

The complaint

Mr S complains that Sainsbury's Bank Plc will not refund him for disputed transactions that took place on a credit card he didn't apply for. He wants Sainsbury's to not hold him liable for the debt, remove the credit card from his name, correct his credit file and provide compensation.

What happened

In 18 December 2018 whilst using an ATM Mr S noticed his balance was lower than he expected. On checking his online banking Mr S noticed a payment had gone through to Sainsbury's from his current account which he didn't recognise. The payment for £1,936.49 debited his account on 17 December 2018.

He contacted his bank, which I will call Y, and they said the transaction had been done online using his wife's card details. Mr S confirmed that neither him nor his wife authorised the transaction.

A few days later Mr S noticed that two direct debits had been set up on his account one with Sainsbury's and one for a credit card with Bank M. As he hadn't applied for these cards, he cancelled the direct debits.

He contacted Sainsbury's on the 9 January 2019. And they initiated an investigation.

Mr S says he contacted Bank M when he got an arrears notice, they said they would investigate and revert to him in two weeks. After their investigation they said they thought Mr S had been the victim of ID fraud. They cancelled the credit card and removed it from his credit file.

Mr S contacted CIFAS who offer a protective registration service in cases of identity fraud.

As a result of the protective registration Mr S received a letter from another bank, I'll call B saying that a bank account had been opened in his name. Mr S visited the branch and confirmed that it wasn't him that had attempted to open the account. Bank B closed the account. In January 2019 Bank Y confirmed that they believed he had authorised the transaction so they would not be refunding the disputed amount.

Sainsbury's confirmed the credit card was opened on 31 October 2018 and activated on 7 November 2018.

After investigating, Sainsbury's said they thought Mr S had opened the account with the intention of committing first party fraud. They thought he authorised the transactions on the card and so wouldn't refund the transactions. Sainsbury's accepted it had taken them ten months to carry out their investigation. But they said there was no evidence Mr S had been impersonated by someone else. And payments to the account had been made from a savings account in Mr S's name. Sainsbury's closed the account with a debit balance of £2,472.27 which they say needs to be paid by Mr S.

Mr S has told us that he noticed his credit score was poor and was unable to get a mortgage. He also has felt very stressed with the situation.

As he was unhappy with Sainsbury's response Mr S complained to our service.

One of our investigator's looked into the complaint and she thought it was most likely that Mr S hadn't applied for the credit card because:

- He was abroad at the time of the application to Sainsbury's.
- The application was made from an IP address near to Mr S's actual address.
- Mr S's story has been consistent, he was proactive in contacting the banking organisations and CIFAS.
- The phone calls provided by Sainsbury's are of three different people who don't sound like Mr S.

She said Sainsbury's should cancel the debt, close the account, correct Mr and Mrs S's credit file and pay £200 for the stress caused.

Mr S said the compensation was not enough because he had stress for a year and a half whilst dealing with this case and the issue had a bad impact on his credit score and his ability to get a mortgage.

Sainsbury's disagreed with the investigator's view. They said the pattern was not one likely used by an unknown third-party fraudster. As Mr S lives in a flat with his family and no one else has access to his flat, it's unlikely a fraudster could access his details and his post.

They thought Mr S colluded with the fraudsters and that would explain why despite a secure home, the fraudster could access Mr S's details as well as cards and PINs and make the application from an IP address in the area Mr S lives in. They say they would expect to see rapid spending on a fraudulent card, not paying off the balance on the card. They said they couldn't see why a fraudster would clear the balance on the card with Mr S's account.

Our investigator considered Sainsbury's comments. She said she thought it was someone close to Mr S who had carried out the fraud because they would have access to his details and cards and PINs as well as knowing he was away. She said there is no set pattern to how fraudsters behave and so it's difficult to say whether a particular behaviour is more or less likely to be the behaviour a fraudster would use.

Following the view from our investigator further information was provided by both Mr S and Sainsbury's.

Sainsbury's said Mr S had provided two versions of events about when he became aware of the credit card. Firstly, he said he noticed the card when the direct debit attempted to collect on the 17 December 2018. On his second call to Sainsbury's he said that he had noticed his balance was low when he used the ATM, he then went home and noticed the direct debit.

There was also a discrepancy about when Mr S was supposed to have first contacted Bank Y to inform them of the fraud. Sainsbury's said that Mr S hadn't contacted his bank straight away as he'd said, but had waited until 9 January 2019 to contact Bank Y. This was the same day he contacted Sainsbury's.

Mr S didn't mention the other fraudulent card with bank M on the call to Sainsbury's nor that he had been away when the card was applied for.

They were also concerned about a mistake in the application regarding Mr S's date of birth. This same mistake was made by Mr S when his account with bank Y was opened.

Sainsbury's have said they think Mr S was aware of the application even if the application was done by someone close to him. They found it suspicious that the wrong date of birth was given in the card application and in the application for Mr S's bank account with Y. The card was activated, online banking was set up and paperless statements set up on the 7 November 2018 the day after Mr S returned from his trip abroad.

