

The complaint

Mr L complains that Sainsbury's Bank Plc failed to refund several transactions he didn't recognise that were made from his credit card account.

What happened

Mr L received a fraud text on his phone and spoke with Sainsbury's about several transactions. Three large transactions had left his account, each with a second charge related to an advance money fee. These transactions had been made to an online gambling merchant - who I'll refer to as M. Mr L told Sainsbury's that he didn't recognise any of them and hadn't used his "new" credit card for six to twelve months. In the call Mr L said he'd had his old card stolen on the previous New Year's Eve. Mr L also told Sainsbury's that he'd recently lost his bag with his tablet device in it, and had made a report about the loss, which was the day before the disputed transactions occurred. The call handler asked Mr L why he hadn't told them earlier about the loss. Mr L said he hadn't realised his Sainsbury's credit card was in the bag and the delay in making the report was due to a slow response by the police. Mr L's credit card was cancelled and a new one issued.

Sainsbury's asked M for information about the account the payments were made to, but M required a specific authorisation from Sainsbury's. The request didn't get authorised for about ten months. M provided evidence that linked Mr L to the transactions – they recorded that an account in Mr L's name had been opened the previous year prior to the theft of his original credit card. The details M had matched those that the bank had, including the name/address/email address/phone number and related Internet Protocol (IP) address. The IP address records details related to the location of services connected with the internet – in this case the details of where the credit card was used to make the purchases from. M also said that the transactions used additional authentication (3D Secure) to confirm the payments and the gambling account had been suspended.

Mr L had also told Sainsbury's that he'd had his car stolen, which contained some of his devices and Sainsbury's subsequently contacted the police about it. They told Sainsbury's that the incident they were dealing with wasn't related to the loss of Mr L's card. Based on all the information they'd obtained; Sainsbury's believed Mr L was responsible for the transactions and declined to refund him. Sainsbury's wrote to Mr L and asked him if he had any evidence to appeal the decision. Mr L replied and denied any knowledge of a fraud claim but mentioned the brief conversation he'd had about the unrecognised transactions which had happened quite some time ago.

Sainsbury's then wrote to Mr L and told him that his account was closed and asked for the outstanding balance to be repaid. Sainsbury's didn't enter the disputed transactions onto Mr L's account until they received a response from M the following year. It was at that point they re-issued the statements and included the disputed transactions. Mr L was unable to access his online statements once his account was closed. Sainsbury's later supplied copies of the statements to Mr L and accepted that they'd failed to switch the account to paper statements after the online access was stopped. Sainsbury's explained to Mr L that they'd sent letters outlining the outstanding balance, so they believed he was aware that there was a debt.

Sainsbury's removed the interest and charges for the period that Mr L was without statements and offered Mr L £50 for the lack of service.

Mr L continued to deny that he'd made the payments and Sainsbury's maintained their view that they believed Mr L was responsible for the payments and declined to refund him.

Mr L brought his complaint to our service and said that he didn't remember receiving a new card after his wallet was stolen on New Year's Eve. He denied opening the account with M but said he might have had one some years ago. Mr L told our investigator that his card may have been intercepted and that he'd been subject to other identity fraud attempts.

Mr L also explained that he'd lost his tablet and phone, both of which were unlocked. Our investigator thought that Mr L was more than likely responsible for the transactions – he concluded that the account with M was set up prior to the loss of any of Mr L's cards and it was unlikely that a fraudster would use a stolen card to make payments on an account with M that was in Mr L's name. He also thought there were some inconsistencies with Mr L's version of the events.

Mr L disagreed with the outcome and made numerous points he wanted taken into consideration. Mr L thought that what had happened had been misunderstood and said he was never told about the large transactions leaving his account and he didn't have any evidence that his card was replaced after the loss on New Year's Eve. Mr L thought that Sainsbury's had spoken to the wrong police force because he never reported the loss of his bag to them.

Mr L explained that he hadn't received replies from Sainsbury's to many of his requests for information about their investigation and he hadn't had access to any statements throughout the process. Mr L clarified that he wasn't sure his card was in his bag that was lost just prior to the disputed transactions because he can't remember ever receiving it.

