

## The complaint

Miss F complains that Sainsbury's Bank Plc hasn't refunded a payment she made using her credit card.

## What happened

In February 2022, Miss F purchased flights through a website (which I'll refer to as "K") using her Sainsbury's Bank credit card. To get to her destination, she booked two connecting flights. Each leg of the journey was operated by a different airline.

The airline operating the second leg of the journey cancelled the flight, so Miss F approached K for a refund for the entire journey. K agreed to assist Miss F with obtaining a refund. The airline for the first flight declined the refund request because the flight was still scheduled to take place and the tickets Miss F had booked were non-refundable. K said it couldn't assist Miss F with a refund for the cancelled flight with the second airline because that airline required Miss F to request the refund herself.

Miss F attempted to request the refund from the second airline, but the airline was unable to verify her details. This is because when booking the flights, K had used a different email address to the one Miss F had provided. The airline required Miss F to login to that email account in order to verify her identity through a link in an email the airline had sent her. Miss F was unable to do this as it wasn't her email address. She asked K to login to the email inbox they had set up so they could assist with the refund application, but K didn't do so.

Miss F contacted Sainsbury's Bank for assistance. Sainsbury's Bank attempted to get a refund from K (as this is who Miss F paid) through the chargeback scheme. K defended the chargeback by saying it had done everything it had agreed to do and Miss F now needed to speak to the airline in order to get a refund. As the chargeback was defended by K, Sainsbury's Bank said it couldn't do anything more to assist Miss F.

Miss F complained to Sainsbury's Bank. She said it should have done more to assist her in getting her money back. Sainsbury's Bank didn't agree it had acted unfairly. It said it had attempted a chargeback twice, both of which were defended by K. While it agreed that K had provided incorrect personal details to the airline, this wasn't something it could pursue through the chargeback scheme.

Sainsbury's Bank agreed it could have handled things better by informing Miss F that when the chargeback failed that it would re-debit the disputed funds from her account. It said it should also have considered her claim under Section 75 of the Consumer Credit Act 1974 ("Section 75"). It agreed to refund the interest and late fee (a total of £19.41) that were applied to her account because of that re-debit. It also agreed to pay her a further £100 compensation for the delays, distress and inconvenience that it caused. Miss F was still unhappy with this resolution, so she referred the complaint to our service.

Our investigator recommended the complaint be upheld in part. He said that in addition to the compensation Sainsbury's Bank had paid, it should also refund a further £77.44 for the

flights that were cancelled by the second airline. He said this was because Sainsbury's Bank ought to have pursued the chargeback further.

He said that K had not adhered to its part of the contract with Miss F, which was to obtain a refund on her behalf for cancelled flights. He said that as K had provided its own details to the airline, Miss F required K's assistance to get a refund for her and it didn't do all it could. He said that as K hadn't provided the services it had agreed to provide in its terms, this was something that could be pursued through the chargeback scheme.

Sainsbury's Bank didn't agree. In summary, it said it had no prospect of success with the chargeback which is why it didn't pursue it further. It said this was because K had provided copies of its terms which showed it had done everything it was contractually required to do when assisting Miss F. It said the chargeback rules said that it couldn't challenge a defence from the merchant if it provided evidence that it hadn't breached their agreement with the customer. It said the services Miss F agreed to were provided by K.

The complaint has been passed to me for a decision.

### **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.

Miss F paid for her flights using her Sainsbury's Bank credit card, so I've thought about whether it acted fairly in trying to assist her with her request for a refund.

Sainsbury's Bank could have attempted to recover Miss F's payment using the chargeback process. Chargeback provides a mechanism for Sainsbury's Bank to ask for a payment Miss F made to be refunded, but only in a limited set of circumstances. What circumstances apply are set out in the relevant card scheme rules.

One of those circumstances is where the goods or services Miss F purchased were not provided. In this case, Miss F says that part of the services weren't provided to her. She says that the services K agreed to provide to her included obtaining a refund where the airline cancelled a flight.

Sainsbury's Bank isn't obligated to initiate a chargeback, but I would consider it good practice for it to do so where a chargeback right existed and where there was a reasonable prospect of success. Sainsbury's Bank attempted a chargeback initially which was defended by K. Sainsbury's Bank then attempted to challenge that defence, but K defended it once more. At this stage Sainsbury's Bank declined to take the chargeback to the final stage of the process which was to allow the card scheme to arbitrate.

