

complaint

Mrs B has complained that Sainsbury's Bank Plc ('the bank') has wrongly refused her claim under section 75 Consumer Credit Act 1974.

background

Mrs B says she had no choice but to use her Sainsbury credit card to pay around £4,000 to a company that claimed to be collecting, from her husband, the debt of a company of which her husband had once been a director. She says representatives of the debt-collecting company attended at her home and said they'd remove possessions of hers if she didn't pay the debt.

Mrs B says there was no debt due from her or her husband. She also says an alleged court writ regarding the debt is a forgery.

The basis of Mrs B's section 75 claim against the bank is that there was an unwritten contract between the debt-collecting company and her, in relation to which the company committed a breach and misrepresentation.

The bank declined Mrs B's claim. They did so because (a) they didn't think there was evidence of a contract of the sort claimed by Mrs B and (b) they didn't think the credit card payment was for Mrs B's benefit, so section 75 didn't apply.

Mrs B didn't accept the bank's conclusions, so she came to the ombudsman service.

Our adjudicator didn't uphold Mrs B's complaint. He concluded the bank had acted reasonably in refusing Mrs B's section 75 claim.

Mrs B didn't accept this conclusion.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I'm sorry to disappoint Mrs B but I too have decided her complaint doesn't succeed.

Applying first principles, for there to be any section 75 claim there has to be (a) a contract for the supply of goods or services and also (b) a qualifying debtor-creditor-supplier agreement. There was neither in this case.

There was no contract, on the facts as described by Mrs B. The people from the debt-collecting company who attended her home demanded and acquired money by menaces and intimidation, in regard to a debt they knew didn't exist. They were also unlawfully threatening to seize goods belonging to Mrs B when she wasn't the person who owed the debt they were collecting. This isn't a lawful binding contract for the supply of services, it's a serious criminal offence. A binding contract couldn't come into existence when it's brought about by coercion and duress. It would be a nullity – in other words, there was no contract to which a section 75 claim could apply.

That is reason enough for the bank to validly refuse Mrs B's section 75 claim.

But secondly, there was no qualifying debtor-creditor-supplier agreement in any case. On the facts as described by Mrs B, she paid off the debt of a third party, not her own debt. In such a situation, section 75 also doesn't apply.

my final decision

I don't uphold Mrs B's complaint. I've concluded Sainsbury's Bank Plc was acting within its rights to refuse her section 75 claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 24 April 2020.

Roger Yeomans
ombudsman