

The complaint

Mr C has complained that Sainsbury's Bank Plc "Sainsbury's" rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mr C bought a new solar panel system (the system) for his home in August 2023 which was subsequently installed in September 2023. The purchase was funded in part with Mr C's Sainsbury's credit card, and that business is therefore liable for the misrepresentations and/or breach of contract of the supplier (which I'll call S) under the relevant legislation. In this case, Mr C alleges the following:

- S failed to carry out an inspection of his property with reasonable care and skill during the initial sale.
- S failed to install bird's nets under his existing solar panel system (not installed by S), and this was a breach of contract.
- The reduction in price of £350 offered by S does not cover the cost of paying a new supplier to install bird's nets.
- S took him to court for payment for the installation unfairly and he wants Sainsbury's to cover the costs he incurred
- The system is not fit for purpose and is not functioning and while this part of the claim was subsequently paused at the request of Mr C, he wanted the costs he incurred in preparing an independent report returned to him.

Sainsbury's considered the claim as a potential breach of contract under Section 75 (s.75) of the Consumer Credit Act 1974. But it did not uphold Mr C's complaint for the following reasons:

- Sainsbury's felt that there was no evidence that S hadn't exercised reasonable care and skill during the inspection.
- S couldn't remove birds nesting under his existing system to install the bird's nets as they had hatchlings, and it was against the law to remove them
- The offer to reduce the price by £350 was fair.
- S had sought payment for the works done through the courts and Mr C had chosen to settle so Sainsbury's didn't feel liable for any costs associated with that.
- It had not considered his concerns over the system not functioning properly due to Mr C's request to pause this issue, while he pursued the matter separately with another scheme. Sainsbury's would only refund the costs of an independent report, should he have a successful claim against it so it would not currently cover this cost.

Unhappy, Mr C referred the matter to this service. Mr C's complaint was considered by one of our investigators. He didn't feel the complaint should be upheld. He agreed that while S had been unable to install the bird's nets, the refund had remedied the breach, that there was no evidence the hatchlings were present during the initial inspection and didn't feel his other complaint points had any merit.

Mr C disagreed. He reiterated his earlier concerns, wanted confirmation that the bird's nests and hatchlings could be removed under specific circumstances with companies with specific licenses to do so, and so S was in breach of contract. He felt the quotes he'd received for now removing the hatchlings and installing the bird's nets was significantly higher than £350, so he didn't think S had fairly remedied the breach. He re-iterated he wants his court costs returned as he was forced to pay this under duress and his concerns over the technical failings of the system remained unresolved.

Our investigator explained that he hadn't considered Mr C's concerns over the technical failings of the system as Mr C had paused that element of the claim while he pursued this matter separately. He was free to raise this with Sainsbury's now if he wished to do so. The concerns over whether S was correct or incorrect over its view that removing the hatchling was illegal was no longer material – as even if we did find that it was incorrect, it had already offered a reasonable remedy by reducing the price owed by £350.

As the complaint couldn't be resolved by our investigator, I was asked to make a decision. On 22 April 2025, I wrote to Mr C and Sainsbury's explaining why I wasn't minded to upholding this complaint. I asked both parties to make any final submissions/comments before I completed my review of the complaint. Neither Mr C nor Sainsbury's have made any additional comments.

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 my provisional decision I explained the following:

Firstly, I'd like to reassure Mr C, that I have considered all his concerns carefully, but I will only be dealing with the most salient parts of his complaint in this decision as I'm required to decide matters quickly and with minimum formality.

It may be helpful to explain that I need to consider whether Sainsbury's – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr C's claim. But it's important to note Sainsbury's isn't the supplier. S.75 is a statutory protection that enables Mr C to make a 'like claim' against Sainsbury's for breach of contract or misrepresentation by a supplier only. I cannot look at everything that S did, only whether Sainsbury's response to his claim for breach of contract was fair.

Having carefully considered everything provided, I am currently minded to not uphold this complaint.

I understand Mr C has informed this service he has different needs and prefers communication over the telephone. I do have to send my decisions in writing, but I've broken down my findings in a more accessible way, to support Mr C in understanding the reasons why I've reached my conclusions. I hope he finds that helpful.

I understand Mr C already had a system installed on his property by a different supplier. This system did not have netting to prevent birds nesting under the solar panels. When Mr C sought to install a new system on another part of his property, he had also asked for bird's nets to be installed on his existing system to which S agreed. S gave Mr C a quote for £10,500 to complete all the works including the installation of the bird's nets – but the costs weren't broken down any further.

