

The complaint

Mr C is complaining Sainsbury's Bank Plc hasn't refunded payments he made on his credit card for some doors and windows. He brings the claim under Section 75 of the Consumer Credit Act 1974 (Section 75).

What happened

The facts of this complaint are well known to all parties, so I won't set them out in detail. But, in summary, in 2019 Mr C entered into three separate contracts with a third-party company – who I shall refer to as H – to supply and install some doors and windows. The contracts were as follows:

1. £5,400 – two bay windows, four windows and one door (invoice one);
2. £1,350 – one French door and one window (invoice two); and
3. £1,000 – one French door (invoice three)

Mr C was unhappy with the quality of the products and the installation. He initially looked to resolve it with H but was unhappy with H's response so he referred his dispute to Sainsbury's. Over the preceding two years Mr C arranged for a number of inspections to be carried out on the doors and windows, which he says shows the work carried out wasn't of a satisfactory nature. He says he's approached a number of companies to do the rectification work, but they're not willing to do so. So he says the only way to put things right is to have everything replaced.

Sainsbury's accepted that there were some issues with the work carried out. But it didn't agree with Mr C about the extent of the work needed. It also didn't think it was necessary to replace everything. It offered to refund the £480 Mr C paid for the independent report and offered a further 5% price reduction - £387.50. Mr C didn't accept this and maintained the only way to put things right was to replace everything. Sainsbury's offered a 20% refund to resolve the complaint, but Mr C says he was entitled to a full refund. Sainsbury's didn't agree, so Mr C referred his complaint to this service.

I issued a provisional decision upholding this complaint and I said the following:

"I should first say, I'm aware I've summarised this complaint in a lot less detail than both parties have set out. I don't mean any discourtesy by this but this simply reflects the informal nature of this service. I assure all parties I've read and considered everything they've provided. However, in this decision I've focussed on what I consider to be the key issues. Our rules entitle me to do this.

Mr C paid for the doors and windows on his Sainsbury's credit card. Section 75 sets out that in certain circumstances, as the finance provider, Sainsbury's is jointly liable for any breach of contract or misrepresentation by H. I'm satisfied those circumstances apply here.

Under the contract with Mr C, H had agreed to supply and install some doors and windows. Legislation – in this case the Consumer Rights Act 2015 (CRA) – implied a term into the contract that H had to supply goods that were of satisfactory quality and then fit them with

reasonable care and skill.

Mr C has raised a number of issues with the doors and windows H supplied and installed. In particular, but not limited to, he's raised the following:

- Windows and sills don't colour match*
- Internal glazing beads in the windows aren't connected correctly*
- Lead on the front elevation has patches that are peeling/discoloured*
- Metal is showing on the kitchen front door*
- Metal bars on the French doors have small areas of rust*
- Front door is not flush*
- The front door furniture is brass, but the door stay is chrome*
- Window frames and glass were supplied by different suppliers*
- The windows are supposed to have a standard glass depth of 28mm, but it's actually only 26mm*

Mr C has arranged for a number of inspections of the work carried out by different companies – some independent and some from the manufacturers of the goods. However, I'm particularly persuaded by the report carried out by RISA as they specialise in providing independent and impartial inspections. I've also found their report to be the most detailed. It seems to me that RISA have concluded that the issues are generally aesthetic in nature. It also didn't agree with Mr C that all the issues he'd raised were faults. However, there are issues with the quality of some parts and with the way the goods were installed. So I'm satisfied that H has breached the terms of the contract and neither party disputes this. The issue for me to decide is what should be done to put things right. I shall address the material points separately.

Windows and sills

Initially RISA said it considered any colour difference to be within expected tolerance. But following a further inspection it said it could see that, in bright sunlight, there was a clear difference in colour between the window frames and sills. I'm satisfied from reviewing this report and other reports that this is not what a reasonable person would expect to see.

In thinking about how Sainsbury's should remedy this, I've taken into consideration what the CRA says. Where the goods are found to not conform with the terms of contract – i.e. they're not of satisfactory quality, as described or fit for purpose – Mr C had the right to require the merchant – H – and in turn Sainsbury's to rectify the issue. But, where it fails to do so or do so in a reasonable time, the CRA sets out he has the right to reject the goods.

Mr C has raised issues with the windows and sills from the start and this has been ongoing for over three years. So, I think it's fair to say that this hasn't been resolved in a reasonable time. Mr C has continually asked to reject the goods, but hasn't been able to do so. As I said above, I think the CRA sets out he should have been entitled to do so. So I think Mr C now has the right to reject the goods and I think that's the fair and reasonable thing to do too.

