

## The complaint

Mr R is unhappy with how Sainsbury's Bank Plc (Sainsbury's) handled a quality of goods claim he made to them.

## What happened

Mr R purchased a number of cushions via an upholsterer I shall call F using his Sainsbury's credit card, to the sum of £1,684.81 in November 2022. Mr R discussed his requirements prior to purchase with F via email and agreed a swatch colour (referred to as 'Key Largo Atlantic') for the cushions from a photograph online.

However upon receipt Mr R felt the cushion fabric didn't match the colour of the photograph he'd reviewed before placing his order. F said the order did match the chosen swatch colour, however as this had only been seen on his computer screen, it may not have been the most accurate representation.

As a result F offered to send a fabric sample to Mr R to confirm it was the colour ordered. They also asked Mr R to return the cushion covers so they could check this themselves.

Sainsbury's has said F also offered to remake the cushion covers at no extra cost to address the complaint but this was rejected by Mr R as F hadn't agreed to collect the items.

As Mr R didn't agree with F's offer, he contacted Sainsbury's on 23 January 2023 to raise a chargeback claim and a Consumer Credit Act 1974 ("CCA") section 75 claim ("S75") so the matter could be addressed.

Sainsbury's say they contacted Mr R for further information and this was received in August when the claim was passed to their S75 team. Additional information was subsequently requested from Mr R and once received, Sainsbury's contacted F regarding the complaint.

F denied breaching their contract and said the correct items was sent to Mr R. They said that pictures online may not be an accurate representation of the fabric colour and that's why samples should be requested prior to purchase. They also confirmed they'd asked for the covers to be sent back so they could confirm the colour of the fabric. F also said they sent a fabric sample to Mr R but didn't hear anything further.

After considering this, Sainsbury's declined Mr R's S75 claim. They felt there was no evidence showing a breach of contract or misrepresentation and that the offer made by F to replace the cushions was fair. They also said only one of the cushions met the price requirements under S75. As Mr R didn't agree, the complaint was referred to our service in November 2023.

Our investigator looked at the complaint and didn't agree Sainsbury's could've done more with regard to the handling of the claim. While they didn't comment on the chargeback claim, they agreed that only one item met the price requirements to be considered under S75. They also reviewed F's terms and conditions and said they were satisfied it was made clear to Mr R that he should request a fabric sample if not sure. As this wasn't requested, the investigator didn't feel F had breached their terms and conditions.

As Mr R didn't agree, this matter has been passed to me for review and 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.

I've read and considered the evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that Sainsbury's aren't the provider of the goods here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mr R paid for the goods using his credit card, both chargeback and a S75 claim could possibly help him. So in deciding what is fair and reasonable I've focussed on this.

#### *Chargeback*

There is no requirement for Sainsbury's to raise a chargeback, but it's often good practice to do so. However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules (in this case Mastercard).

It's likely Mr R's chargeback claim would've fallen under 'goods/services not as described'. Mr R contacted Sainsbury's on 23 January 2023 to raise the claim, however I understand F disputed they'd breached the terms of their contract. They explained Mr R hadn't asked for a sample of the fabric and had relied on a screenshot which may not be accurate. They also said their terms and conditions made it clear that if the colour choice is key, a sample should be requested.

I've reviewed F's terms and conditions and under "*Colours & Images*", it says the following:

*"Colours and images can not be relied upon due to variation in screen resolution. Some foam products may vary in colour due to differences in supply chain, Firmness and density remain constant. If colour is a paramount consideration in your choice of product, please contact us prior in order to request a sample"*.

I've also seen a screenshot of F's website where it says:

*"Please feel free to ask for a sample of any fabric to get a true reflection of colour and texture as screen resolutions vary"*.

I therefore think F did make Mr R reasonably aware on both their site and via their terms and conditions that a fabric sample would be the best way to confirm the colour requested.

I'm also aware that F still agreed to replace the cushions for Mr R but he declined to send them back at his cost. However considering the above evidence, I think this was an appropriate resolution presented to address what'd happened here.

I don't consider F's request to compare the cushion covers to the swatch colour as unreasonable. They also sent a fabric sample which Mr R could've compared himself. However without anything further, I've insufficient evidence to show that F acted unfairly here and I'm also satisfied that F's terms and conditions made it clear to request a fabric sample to check the colour choice was correct.

So while I note Sainsbury's didn't raise a chargeback claim in this instance, I don't think it would've likely succeeded with this in mind.

### *Section 75*

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

In order to have a valid claim under S75, certain requirements need to be met. One of those requirements is that the claim must relate to a single item to which the supplier has attached a cash price of over £100 but not more than £30,000.

Looking at the purchase invoice, it looks likely that only one item is likely to meet the requirements of a cash price of over £100 as required by S75 and that is the largest overall cushion with the dimensions of 91.44 cm x 114.3 cm x 15.24 cm.

I therefore agree that only one item on the invoice would meet the requirements for a valid S75 claim.

Even with this limitation in mind, in order to assess a valid claim, Sainsbury's would've needed to consider all relevant evidence with regard to the alleged breach of contract.

As Mr R declined to return the cushion covers so that F could determine if the correct fabric was used, and he also declined to comment on whether the sample sent matched the cushions, there is insufficient evidence that the item wasn't made to the required colour as ordered.

Mr R said that he didn't receive the colour ordered and referred to the fact the invoice mentioned 'Firm Blue V38'. F has confirmed this is only in relation to the grade and colour of the cushion foam, and not the fabric itself. The fabric colour chosen was Key Largo Atlantic and V's website and terms clearly say that it would be for the customer to request a fabric sample to be sure of the colour they'd receive.

I see Mr R didn't do this but relied on the screenshot which F suggested may not be accurate. Mr R has sent pictures of the cushions as well as the sample colour and I do see a degree of colour variation from the swatch screenshot, but again these screenshots may not be an accurate representation of the colour. Regardless I can't agree that F would be responsible here. It would be for Mr R to ensure the colour selected was correct prior to purchase and this would be by requesting a sample fabric if necessary.

I do note the email correspondence between Mr R and F prior to purchase, and I see on 23 November 2022 F said that the covers would be in Key Largo Atlantic per the image sent by Mr R. However the issue remains that for accuracy, a copy of the swatch fabric being requested would've been the best way to confirm the final cushion colour.

I'm also aware that F previously offered to address the issue and remake the cushion covers, however Mr R has declined to send these back. I think it'd be for Mr R to discuss any options offered by F under the circumstances as I don't think they have breached their terms and conditions.

All in all, I don't think Sainsbury's has done anything wrong here. While they didn't raise a chargeback claim, I don't think there was a likely prospect of success for the reasons explained.

Likewise I do consider they were entitled to decline the S75 claim as there was insufficient evidence that F didn't make the cushions in line with the colour chosen. Also it would've been reasonable for Mr R to ensure the fabric selection was correct prior by requesting a sample, if necessary, as suggested by F on their website.

### **My final decision**

For the reasons above my final decision is that Sainsbury's Bank Plc need do nothing further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 23 October 2024.

Viral Patel  
**Ombudsman**