On the day of installation S said it was unable to install bird's nets on his old system as not only were birds nesting under the system, but there were also hatchlings which S couldn't legally remove. They said they would have to come back when the hatchlings had moved on to install the bird's nets. Mr C was unhappy with this, so S offered a reduction of £350 which is what S says is the cost to have the bird's nets installed. A number of concerns have since been raised by Mr C stemming from this issue which I will address below.

1. Out of court settlement

I understand after S installed the system, Mr C failed to pay for the installation, instead he said he'd be withholding the outstanding amount for 6 months until the bird's nets were fitted. S reduced the cost of the outstanding amount by £350 but sought the remaining amount as the system itself was fully delivered and installed. When Mr C still failed to pay, S sought to recover the amounts through the courts. Mr C says, under duress, he paid the outstanding amounts but now wants Sainsbury's to reimburse the costs he incurred.

I think it's important to point out a potential issue with this case is that when Mr C chose to settle the claim for payment of the installation – he may have extinguished his s.75 claim. His defence for non-payment was that the contract hadn't been fully completed (due to the bird's nets not being installed), and/or that the price reduction of £350 wasn't a fair amount. But he chose not to defend the claim, and instead chose to settle and pay the outstanding amount. I haven't seen all the court papers and am not aware of the ins and outs of what happened in court but out of court settlement sometimes have wider legal implications even if they may be unintended.

So, I have concerns here that if Mr C now chose to pursue his s.75 claim through the courts, he may discover that, as he's reached a settlement and paid the outstanding amounts with the supplier (instead of defending his position), he may now have lost the right to pursue a separate s.75 claim against Sainsbury's. I understand Mr C says he settled out of duress, but when he settled the court claim against him, and paid S the amounts it claimed, he may have agreed that this amount was due to S – and therefore the £350 price reduction was a fair amount – even if that's not what he truly intended.

But I've not delved into this issue into detail and gone on to assess his complaint, in any event, as I don't think any further amounts are due to him based on his s.75 claim.

I would add that, as I've mentioned above, I am looking at a complaint against Sainsbury's the finance provider and whether Sainsbury's has failed to accept a claim for breach of contract or misrepresentation of S. I cannot see a misrepresentation or what contractual term S breached that would make Sainsbury's liable for the court costs Mr C incurred. So, I don't think Sainsbury's acted unfairly for not reimbursing Mr C the costs he incurred.

2. Has there been a breach of contract?

In order for me to uphold Mr C's s.75 claim, I'd have to be satisfied that S breached a term of the contract – and that caused him loss. I'd have to consider if S breached any express terms in its written contract as part of my assessment of the complaint. But the Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that suppliers must perform the service with reasonable care and skill and that services should be performed within a reasonable amount of time. What a reasonable timeframe is a question of fact unless there's any express terms about timeliness in the contract. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

- Breach of an express/implied term - failure to install the bird's nets.*

I understand Mr C has completed a considerable amount of research into whether hatchlings can be legally removed and is of the view that they can be with the appropriate specialist licence. While that may be the case, I've seen nothing to suggest that S has this license and specialty – it is a solar panel supplier not a birds nesting specialist. There may be specialists out there (as Mr C has found), but S doesn't appear to be one of them. I cannot reasonably conclude that S ought to have done this anyway when it doesn't appear to have the appropriate licenses and expertise to do so.

On discovering the hatchlings were present, S informed Mr C that it was unable to fulfil this part of the contract at this time. While I appreciate this was frustrating for Mr C, I cannot safely conclude that S ought to have completed the job in any event when it doesn't have the licenses to enable it to do this. So, I don't think it's unfair, that S informed Mr C that it was unable to complete the job at this time. But as S also offered to return to complete the job once the hatchlings moved on, like our investigator says, I am not persuaded that this is significantly material – as S offered to fulfil its obligations when it was safe and legal for it to do so.

To me, it appears that S was unable to complete the job at that particular time, for factors outside of its control (the birds laying eggs), so it may mean this part of the contract was frustrated rather than a breach of contract happening. Frustration is not the same as breach of contract – it's a different legal doctrine, and it's not covered by s.75. Mr C cannot bring a claim against Sainsbury's for frustration under s.75.

I would add that I don't think its completely clear that S did indeed breach a term of the contract. S wasn't unwilling to complete the task it had agreed to do, it simply was unable to do so at this particular time because of circumstances beyond its control. It's not clear whether this amounts to a breach of contract. Nothing in the terms suggests that everything had to be done at the same time, or there doesn't appear to be a deadline by which S had to install the nets. So, I cannot see there was a breach of an express term of the contract for S being unable to install the nets at this time. And it was willing to return after the hatchlings had moved on to complete the job.

