

The complaint

Mr N complains that Sainsbury's Bank Plc wrongly declined his claim under section 75 of the Consumer Credit Act 1974 ("section 75") after work on his central heating system was not carried out to a satisfactory and was not completed.

What happened

In February 2022 Mr N engaged a business which I'll call "P" to carry out a specialist flush and clean of his radiators.

On the day the work was to be carried out, P sent an email to Mr N to confirm the booking and some details. This included confirmation of the number of radiators on the system (twelve) and confirmation of the number of radiators which were not working (one). It also confirmed that Mr N had chosen P's "online listed prices" (rather than its "no-fix-no-fee" arrangement).

Mr N also signed an agreement which included a description of the work to be done. It said that P would be performing a central heating cleaning procedure on twelve radiators. It recorded too that the central heating was not operating as it should with a hand-written note: *"Kickspace dead + rad not 100%"*.

The agreement also recorded that the system contained rubber or plastic pipes. In answer to the question whether sludge flakes were suspected, a handwritten note recorded *"plastic microbore"*. The price for the work was £1,400. Mr N paid this with his Sainsbury's Bank credit card.

A further document produced by P explained that any repairs to damaged or broken parts were not covered in the contract. It asked that the customer provide information about any parts that were not working: *"We need to know what is not working before we start, so that we can pay extra attention to that radiator or that section of pipe/s. We have to rely on you to provide us the correct information in this regard."*

It also included information about plastic pipes:

"If you do have plastic or rubber pipes and you are happy for us to do [process] you accept that it might fail. No known procedure can deal with sludge flake 100% effectively and sometimes, some or all pipes might need to be replaced/cut and unblocked. Re-blocking of some or all of the system in future is always a possibility and is outside of our control. Because of this fact, we do not give current or future guarantees on systems containing sludge flake."

Mr N says that P did not carry out any work on the kickspace radiator. P does not appear to dispute that; it says that it was blocked and so it was not included in the cleaning programme. It said that Mr N's property had 13 radiators and that it had agreed to clean twelve of them.

Mr N referred the matter to Sainsbury's Bank. He said that P had not done all the work it agreed to do and that the work it done was not carried out to a satisfactory standard.

Because he had paid using his credit card, he said a claim against Sainsbury's Bank as well as against P. He wanted a full refund. Sainsbury's Bank declined the claim. It said that there was insufficient evidence of any breach of contract on the part of P.

Mr N referred the matter to this service, where one of our investigators issued a preliminary assessment. He took the view that P had not carried out all the work it had agreed to carry out. It had only cleaned eleven radiators out of twelve. He thought it was fair therefore that Sainsbury's Bank reimburse one twelfth of the price Mr N had paid.

Neither party accepted the investigator's assessment. Sainsbury's Bank said it remained unconvinced that P had been in breach of contract. Mr N said that the assessment had not dealt with his claim that the work which had been carried out was not of a satisfactory standard. The case was therefore passed to me for further consideration.

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.

Where necessary, I have made findings of fact on the basis of what I consider to be more likely.

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider. The necessary relationships between Sainsbury's Bank, P and Mr N are present in this case, and the transaction falls within the relevant financial parameters. I have therefore considered Mr N's dealings with P.

It is not in dispute that P did not carry out any work on Mr N's kickspace radiator. Nor, I believe is there any dispute that Mr N had told P it was not working. The dispute is whether P agreed that it would treat that radiator (as one of twelve) or that P would not treat it but did treat another twelve radiators in his home.

Mr N has offered to provide evidence that he only has twelve radiators in his home. Sainsbury's Bank did not think such evidence would help, since it could be easily manipulated. Whilst not suggesting that Mr N might provide evidence dishonestly, I can see the bank's point; I think a video showing twelve radiators is not really proof that there isn't a thirteenth. Indeed, even a site visit now would not be conclusive of what the position was three years ago.

That said, I think that, on balance, Mr N did pay for treatment of twelve radiators, including the kickspace radiator.

The price which Mr N paid is consistent with the listed price for treatment of twelve radiators with plastic microbore piping. (The list price is actually £1,410, but I don't believe the small difference is material.) The contract records that work is to be performed on twelve radiators.

The booking confirmation said that there were twelve radiators and that one was not working. I take that to mean that one of the twelve was not working, not that there were twelve which were working and another one that wasn't. It certainly doesn't suggest that there were any radiators on the system that were to be excluded from the scope of the work. Had that been the case, I think P's booking confirmation would have made that clear.

The list of work to be performed includes a reference to the kickspace radiator being dead. In my view, that is consistent with P's statement that its engineers need to know if any part of the system isn't working properly before they start work. Again, if that radiator was to be excluded from the scope of the work, I would not expect it to be referred to under a list of work to be performed, unless it included a note that it was not in fact included. And there would be no reason to include a note to say that it was not working if it fell outside the scope of the agreed work.

For these reasons, I think there is persuasive evidence that P agreed to treat twelve radiators and that Mr N paid for treatment for twelve radiators, including the kickspace radiator. He did not therefore receive everything he had paid for.

There was however no guarantee that the treatment which P offered would have resolved the issue with the kickspace radiator. The agreement was clear that P's limited guarantee did not cover problems caused by sludge flake as a result of plastic or rubber piping. And Mr N did not have the benefit of P's "no-fix-no-fee" guarantee, because that was not the agreement he had chosen.

In the circumstances, I agree with the investigator that a reduction of one twelfth of the price (reflecting that fact that P did eleven twelfths of the work agreed) is a fair resolution to this part of the complaint. I will however round it up to £120.

Mr N says that the work which was carried out was not done to an acceptable standard. He has however provided no evidence to support that – for example, by way of an expert's report. I do not believe therefore that it would be fair to require Sainsbury's Bank to meet that part of his claim.

It is not for me to say whether Mr N does in fact have a claim against P. Nor is it for me to decide whether he has a claim against Sainsbury's Bank under section 75. What I must do is decide what I consider to be a fair resolution of Mr N's complaint about the bank's decision to decline his claim. In the circumstances, I think the resolution proposed by the investigator was fair.

My final decision

For these reasons my final decision is that, to resolve Mr N's complaint, Sainsbury's Bank Plc should pay Mr N £120.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 26 March 2025.

Mike Ingram
Ombudsman