

complaint

Mr R complains that Sainsbury's Bank Plc have not upheld his claim under Section 75 of the Consumer Credit Act 1974.

background

Mr R says that he paid for a timeshare in 2012 using his Sainsbury's credit card. He says he was legally denied the required cooling off period when he bought it, so would like to claim a refund against Sainsbury's under Section 75.

Sainsbury's says Mr R doesn't have a Section 75 claim against it because he didn't pay for the timeshare using his Sainsbury's credit card. It says that he financed it with a fixed sum loan with a third party ('Business A') and the credit card transaction was for a hotel stay. It offered Mr R £100 for the way it had handled his complaint.

Our adjudicator didn't think Mr R's card payment was for the timeshare either, so she said he didn't have a Section 75 claim against Tesco.

Mr R's representative has asked for this matter to be passed to an ombudsman.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

When considering if it is fair and reasonable to uphold this complaint I take into account relevant law. In this case, Section 75 specifically allows Mr R to claim against Sainsbury's for any breach of contract or misrepresentation by the supplier of goods or services paid for using his Sainsbury's credit card.

However, I don't think that Mr R has a claim against Sainsbury's here. I say this because I don't believe that the credit card transaction of around £1,500 was used to pay for the timeshare. The timeshare contract does not mention a credit card deposit as a method of payment. It clearly states that the timeshare is being paid for by 'external finance' for £13,851. And from the evidence available (and an annual statement from Business A) I am satisfied that Mr R has taken out a finance agreement to fund the timeshare in full.

Mr R has indicated that the credit card transaction was for the first year of maintenance fees and tax. However, the contract is clear that these costs are already covered by the proceeds of the finance agreement. I don't think Mr R has double paid for these things either as the figures don't fully add up to the amount he put on his credit card.

Also from the description of the credit card transaction on Mr R's statement, along with the invoice provided by the supplier, it seems even more likely that this was for a hotel stay and not the timeshare.

Overall, and with Section 75 in mind, I don't think that Mr R has a claim against Sainsbury's for the sale of the timeshare. In any event, I don't think that a failure by the supplier to provide cooling off rights would necessarily give rise to a successful claim. However, Mr R may be able to pursue a complaint against Business A if he wants.

I don't think what Sainsbury's told Mr R means it has accepted liability under Section 75 (as Mr R has suggested). However, I note its complaint handling could've been better. It accepts this, and has offered Mr R £100, which I think is fair in the circumstances. It's now up to Mr R if he wishes to accept this to settle his complaint.

my final decision

I leave it to Mr R to decide if he wishes to accept the offer of £100 from Sainsbury's Bank Plc in full and final settlement of his complaint against it.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr R to accept or reject my decision before 1 September 2015.

Mark Lancod
ombudsman