Again, I don't think it's clear whether S being unable to complete the job at this time, and being prepared to come back to complete the job at a later date constitutes a breach of an implied term either, as long as S came back within a reasonable timeframe to complete the job. As explained above, what a reasonable timeframe is, is a question of fact, and as long as S came back once the hatchlings moved on, and completed the job when it was safe and legal to do so, I'm inclined to think that this would have been deemed to have been done within a reasonable time frame – and therefore this would not constitute a breach of contract.

But even if I am to conclude that S did breach the contract, as mentioned above, the CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met. So I've gone on to assess whether S's response to this issue was fair and reasonable in the circumstances of the complaint.

- *Was the remedy S offered reasonable in any event?*

As mentioned above, even if I was to find that S had breached the contract by not installing the nets on the day of installation, it offered to come back and complete the job at a later date when the hatchlings moved on – and fulfilling the contract is a remedy for breach of contract under the CRA. Alternatively, it offered to not charge Mr C the £350 it says it charged him for installing the nets. Both of these options seem reasonable in response to circumstances changing outside of both the control of S and Mr C.

I understand Mr C had paid for scaffolding to be put up to enable S to complete the installation, rather than incur the costs of S using its own scaffolding and he was concerned about having to pay for scaffolding to be put up again to enable S to install the nets. But S had offered to come back and install the nets and it was for it to figure out a way to do that. It's unclear whether full scaffolding would have even been required a second time – when only nets needed to be installed (the main installation had already been completed) but this is something S needed to work out and I'm not sure why Mr C refused to give them the chance to do this.

S also offered to reduce the contract price by £350 as an alternative to Mr C as he didn't seem to want S to return at a later date to install the birds nets. I understand Mr C feels this amount is an insufficient amount as it does not give him the means to have bird's nets installed. There is no breakdown in the quote, and our investigator has simply relied on what S has told the courts (in the court claim) how much the installation of the bird's nets cost. Mr C has provided multiple quotes showing it would cost significantly more than this to have the hatchlings, nests and birds removed and a net installed.

I think it's important to re-iterate, as explained above, that it's not clear there was a breach of contract or whether this part of the contract was frustrated – in which case Mr C wouldn't be entitled to any remedy for breach of contract under s.75. But I have still gone on to assess whether the price reduction of £350 is a fair amount. While I sympathise with Mr C's position, I'm afraid I agree that the £350 doesn't seem out of line with what S in all likelihood charged Mr C for installing the nets. Suppliers like S can often install bird's nets at a fraction of the cost of a separate bird's net installation. This is because the scaffolding and engineer's time is already incurred due to the solar panel installation, so a bird's nets installation doesn't require much further effort or cost. But a specialist will have to do a separate call out potentially solely for this bird's nets, remove hatchlings (something S was unable to do) so the cost is understandably higher.

I would add that in my experience of deciding cases involving solar panel cases, I've seen a number of quotes where birds nets was a separate cost and £350 is in line with those quotes. And when S sought recovery of the cost of the installation through the courts, it set out the cost of installing the bird's nets as £350 – I don't think it's likely it would have done that unless it felt this was a true reflection of the cost.

Overall, I don't think there's sufficient evidence that what happened on the day of installation even amounts to a breach of contract, and even if it did, S offered to fulfil the contract at a later date (a reasonable remedy under the CRA), when it was safe and legal for it to do so. It also offered to not complete the job and not charge Mr C for the work. I also reiterate Mr C paid for the installation less the £350 as part of an out of court settlement – so he may have now lost the right to challenge this amount through a s.75 claim. Both the options offered by S are reasonable options. So, under these circumstances, I don't think it's unfair that Sainsbury's didn't uphold Mr C's claim and offer anything further.

- *Did S breach any other express/implied terms in the contract?*

Mr C says S ought to have noticed that there were hatchlings and eggs when it inspected the property in August 2023. Had they done a proper assessment, S would have noticed that there were not just birds but also hatchlings and told Mr C they couldn't install the bird's nets at that time. Mr C says he wouldn't have proceeded with the sale and instead found a supplier that could do the whole job. Mr C was paying separately for the scaffolding to be put up, so didn't want to incur this cost repeatedly.

I understand there was almost a month between the sale and the installation – which isn't unusual in these types of cases. And I've seen no evidence that the hatchlings/eggs were

present during the initial inspection. Sainsbury's says it is feasible that the hatchlings and eggs were hatched during that month.

