

## **The complaint**

Mrs A complains that Sainsbury's Bank Plc are holding her liable for a loan which she explains she didn't take out. She'd like the loan written off, removed from her credit file and compensation for the distress caused.

## **What happened**

In January 2020 a loan of £5,000 was taken out in Mrs A's name with Sainsbury's.

The loan funds were paid into Mrs A's account with another bank, I'll call Bank N, and then transferred to another account in Mrs A's name, one of her ex-partner's accounts and a small amount was also spent via some card present transactions.

On 17 February 2020 Mrs A contacted Sainsbury's to advise that the loan had been taken out without her consent by her ex-partner.

Mrs A explained she'd recently started a new relationship but when her ex-partner left she discovered he'd carried out transactions without her consent and taken out credit cards and loan agreements in her name.

Mrs A advised that her ex-partner had been controlling and abusive, she'd been in contact with a charity which supports victims of domestic abuse and also received support from a debt advice charity.

Mrs A made contact with the other providers where she'd experienced fraud, including Sainsbury's credit card team, and all of the businesses agreed to write off the debt. And load her to a fraud prevention agency to protect her from further fraud.

Sainsbury's reviewed Mrs A's complaint but didn't uphold it. They thought, on balance Mrs A likely consented to the loan – and therefore should be held liable for it.

Mrs A wasn't happy with Sainsbury's response, so complained to our service.

One of our investigator's looked into Mrs A's response. In summary they thought that Mrs A didn't consent to taking out the loan. He recommended that Sainsbury's write off the loan, remove any record of it from her credit file and pay £200 compensation for the distress caused.

But Sainsbury's didn't agree. In summary they said:

- Mrs A's ex-partner needed to know her PIN to access her account with Bank N.
- Nectar details were provided to get a lower APR rate, why would a fraudster do this?
- Mrs A discovered the fraud on 10 February 2020 but didn't report it to Bank N until 17 February 2020. It's surprising that no fraud took place on Mrs A's account with Bank N between 10 and 17 February 2020.

- Mrs A's ex-partner would have needed to access to her email – and there's no explanation for this.
- The money was transferred from Bank N to another account in Mrs A's name.

As Sainsbury's didn't agree 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.

A customer can't be held liable for a credit agreement they didn't consent to. So, I need to determine on balance whether Mrs A consented. Having done so I don't think Mrs A did – I say this because:

- I've seen a copy of the loan agreement signed on 7 January 2020. Within this document Mrs A's correct date of birth, address and bank details (with Bank N) were provided. To take out a loan in Mrs A's name her ex-partner needed to know these personal details. Mrs A's ex-partner lived at her home address – and likely would have known some of the details and been able to find out the others.
- I've listened to a phone call Mrs A had with Sainsbury's in February 2020. Sainsbury's have argued Mrs A has been inconsistent with her account but I'm afraid I can't agree. In the circumstances with Mrs A experiencing domestic abuse from her ex-partner, I think Mrs A's account has been consistent and detailed in terms of what she knew about her ex-partner. And how he might have committed the fraud – a victim of fraud isn't responsible, and wouldn't necessarily be aware, of exactly how a fraudster gained access to their security details.
- Sainsbury's have highlighted that Mrs A's email address was provided in the application – but with Mrs A's ex-partner residing with her, and potentially having access to an old phone it's plausible he gained access to her email address to submit applications for credit. Including this Sainsbury's loan.
- The loan funds were paid into Mrs A's account with Bank N – some were spent, and others were moved on to Mrs A's account and another payee (likely Mrs A's ex-partner). Mrs A's ex-partner would have needed access to her online banking details to access the loan payment – but Mrs A has explained that she shared them with her ex-partner under duress. Mrs A also advised Sainsbury's, during a phone call, that her ex-partner previously moved funds from her account with Bank N to his accounts.
- Sainsbury's have argued that Mrs A's nectar details were provided when the loan was applied for and this enables a lower APR. They've also argued that the funds were kept in Mrs A's account with Bank N for a month, and they'd have expected a fraudster to apply for the maximum possible amount. I understand Sainsbury's arguments here and agree her ex-partner wouldn't benefit from a lower APR. But it's not always possible to predict a fraudster's behaviour, and it isn't Mrs A's responsibility to explain why her ex-partner made the decisions he did.
- I've listened to the call Sainsbury's had with Bank N. And in contrast to what Sainsbury's have said – I'm satisfied that within the call Bank N advised Sainsbury's that Mrs A contacted Bank N on 17 February 2020 – seven days after she discovered the fraud by her ex-partner. And reported some fraudulent transactions to Sainsbury's. Mrs A didn't report the £5,000 loan payment as fraud – but considering she's reported the *loan itself* as fraudulent to Sainsbury's, and the payment was a

credit *into* Mrs A's account, not out as most disputed transactions are, I don't think it's surprising Mrs A didn't mention it to Bank N.

For the reasons I've outlined above I'm satisfied that Sainsbury's aren't entitled to hold Mrs A liable for the loan.

### **Putting things right**

I'm satisfied that Mrs A has experienced distress after contacting Sainsbury's about the loan in February 2020. And the bank could have acted much sooner in stopping interest charges and writing off the loan. I think the bank should compensate Mrs A £200 for the impact caused to her.

### **My final decision**

My final decision is I direct Sainsbury's Bank Plc to:

- Write off the loan in Mrs A's name
- Remove any reference of the loan from Mrs A's credit file
- Pay Mrs A £200 compensation for the distress caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 16 August 2022.

Jeff Burch  
**Ombudsman**