Mr S told us that there had been visitors at his home when he was away who could have had access to his details and post. He also said his letting agent had access to his home.

As there was no agreement the matter has come to me for decision. On reviewing the case I came to a slightly different conclusion to our investigator. And I issued my Provisional Decision on the 23 October 2020 giving Sainsbury's and Mr S until the 22 November 2020 to provide further comments.

My provisional decision

In my provisional decision I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I am minded to reach a different conclusion to that reached by the investigator and I will explain why below.

Generally, Sainsbury's can hold Mr S liable for the debt if he applied for the credit card himself or authorised someone else to do it on his behalf.

So, I need to think about whether the evidence suggests it's more likely than not Mr S applied for the credit card or consented for the application to be made and should therefore be held liable for the debt. The evidence shows that the application was made using an IP address close to Mr S's home. Mr S has provided evidence that he was abroad at the time the application was made. However, it is still possible for Mr S to have consented to the application even if he didn't make it himself.

I have also seen the credit card application form. It has Mr S's correct name and address and his wife's name and address as an additional cardholder. The phone number and the email address are different to the one's we hold for Mr S. The occupation isn't Mr S's occupation. So, I can see how this would suggest that a fraudster got his details and applied for the card pretending to be him.

But on balance from what I've seen, I don't think it's unreasonable for Sainsbury's to conclude Mr S consented for the application to be made. I say this because:

- I've thought about how a fraudster could have gained access to his post box. Mr S lives in a gated community. His post is delivered to a locked post box and he has the key to it. I have seen evidence the card and PIN were sent by post. I'm unable to see how someone without his permission could have accessed the post box. He suggested that he had other family and friends visiting during the time and they could have gained access to the post box. He has also told us that the letting agents have a key to his flat and could have gained access to his information. But I don't think this is plausible.*

- *Mr S has given Sainsbury's two different versions of how he found out about the credit card. He told us that he went to an ATM and found his balance lower than he expected, he then became aware of the direct debit and contacted his bank. He has said he assumed they would contact Sainsbury's. The direct debit left his bank on the 17 December 2018. Sainsbury's have said that he didn't contact them until the 9 January 2019. On contacting Mr S's bank, Sainsbury's found that Mr S hadn't spoken to Bank Y until the 9 January 2019 the same day he spoke to Sainsbury's. I think it's possible Mr S might have been confused which is why he's provided two versions. But it seems Mr S didn't call the bank until three and a half weeks after the direct debit payment for the credit card left his account. If I accept that Mr S noticed his low balance in late 2018, I find it surprising that he didn't report this to either Sainsbury's or Bank Y until over three weeks later.*
- *I find it implausible that Mr S didn't contact bank M to let them know the card was fraudulently applied for and instead he waited to receive an arrears notice, especially since he was aware of a direct debit to them in mid-December. Mr S has said that he called Sainsbury's before Christmas. The evidence from the bank shows Sainsbury's didn't receive a call from Mr S until 9 January. When Mr S did contact Sainsbury's, he didn't mention that another card had also been taken out fraudulently in his name.*
- *Although it isn't possible to predict the behaviour of a fraudster. I find it unlikely that a fraudster would apply for a card in joint names to commit a fraud. Or clear the balance on the card from the victim's current account. These behaviours would make it easier to detect the fraud, something a fraudster would try and avoid.*
- *An online payment for the full balance on the Sainsbury's credit card was made using Mrs S's card details. Clearing a balance in full is very unusual for a fraudster. It also seems strange that the fraudster didn't then take advantage of Mrs S's bank details to commit further fraud.*
- *The card application shows an incorrect date of birth for Mr S. It's been suggested that this is the result of reading the date as month/day/year as is common in the US instead of as day/month/year as is common in the UK. The same mistake was made when Mr S's current account with bank Y was opened 8 years ago. This suggests that the same person opened both accounts. I have also noticed that Mr S has used the US construction of month/day/year when he refers to dates in his communications with this service.*
- *The person who phoned Bank Y to set up the payment to the Sainsbury's credit card was able to give Mr S's correct date of birth and not the date of birth on the application form. I think a fraudster wouldn't have been aware of the different dates.*
- *Mr S has said that the people who phoned Sainsbury's were not him. Our investigator agreed that the calls were made by people who sound very different to Mr S. I have listened to the calls and I agree they don't sound like Mr S. However, this doesn't change my view because Mr S could have directed someone else to make the calls on his behalf.*

I have considered the plausibility of the evidence that has been provided to me by Mr S. Uppermost in my mind has been the behaviour of Mr S when learning of the fraudulent card applications and his delay in contacting the relevant institutions.

I have had to consider whether Mr S made the application himself or consented to it. He has said that he was abroad when the application was made. All the other evidence I have seen

points me to think that it is more likely than not that Mr S consented to the credit card application. I am satisfied that Mr S knew about the card. Because of this I am minded to reject the complaint. It follows I will not be asking Sainsbury's to do anything else.