As a result, I think Sainsbury's should refund everything Mr C has paid for the windows. I also intend to say it should pay 8% simple interest on what he paid for them – which I understand to be the contract totalling £5,400 - from the date he paid for them (31 October 2019) until he gets it back. Sainsbury's should arrange to remove and collect the windows at a time suitable to Mr C – i.e. allow him an opportunity to organise replacement windows. But it should do so within 12 weeks of Mr C accepting my decision.

Mr C has raised other issues regarding the windows. But I don't think I need to make a

finding regarding this as I've already said Sainsbury's should allow him to reject this.

French doors

Mr C has raised a number of issues with the French doors. However, unlike what I've said about the windows and sills, I don't think there are issues with the quality of the doors provided, but the RISA report sets out that there are issues with the installation of the goods here. However, I think the RISA report sets out that the majority of the issues raised are within the range of a reasonable tolerance – i.e. the following:

- *Cosmetic flaw from the welding process showing the effect of metal showing; and*
- *Front door not sitting flush.*

The question is whether the installation was carried out with reasonable care and skill. Ultimately RISA has set out that some imperfections are common and said it was the inspector's professional opinion that they fell within the range of tolerance. I don't think I can reasonably say this wasn't the case for the above issues, given the comments on the RISA report.

However, RISA did agree with Mr C that there were small areas of rust on the kitchen door. The inspector said this was caused by "metal swarf when fixing had been drilled". However it said this can be easily cleaned. I think the fair way to resolve this is that Sainsbury's arranges to have the rust cleaned away.

I don't think Sainsbury's has any further liability regarding the doors.

Lead on front elevation has patches that are peeling

I think it's accepted that there is some issue with the paintwork here. But I'm not persuaded this is down to the actions of H. I'm conscious RISA said this could have been caused by either a faulty batch of coating, but it could also have been caused by using incorrect cleaning methods using abrasive chemicals. Other inspection reports also commented on this issue and suggested it could have been caused by using an adhesive – such as Sellotape – to attach something. I understand H advised Sainsbury's that Mr C had advised that he'd had things sellotaped to his door, although I haven't seen anything to support this. I've thought about everything that all parties have said on this issue, but I'm not persuaded I've seen enough to say the issue in respect to the peeling on the front elevation is down to anything H has done wrong. So I don't think Sainsbury's needs to do anything to put things right regarding this.

Summary

For the reasons I've set out above, I think Mr C has the right to reject the goods purchased on invoice one and Sainsbury's should refund what he paid for these goods – £5,400 – plus 8% simple interest. It should also arrange with Mr C a time to collect the goods. Mr C has also raised issues regarding the goods supplied and fitted in invoices two and three. But I think the only issue Sainsbury's needs to put right regarding this is to clean the rust of the kitchen door. I think Sainsbury's should also refund any costs Mr C has incurred in obtaining the independent reports, plus 8% simple interest. I don't think it needs to do anything further."

Mr C responded and, in summary, set out the following:

1. *Sainsbury's never offered him a 20% refund – only £387.50 and he said it declined to refund the cost of the two reports he obtained.*

2. He said the items listed as French doors are actually in effect full height windows with full height openers and the colour difference of the sills and trims is evident on these as well. He believes RISA's comment about the difference in colour also applies to the kitchen French door, the living room French door and the front door. He also said that he would have mismatched windows and doors if everything isn't replaced.
3. Invoice two includes the kitchen window and that hasn't been included in the windows that need replacing.
4. He said it's now impossible to replace the windows for anywhere near the original purchase price due to the effects of Covid-19 and inflation. He said he would have been able to replace the doors and windows at a similar price to the purchase price if Sainsbury's had acted fairly with us and dealt with this matter three years ago correctly. He said it would be impossible to replace them not and he can't make up the considerable shortfall due to his and his wife's personal situation.