As I've explained above, I can only assess whether Sainsbury's has responded to Mr C's claim fairly. And it must make a decision based on the available evidence. In order for me to make a finding that Sainsbury's didn't fairly respond to his claim, I would need to see evidence that S hasn't exercised reasonable care and skill during the inspection. So, I would need evidence that the hatchlings were present at the time of sale and S failed to notice it. The fact that they were present a month later, is not sufficient evidence they were there during the sale.

So, while I understand Mr C's frustration, there simply isn't sufficient evidence for me to uphold this aspect of his complaint. I don't think Sainsbury's acted unfairly in concluding that there's insufficient evidence that S failed to exercise reasonable care and skill when it completed the inspection.

3. Claim for technical failings of the system.

I understand Mr C felt the system was not fit for purpose and was not functioning correctly. But he asked Sainsbury's to pause considering this part of his claim as he was pursuing the matter with a different scheme. He's unhappy that Sainsbury closed this matter down when it is still unresolved.

- How his claim is recorded on Sainsbury's system

While I understand Mr C's frustrations, Sainsbury's isn't actively looking into this claim, so it's not unfair for it to close this down. It has already told Mr C that he can re-open it if he ever wishes to pursue this matter with Sainsbury's. How this element is recorded on Sainsbury's system (i.e. closed or paused) does not affect Mr C in any way. Sainsbury's has a system, and it cannot enter data in a way that the system isn't designed to accept. As it's not actively considering the claim, it's closed the matter down. Mr C isn't currently pursuing this matter with Sainsbury's but as explained, he can do so if he wishes.

- Independent report

I understand Sainsbury's initially requested an independent report to aid in its investigation of this claim. But that was before Mr C asked it to pause considering it. It's not unusual for businesses such as Sainsbury's to only pay for the costs of independent reports if consumers are successful in their s.75 claims. This currently isn't the case for Mr C so while I understand he has incurred this cost, it was his decision to not pursue the matter with Sainsbury's. So, I don't think Sainsbury's needs to refund this cost to Mr C.

- Claim remaining unresolved.

I understand Mr C has waited a considerable amount of time to have his concerns dealt with by another scheme and I can see how much effort he has put into raising his concerns. I sympathise with his position, but there is a process that needs to be followed before this service can consider a matter like this. Mr C would have to reopen his claim with Sainsbury's, follow the claims and then complaints process. If he remained unhappy, he could refer the matter to this service as part of a separate complaint. But this is not something I can pick up now. Under our rules, Sainsbury's is entitled to consider his claim and complaint in the first instance before being referred to us. It may be that Sainsbury's accepts his claim and offers him a remedy that he is happy with – we would then not need to be involved.

I wanted to clarify that as Mr C has not completed the claims and complaints process with Sainsbury's for this element of his claim, I haven't considered this in any way and make no findings as to whether there has been a breach of contract here.

Summary

Based on everything that I've seen, I don't think Sainsbury's has dealt with Mr C's claim unfairly, so I don't intend to uphold his complaint. My reasons for doing so are below:

- 1. I don't think there is a breach of contract or misrepresentation that makes Sainsbury's liable for the court costs Mr C incurred. And I am mindful that Mr C may have extinguished his right to bring a s.75 claim by reaching an out of court settlement with S directly— rather than defending his position through the courts.*
- 2. I don't think it was unreasonable for S to refuse to install the bird's nets where hatchlings were present. But I'm not persuaded that this amounts to a breach of contract – when the reason for it not doing so was outside of its control.*
- 3. And in any event, the remedy to either return to complete the work at a later date or reduce the cost of the works by £350 is fair for S being unable to install the bird's nets at that time.*
- 4. There's insufficient evidence that S failed to exercise reasonable care and skill when it completed the initial inspection.*
- 5. Mr C has asked for Sainsbury's to pause considering his claim for technical problems with the system, so I have not assessed this part of his claim as part of this decision.*
- 6. As Mr C hasn't had a successful s.75 claim against Sainsbury's for the technical failings of the system, at this stage, I wouldn't expect Sainsbury's to reimburse him the costs he incurred for getting an independent report.*

As neither Mr C nor Sainsbury's have made any additional comments, I see no reason to depart from my findings as set out in my provisional decisions. So having considered this complaint again in its entirety, and for the reasons set out above, I am still of the view that I don't think Sainsbury's acted unfairly by declining Mr C's s.75 claim.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 June 2025.

Asma Begum
Ombudsman