Mr L complained that Sainsbury's had taken too long to investigate his situation and they'd failed to identify these payments as unusual because he rarely used this particular card. Mr L has said this situation has caused him stress and happened at a time when he was still dealing with the loss a close family member.

Mr L thought that Sainsbury's had failed to meet its obligations under the Payment Services Regulations 2017 (PSRs 2017) – specifically sections 54,59,72,73,74,75,77,79,80,100,101 and sections 13.1.1,13.1.2 & 16.2 of the Credit Agreement.

Mr L wanted his complaint reviewed and it's 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.

I'd like to acknowledge the additional points that Mr L has made and confirm that I've considered them, alongside the regulations that he's referred to. My role is an independent and impartial one and I'm going to focus on what I feel the crux of the complaint is. In doing so, I won't be responding to each and every point Mr L has made, even though he may wish me to – but that's in line with our role as a quick and informal service.

In doing so, the key consideration in respect of the regulations is whether Sainsbury's can hold Mr L liable for the transactions. I'll also address the handling of the investigation by

Sainsbury's. As Mr L has pointed out, the relevant law surrounding authorisations are the Payment Service Regulations 2017. Credit card transactions are also covered by the Consumer Credit Act 1974. The basic position is that Sainsbury's can hold Mr L liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them.

Coming to the question of authorisation, this is made up of two parts. Authentication and consent. Authentication is usually referred to as the technical evidence and in this case, Sainsbury's have supplied evidence that shows the correct card details were used to make the transactions. In this case, I'm satisfied the evidence shows all the disputed transactions were authenticated.

Consent refers to the way in which Sainsbury's and Mr L agreed to use the card for transactions. For example, when using the card details on a merchant's website, Sainsbury's agree to accept that this is a legitimate payment instruction made by the cardholder or another approved user and make the payment on their behalf. The transactions in this case used the genuine card details and a secondary level of security called 3D Secure to confirm the payment, so I'm satisfied that consent was given and the disputed transactions were authorised. But, there are exceptions where it wouldn't be appropriate for Sainsbury's to hold Mr L responsible, for example if the card was used without his permission.

During a New Year's Eve celebration, Mr L's wallet was stolen which contained his original Sainsbury's credit card and he notified Sainsbury's about this. Sainsbury's reported that they replaced the original card and dispatched it to Mr L's home address shortly after. There were no reports of postal issues and I'm not aware of any other problems that would have prevented the new credit card from being delivered to Mr L. So, I'm satisfied the card was dispatched to Mr L's home address.

About five months later, Mr L lost his bag on a train journey and reported it through an online portal the day before the disputed transactions were made. The bag contained an unlocked tablet device with Mr L's banking details on it, and it also contained his passport. When Mr L received a text about the unrecognised transactions, the Sainsbury's call handler asked Mr L why he hadn't reported the loss of the tablet to them earlier (presumably because Mr L said it contained banking details). Mr L told the call handler that he didn't realise his new (credit) card was in the bag that was stolen at the time.

By the time that Mr L had lost his tablet on the train, he'd suffered two previous incidents of theft/loss of his personal items and believed he'd been subject to attempts of identity theft. I think Mr L would have been more than aware of the potential risk he was under when he lost his tablet containing his banking details and his passport. I would have thought he'd have reported this loss to all the banks he had accounts with, in order to prevent any unauthorised use of them and give the banks an opportunity to protect his funds. Mr L has said that he was waiting for a response from the police, which explained the delay in making a report to the online portal, but this was only to report the loss of his bag and not to report the loss to Sainsbury's.

Mr L later explained that he was never sure he ever received his new card and there was no evidence given to him that proved it was safely delivered. When I listened to the first call Mr L had with Sainsbury's, he described the card as his "new card" and explained the circumstances of the original card's loss. So, it appears in that call that Mr L believed he'd received the new card, otherwise I don't think he would've referred to it in that way. So, I think it's likely that Mr L received his new card. Mr L stated that he was never made aware of the large transactions that left his account but having listened to the original call Mr L had with Sainsbury's, the call handler goes through the unrecognised transactions including the larger ones. So, I think it would have been clear during that call, that there were numerous

unrecognised transactions made from Mr L's account. But, Sainsbury's delayed any further investigation for a considerable time and didn't apply the charges to Mr L's credit card, so I can understand why Mr L's recollection may have faded over time.