Responses to my provisional decision

Sainsbury's accepted my provisional decision.

Mr S has provided extensive comments to my provisional decision. I thank him for his detailed submissions. I'd like to reassure Mr S that I've considered the whole file and what he's said. But I'll concentrate my comments on what I think is relevant. So, I won't be addressing every point in detail which Mr S has raised in his submissions. My findings will focus on what I consider to be the central issues. If I don't mention any specific point, it's not because I failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is the outcome. I have summarised Mr S's main points below:

- Mr S says he contacted Bank Y immediately when he learnt first about the transactions and not on 9 January 2019 as I have suggested.
- Mr S has also provided reasons why he didn't contact the other two banks.
- Mr S provided comments on how the fraudster accessed the card and PINs.
- Mr S hasn't derived any benefit from the fraud.
- Mr S went to action fraud and to CIFAS.
- Mr S says it doesn't make sense for him to be held liable by Sainsburys when Bank M and Bank B have exonerated him.
- Mr S has made comments regarding the mistakes around his date of birth.

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.

Having done so I've not changed my original conclusion.

Mr S says he contacted Bank Y immediately when he first learnt about the transactions and not on 9 January 2019 as I have suggested. Mr S says he visited the local branch of Bank Y with his wife on 18 December 2018. Mr S originally mentioned to us that he had phoned Bank Y to tell them that he didn't recognise the payments, he didn't mention that he had gone into branch. I would have expected Mr S to remember whether it was an in-person conversation or a telephone call he had with Bank Y on 18 December when he discovered the payment to Sainsbury's.

Mr S has said that due to the difficulty in communicating with Sainsbury's he didn't mention that another fraudulent card had been applied for. I accept Mr S may have contacted Bank Y before Christmas, but I still think it strange that he didn't provide all the details to Sainsbury's that may have provided them with a fuller picture of the situation.

Mr S originally mentioned that his house and post box were secure and then later that friends and family were staying with them at the time. Mr S has now provided us with a possible explanation about how a fraudster could have intercepted the cards and PINs. He's suggested the post has been intercepted by a visitor or one of his neighbours. He thinks it's

highly likely that a fraudster had access to his details by hacking into his bank account with Y and then intercepted cards in order to commit a fraud.

I appreciate Mr S providing this possible scenario however I find it highly implausible that a fraudster connected to Bank Y would hack into Mr S's account and then go to his home and intercept the card and PIN possibly on two separate occasions. I think it unlikely that a fraudster having gone to so much trouble would not use the information to commit further fraud on both Mr S's account and his wife's account. It is also extremely unlikely that a fraudster would set up a payment for the card balance or direct debits.

Mr S says he didn't carry out the transactions and CCTV evidence would show this. I haven't been given access to CCTV evidence and even if I had it would not provide evidence of whether Mr S consented to the application, as he could have consented to someone else making the purchases online and in store.

Mr S says he is a highly unlikely candidate to perpetrate fraud as he stands more to lose than to gain. Mr S has said that he went to action fraud and to CIFAS for protective registration and these are not the actions of a fraudster. My investigation is based on trying to establish whether Mr S took out the card or authorised someone else to do so. So, I can't draw any conclusions from Mr S having reported the matter to action fraud or contacting CIFAS.

Mr S has said that it doesn't make sense that Sainsbury's would hold him liable for the fraud when Bank M and Bank B exonerated him and were happy to accept that he was a victim of Identity fraud. I appreciate that this is frustrating for Mr S however each bank is entitled to carry out their investigation in the way they think most appropriate and I can't draw any conclusions based on the decision of Bank M and Bank B.

Mr S has mentioned the mistake regarding the date of birth, and he has said he was confused because he was new to the country. He has also said the fraudster might be someone who uses US date construction. I still think it's unusual that the same mistake was made in both the genuine application to Bank Y eight years ago and in the fraudulent application to Sainsbury's. I also think it's relevant that the person who set up the payment to the Sainsbury's credit card was able to give Mr S's correct date of birth and not the one on the application form. I don't find the explanation Mr S has provided convincing and it doesn't change my mind.

The evidence Mr S has provided has evolved over time. This is perhaps understandable since the events took place nearly two years ago. However, in his response to the provisional decision he has recently mentioned that his family were away on holiday from the 18 December 2018 until the new year. This is new information and I find it difficult to accept that Mr S wouldn't have mentioned this before. Although it is possible that Mr S was confused, I think it reflects on the credibility of his story.

I have considered Mr S's submissions carefully I have also reconsidered the evidence in this case. Having done so I have not seen anything to change my mind.

For all these reasons and the reasons outlined in my provisional decision, my view on what the fair and reasonable outcome on this case is remains the same as set out in my provisional decision

My final decision

For the reasons set out above my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 December 2020.

Esperanza Fuentes
Ombudsman