Sainsbury's Bank declined Mr T's claim, on the grounds that Mr T had resolved his dispute with C. Mr T said that was not the case. He said he had accepted the payment as a gesture of goodwill only, and there was no binding settlement agreement between him and C. He noted too that some problems with the bathroom had not come to light until after he had accepted the payment from C. He referred the matter to this service.

One of our investigators considered what had happened but did not recommend that Mr T's complaint be upheld. He was broadly in agreement with the bank that Mr T had settled his dispute with C and that he did not therefore have a claim under section 75. Mr T did not accept the investigator's assessment and asked that an ombudsman review the case.

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.

Section 75 says:

75 Liability of creditor for breaches by supplier.

(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in

respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

(2) Subject to any agreement between them, the creditor shall be entitled to be indemnified by the supplier for loss suffered by the creditor in satisfying his liability under subsection (1), including costs reasonably incurred by him in defending proceedings instituted by the debtor.

(3) Subsection (1) does not apply to a claim —

(a) under a non-commercial agreement,

(b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000 ...

The necessary links between Mr T, the bank and C are present in this case, and the transaction for the supply and installation of the bathroom are within the financial limits. The issue I must consider, therefore, is whether Mr T has a claim against C in respect of a contract which was financed by the credit card payment.

Mr T's contract with C was to be read as including a term that the work would be carried out with reasonable care and skill. I think there is quite persuasive evidence in this case that it was not. Indeed, even C appears to accept that there were elements of the work which needed to be remedied.

The bank's reason for concluding that Mr T did not have a claim against C was not, however, because of the quality of the work; it was because he had already settled that claim. And the investigator was in agreement with that analysis.

I have considered that issue very carefully, paying particular attention to an exchange of emails in April 2023 and leading to the payment of £2,000 from C to Mr T on 20 April. Having done so, I believe that they do show a settlement agreement between them. It is evident that Mr T finally agreed on a sum which was rather lower than he had hoped to receive, but it was clearly a sum which he agreed to resolve the dispute.

There has been some discussion about whether the payment was a "refund" or a "gesture of goodwill". I don't believe however that the label applied to the payment determines its true nature. The issue is whether the payment was made to resolve the dispute in full or whether it was, for example, a payment on account or a payment made to resolve one or more parts of the dispute. That must be considered against the full background, not by how the payment was referred to.

There was no formal, single document evidencing a settlement agreement. It is however not unusual for an agreement of this kind to be evidenced by an exchange of correspondence, as it was in this case. In my view, however, the correspondence shows a willingness on both sides to agree a settlement figure in order to draw a line under the dispute.

Mr T has pointed out, correctly, that for an agreement to be binding, there must be an intention to create legal relationships. That does not mean, however, that there must be a formal document or even that the agreement be in writing. I am satisfied here however that there was such an intention here. C would not have agreed to and paid the settlement sum if it had thought Mr T could raise a fresh claim in the future. If, as I believe to be the case, Mr T has settled his claim against C, he no longer has a claim for breach of contract against it. And it is of course a condition of section 75 that the debtor have a claim against the supplier. It is not enough that the debtor had such a claim which was settled.

In the circumstances, I believe that Sainsbury's Bank's response to Mr T's section 75 claim was reasonable.

I appreciate that Mr T may well have settled the underlying claim for less than he thinks he should have done. That was however his decision to take. I have no doubt he felt under some financial pressure to agree to accept, but it was open to him to decline C's offer and pursue his claim through other means.

My final decision

For these reasons, my final decision is that I do not uphold Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 May 2025.

Mike Ingram

Ombudsman