The disputed transactions took place over five months after the original card was replaced and there was no other use of the card during that period. I think it unlikely that if Mr L's card was stolen by an unknown third party, they would wait for such a long time to use the card. Of course, it could have been lost during this period and found later, but I don't think that's the likely explanation because the disputed transactions were made using an account in Mr L's name.

M sent Sainsbury's the information they held about the transactions and which account they were linked to. The information they sent Sainsbury's included Mr L's name, home address, email address, date of birth, mobile phone number and related IP address activity. They told Sainsbury's that the account was set up prior to the loss of Mr L's first card, some six months earlier. I've thought about a likely scenario where Mr L's card could be lost and then used to make transactions on an account that matched Mr L's, particularly when Mr L has denied setting up such an account at that time. There doesn't seem to be a plausible explanation for how an unknown third party who obtained Mr L's card, could then find out about this account, including the security details needed to log in to the merchant's website.

There are also other, simpler ways, to use someone's card details to steal their money, rather than with a gambling merchant that would likely pay any winnings back to the card they came from. There would be no guarantee that the unknown third party would be able to use those funds because they wouldn't know when the card would be blocked. So, I don't think these transactions were made by an unknown third party.

M provided IP address data that matched the records held by Sainsbury's for Mr L, this means that both the merchant and the bank reported the same IP address data. It doesn't seem likely that someone other than Mr L could use the same IP address that was recorded by both Sainsbury's and M.

M also confirmed the transactions were carried out with additional authentication, in this case the 3D Secure system. This is an additional layer of authentication and is linked to the account holder and the means of payment (Mr L's credit card), usually through either an app, email address or phone. The records that M held for these transactions were all linked to Mr L, so it seems likely that any additional authorisation that M carried out was sent to a device or account registered to Mr L. I realise that this will be a difficult message for Mr L to hear, but the evidence I've considered leads me to conclude that I think it was more likely than not that Mr L was responsible for the transactions he's disputed.

Mr L thought that Sainsbury's should have notified him about these transactions because they were unusual. In the context of how the account was used I'd agree with him and Sainsbury's did issue a warning text after the transactions had been made. But, as I've made a finding that I think Mr L was more than likely responsible for making these transactions, he would've been aware of the payments leaving his account and any warning issued by Sainsbury's would only confirm information he already knew.

Mr L was critical of how Sainsbury's dealt with the investigation and when I've reviewed how it was handled, Sainsbury's failed to pursue their investigation for about ten months. It was only once the authority was provided to approach M and they responded, that the investigation was concluded. I asked Sainsbury's why they delayed their investigation, but they could offer no explanation. During this period, they left the disputed transactions off Mr L's statements. Sainsbury's did recognise that once they blocked Mr L's account, his online access to statements was also blocked. They later provided paper copies of historical

statements, including the newly added disputed transactions. Sainsbury's did explain that they were writing every two months to Mr L about his debt, so they believed he was aware that they were holding him responsible for the outstanding monies.

Sainsbury's offered Mr L £50 for the lack of statements and removed any interest and charges during this period. Because I've made a finding that I think Mr L was more than likely responsible for the disputed transactions, it follows that he also knew the debt was repayable to Sainsbury's. So, whilst I recognise that Sainsbury's failed to carry out a timely investigation, it doesn't change the responsibility owed by Mr L to repay the outstanding debt. I think that Sainsbury's offer for £50 with the removal of the interest and charges was a reasonable way to deal with this situation and I won't be asking them to change this.

In summary, Mr L disputed several transactions on his credit card. He's explained he can't remember receiving the new one and some five months later there are disputed transactions on his account. These happened shortly after losing a bag that may or may not have contained Mr L's credit card. The transactions were linked to an account in Mr L's name that was set up before any of his cards or personal details were stolen. Taking everything into account – I don't think there's a plausible explanation why anyone other than Mr L would use the card to make payments to an account that was in his name. So, I think it's reasonable for Sainsbury's to hold Mr L liable for the transactions and I don't uphold this complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 12 January 2022.

David Perry
Ombudsman