Sainsbury's didn't accept my provisional decision either and raised the following:

1. It said the CRA gives Mr C a final right to reject, but it said he only has this right once H have had the opportunity to fix the issues. It doesn't believe Mr C has given H this opportunity as he has disputed the scope of the works. It said some works were carried out prior to the RISA report, but it doesn't believe Mr C allowed any further works to be carried out. It said the last remedial visit from H was in September 2020 and a number of problems were satisfactorily remedied at this time.
2. It doesn't believe a full refund is warranted and maintains that a price reduction is fair. It still believes the most economical option is to repair the issues. It said it hasn't seen anything to show that Mr C couldn't colour match the windows and sill.
3. It said the rust has been caused by Mr C not cleaning or sweeping the metal debris that was left behind following the installation. So it doesn't believe the merchant should be held liable for Mr C not adequately cleaning and maintaining the door and surrounding area.
4. It's not its area of expertise to collect the windows. So it said, if I was still of the opinion that the doors and windows should be replaced as I set out previously, it proposed instead that Mr C either disposes or sells the windows. It said it would cover the costs, of disposing the goods subject to an invoice being provided, if Mr C chooses to do this. Alternatively, if he chooses to sell them it would deduct the proceeds from the settlement.

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.

I've taken everything all parties have said in response to my provisional decision, but I've come to the same conclusion as I did previously for the same reasons. But both parties have raised some further considerations which I shall address now.

Sainsbury's has said Mr C hasn't given H an opportunity to put things right. Under the CRA Mr C has the right to ask H to resolve the issues, but if that repair is unsuccessful, he has the right to reject it. But it's important to note that the CRA gives one right to resolve the issues as a whole, not a separate right to repair for each individual fault. It's not entirely clear who is at fault for the issues not being rectified after RISA's report, but the issue is that there are still issues and H had carried out repairs at least twice before to rectify the issues. So I still believe Mr C is entitled to reject the goods I set out in my provisional decision if he wants to do so.

I note Mr C has said there is colour mismatch on all the doors and windows. But, as I set out

in my provisional decision, I'm most persuaded by the contents of the RISA report. And this hasn't highlighted the additional issues Mr C has referred to. I've reviewed the photographs Mr C has provided but I don't think this shows that they should be replaced.

I note Mr C says he'll have mismatched doors and windows and highlighted the increased cost of replacing them, but I don't think this is a sufficient reason to require Sainsbury's to refund everything he's paid or pay more than the cost of the windows. I also don't think I've seen anything to show that the sills *can't* be changed to match the doors. So, if Mr C doesn't want to replace the doors, a price reduction is fair. Sainsbury's has offered a 20% price reduction off the total invoice price and I think that's fair if Mr C doesn't wish to replace the goods. So, if Mr C chooses to not replace the windows, then Sainsbury's should give Mr C a 20% price reduction off the cost of the goods as it previously offered.

Sainsbury's has said it's unable to collect the goods. I think its proposition – either Mr C pays for them to be disposed of Sainsbury's refunds the cost, or Mr C sells them and Sainsbury's deducts the amount he receives from the refund – is fair.

Mr C says invoice two contains the cost of one of the windows that need replacing. But invoice one also contains the door combo that I don't think needs replacing. So I remain of the opinion that the fairest way to resolve this complaint (if Mr C wants to reject the windows) is refunding the amount paid on invoice one - £5,400.

Finally, I've thought about Sainsbury's comment that said the rust has been caused by Mr C not cleaning or sweeping the metal debris that was left behind following the installation. But this is contrary to what RISA has said. But, even if that wasn't the case, it was the supplier's responsibility to clean the debris. However, I'm satisfied that, on balance, the rust is down to the installation work.

Putting things right

For all the reasons I've set out above, I remain of the opinion that the redress I proposed in my provisional decision is fair. So I think Sainsbury's should do the following to put things right:

If Mr C wants to reject the windows

- Sainsbury's should either arrange to collect the windows, or refund any cost Mr C incurs in replacing them. Alternatively, if Mr C sells them to a third party, Sainsbury's can deduct the amount he receives for the windows. Sainsbury's can require Mr C to provide evidence of what he does with the windows.
- Sainsbury's should refund £5,400 plus 8% simple interest from 31 October 2019 until he gets it back.*

If Mr C doesn't want to reject the windows

- Sainsbury's should give a 20% price reduction of the cost of the goods (as it offered in the call on 13 September 2019) plus 8% simple interest from 31 October 2019 until he gets it back.*

In addition to this, Sainsbury's should arrange to have the rust cleaned away or refund any cost Mr C incurs in cleaning it away.

Finally Sainsbury's should also refund any costs Mr C has incurred in obtaining the independent reports, plus 8% simple interest from when he paid them until he gets it back*.

* If Sainsbury's thinks that it's required by HM Revenue & Customs to deduct income tax from this interest, it should tell Mr C how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.

I don't award anything further.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Sainsbury's Bank Plc to compensate Mr C in line with my instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 January 2023.

Guy Mitchell

Ombudsman