Sainsbury's Bank says that it had no reasonable prospect of success. But I disagree. K offered an additional 'guarantee' service, the effect of which was that in the event of airline cancellation, Miss F could either select store credit for K or an 'assisted refund'. The assisted refund involved K trying to obtain a refund from the airline on behalf of Miss F.

There appears to be some dispute as to whether Miss F purchased the guarantee. However, K stated in the chargeback defence that she did and provided evidence of that. In any event, it isn't disputed that K agreed, at Miss F's request to try and obtain a refund using its 'assisted refund' process. K provided a screenshot showing the terms Miss F would have agreed to when accepting the assisted refund process. This stated: "*We'll do as much as we can to get your refund in 3 months*".

The first airline declined K's request for a refund on the basis that it had not cancelled any flights. K's terms concerning assisted refunds made it clear that if the airline tickets were non-refundable then no refund would be guaranteed by K. So, I don't think there was any breach of contract or failure to provide a service in relation to the first flights.

Regarding the second flights which were cancelled by the airline, those were refundable in those specific circumstances. It also appears the airline was willing to provide a refund. However, the airline required Miss F to apply for the refund herself. Miss F attempted to do this but failed. This was because the airline held K's email address on file for her and it needed Miss F to access and click a link it sent to that email address in order to process the refund. As it wasn't Miss F's email address, she had no access to the inbox or the email the airline sent. She asked K to assist with the refund as only it could carry out the required steps. However, K declined to help.

Given that part of K's agreed contractual terms with Miss F included a declaration that it would *'do as much as we can to get your refund'* and Miss F was eligible for a refund, and only K could do something to obtain that refund for her, I'm satisfied it didn't provide part of the service she had paid for when it refused to assist her further. Sainsbury's Bank already had all of this evidence available to it in order to further challenge K's defence to the chargeback. I therefore think it acted unfairly in not pursuing the chargeback further as there was evidence available to demonstrate the services hadn't been provided as agreed.

Sainsbury's Bank has sought to argue it couldn't provide new information as part of the arbitration process and therefore wouldn't be able to explain why the terms were breached. However, the section it has quoted from the card scheme rules appears to have been taken out of context. It says that the scheme won't take into consideration new information if that information should have already been presented earlier in the process (e.g. it was a requirement to provide a certain document for the chargeback to be processed) – it doesn't say that no new information can be provided. To support that, the same section (when read in its entirety) also says when taking a case to arbitration Sainsbury's Bank should explain why it disagrees with K's defence and provide supporting evidence if appropriate. So clearly it could explain why it disagreed with K's position.

By not attempting the chargeback, I think Sainsbury's Bank has unfairly deprived Miss F of the opportunity of potentially having her money refunded. Given what I've set out above about the relevant circumstances and evidence provided by Miss F and K, I'm satisfied that it's more likely than not that the chargeback would have succeeded if it had been robustly pursued as far as possible. For these reasons, I think Sainsbury's Bank should now refund the cost of the second flight, being £77.44. As she's been deprived of those funds, it should also add 8% simple interest per year on the refund from the date it declined her request for a chargeback.

Lastly, Sainsbury's Bank accepted that it could have handled Miss F's claim for a refund better. It said that it should have also reviewed her claim for a refund under Section 75. It said that it also didn't communicate the outcome of the chargeback dispute clearly and this resulted in Miss F being charged interest and a late fee on her credit card.

To put things right in relation to its customer service failings, Sainsbury's Bank has refunded the interest and late fee and removed the late payment from Miss F's credit file. It also agreed to pay her £100 compensation for the upset and inconvenience caused. As any claim under Section 75 would always have failed anyway (because each airline ticket cost less than the minimum required amount of £100 for a claim to be considered), I think what Sainsbury's Bank has offered for its customer service failings is fair and reasonable.

## **My final decision**

For the reasons given above, I uphold this complaint and direct Sainsbury's Bank Plc to:

- Refund £77.44 for the cancelled flight, adding 8% simple interest per year to that refund from the date the chargeback was declined to the date of settlement.
- Pay £100 compensation for the distress and inconvenience caused if this hasn't already been paid.
- Refund the interest and late payment fees totalling £19.41 if it hasn't already.
- Remove the late payment marker relating to the above interest and fee if it hasn't already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 18 March 2024.

Tero Hiltunen  
**Ombudsman**