

The complaint

Mrs H complains about the way in which Sainsburys Bank Plc handled her disputed transaction claim. She says the delay in sending a claim form resulted in her accepting a resolution from the supplier, which she feels was a partial settlement.

What happened

In January 2022 Mrs H purchased sofas from a merchant and paid £1,316 using her Sainsburys credit card.

Mrs H says that at the time of choosing the sofas she made it clear to the merchant that she needed the fabric to be hard wearing due to her having pets. Mrs H says that she was assured by the salespeople that the fabric she had chosen would be suitable for her needs.

The sofas were delivered to Mrs H on 10 May 2022. Mrs H noticed that the sofas were “bagging” and not of the quality she had expected.

Mrs H contacted the merchant and raised a complaint about the quality of the sofas. In September 2022 the merchant arranged for a technician to inspect the sofas. Mrs H says that following the inspection the technician verbally confirmed to her that the fabric was faulty and that he would report back to the merchant accordingly.

In late September 2022 Mrs H received an email from the merchant stating that the technician had concluded that there was no fault with the fabric. Mrs H tried to contact the technician but says he blocked her number. Mrs H told the merchant that the technicians report was at odds with what he had said to her verbally during the inspection. Then merchant arranged for a further inspection by a different technician.

In November 2022 a second inspection took place. The technician said there was no manufacturing fault with the fabric and that the pilling was a natural characteristic of the fabric. The technician said that the pulls in the fabric on the seats and arms had been caused by the fabric getting caught when being used which was consistent with accidental damage.

Mrs H wasn't able to resolve matters with the merchant and advised them that she would issue proceedings in the small claims court. Mrs H issued proceedings, and these were subsequently concluded at mediation.

In December 2022 Mrs H contacted Sainsburys to raise a section 75 claim. She called again in January 2023 as she hadn't received anything. In September 2023 Sainsburys sent a declaration form to Mrs H. When Mrs H received the declaration, she contacted Sainsburys. The agent advised Mrs H that there were no notes about the disputed transaction being raised as a section 75 claim and transferred the call to the section 75 team. Mrs H told the section 75 agent that she'd accepted a partial resolution from the merchant. The agent advised Mrs H that she wouldn't be able to proceed with a section 75 claim because the dispute had been resolved.

Mrs H complained to Sainsburys. She said the delay in Sainsburys raising the section 75 claim led to her accepting a resolution from the merchant which she felt was a partial settlement. Mrs H felt that she would have been able to get a better settlement had the section 75 claim been raised.

In its final response, Sainsburys accepted that there had been a delay in sending the section 75 declaration to Mrs H and that this fell below the level of service she could expect. It also acknowledged that Mrs H had been given incorrect information when she called in April 2023 when she was advised that the notes weren't clear about raising a section 75 claim. Sainsburys upheld Mrs H's complaint on this basis and paid compensation of £75. It said it wasn't able to proceed with a section 75 claim because Mrs H had made the decision to accept a resolution elsewhere.

Mrs H wasn't happy with the response and brought her complaint to this service.

Our investigator didn't uphold the complaint. They said that whilst they agreed that Sainsburys could have provided better service when the section 75 claim was raised and that there was a delay in sending the forms, they thought the compensation paid for the service failings was fair and reasonable. The investigator said that Sainsburys would only be liable under section 75 where the supplier had failed to provide a remedy for breach of contract or misrepresentation and that in this case, the supplier had provided a remedy which Mrs H had accepted.

Mrs H didn't agree so I've been asked to review the complaint.

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 certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold Mrs H's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that Sainsburys response to the claim under section 75 wasn't fair or reasonable.

In this case, Sainsburys hasn't responded to the section 75 claim because Mrs H settled the dispute with the merchant. Mrs H didn't provide any evidence to Sainsburys in support of the claim (although she has provided some evidence to this service which I'll come on to discuss later). So I'm not in a position where I can look at the evidence that Mrs H supplied and determine whether Sainsburys responded to the claim fairly.

What Mrs H says is that she contacted Sainsburys to raise a section 75 claim in December 2022 but because of the delay in Sainsburys progressing the claim, she accepted a resolution of the claim at mediation. Mrs H says that she feels that the resolution she accepted at mediation was a partial settlement and that she would have achieved more if her section 75 claim had been progressed.

I'll address the service issues first. Mrs H first contacted Sainsburys about a section 75 claim on 19 December 2022. At this point, Sainsburys accepts that it should've sent Mrs H a form to complete and return with supporting evidence so that it could consider the dispute. It isn't clear why Sainsburys didn't issue the form at this time, but it's accepted that it wasn't issued.

Mrs H contacted Sainsburys again on 9 January 2023 because she hadn't heard anything from Sainsburys. Sainsburys accept that it should've issued the form at this point, but that it

again failed to do so.

Sainsburys system show that it wasn't until 1 April 2023 that it sent the form to Mrs H. By this time, Mrs H had resolved the issue with the merchant.

I've thought about these service failings and how they impacted on Mrs H. There's no time limit for bringing a section 75 claim so it wasn't the case that Mrs H was deprived of her right to bring a section 75 claim by reason of the delay. However, Sainsburys advised Mrs H that she couldn't pursue the section 75 claim because she'd accepted a resolution from the supplier.

Sainsburys acknowledged that it could've provided better service to Mrs H and paid compensation of £75. In the circumstances, I think this is fair. I say this because although Sainsburys were responsible for the delay, it wasn't responsible for Mrs H's decision to settle the claim with the merchant.

Mrs H has said that she doesn't think £75 compensation is fair in comparison to the financial loss she incurred due to the failure to raise the section 75 dispute. I haven't seen any details of the financial loss that Mrs H says she's suffered so I can't comment on this. Further, there's no guarantee that the section 75 claim would've been successful.

I haven't seen the precise details of Mrs H's settlement with the merchant so I'm unable to say whether the whole claim has been settled. Mrs H has said that she was advised by Sainsburys that it would be a waste of time pursuing a section 75 claim because she had partially resolved the matter. If Sainsburys did say that, then I think that was slightly misleading, because there was – and is - still a possibility that a section 75 claim could proceed depending on whether the claim was settled on a full and final basis.

Sainsburys has said (in response to the investigators view) that it would need to see the offer that Mrs H has accepted from the merchant before it can determine whether she still has a valid section 75 claim. It has said that if Mrs H wants them to have another look and see if its possible to pursue the merchant for more, then it is happy to do so. Mrs H will need to contact Sainsburys directly about this and provide all of the evidence about the claim that she provided to this service.

For the reasons I've explained I'm unable to uphold the complaint.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 21 February 2024.

Emma Davy
Ombudsman