

The complaint

Mrs B complains that Sainsbury's Bank Plc didn't do enough to protect her from losing £4,999 to an investment scam.

What happened

The detailed background to this complaint is well known to both parties, so I'll only provide a brief overview of some of the key events here.

Mrs B has explained that in April 2018 she was searching for a high interest savings account and came across an advert for Greenfields Capital regarding trading in stock and shares. She left her contact details for them to call her back so she could find out more information. Mrs B was subsequently persuaded by Greenfields Capital to make payments to them as an 'investment'.

Mrs B started making the payments to Greenfields Capital from accounts *not* held with Sainsbury's Bank. The one payment she *did* make using her Sainsbury's Bank credit card (and which *is* the subject of this complaint) is as follows:

Date	Method	Merchant	Amount
27 April 2018	Credit card	greenfieldscapital.com	£4,999

Mrs B subsequently came to realise she'd been scammed by Greenfields Capital and she reported the matter to Sainsbury's Bank. Ultimately, Sainsbury's Bank didn't refund the payment to Mrs B, and so she referred her complaint about Sainsbury's Bank to us. As our investigator was unable to resolve matters informally (the investigator recommended that the complaint be upheld but Sainsbury's Bank didn't agree), the case has 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've decided to uphold this complaint for materially the same reasons as the investigator. I'll explain why.

Mrs B authorised the payment in question here. This means that although Mrs B subsequently lost this money, Mrs B is presumed liable for the loss in the first instance. However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Sainsbury's Bank should fairly and reasonably:

- Have been monitoring accounts – and any payments made or received – to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that

might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and

- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

My fellow ombudsmen and I have referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions published on our website.

Bearing this in mind, regulated firms ought reasonably to take notice of common types of scams. As long ago as June 2012, the FCA's predecessor indicated – in its consultation paper entitled *Banks' Defences Against Investment Fraud: detecting perpetrators and protecting victims* – that it was good industry practice for firms to build up an updated watch-list of types of scams and potential perpetrators; and regularly to share “*timely and detailed intelligence*” with other banks, UK and overseas regulators, the police, etc. Whilst the regulator gave no specific timings, it is not unreasonable in my view to expect Sainsbury's Bank to update its watchlist and communicate internally to staff within, say, one month of an alert being posted by the FCA or IOSCO. In my judgment, such alerts should automatically trigger alarm-bells – and lead to the payment being paused – pending further enquiries (and a possible scam warning) to the payer.

I've noted regulators published warnings about Greenfields Capital as follows:

- On 13 March 2018 (more than a month *before* Mrs B's payment), Superintendence of the Securities Market of the Republic of Panama published an alert on the International Organization of Securities Commissions (IOSCO) investor alerts portal – warning that Greenfields Capital was carrying out activities without authorisation related to the securities market, including business of intermediation, investment advice, intermediation in forex, securities investment manager, inside or from the Republic of Panama.
- On 14 April 2018 (again, *before* Mrs B's payment, albeit not as much as a month before), an alert about Premium Peak Ltd trading as Greenfields Capital was published by the Financial Conduct Authority (FCA) warning that it was offering financial services in its jurisdiction without authorisation.

It is not unreasonable to expect Sainsbury's Bank to regularly updates its internal alerts to include information about payees who had tried to carry out regulated activities without permission. I accept that it did not necessarily follow from the nature of the IOSCO warning in isolation that Greenfields Capital were fraudsters. But given the timing of the IOSCO alert relative to the payment, I think Sainsbury's Bank ought to have automatically blocked it; as it had a fair chance to update and communicate its watch-list between the IOSCO warning being published and the payment being made.

Sainsbury's Bank had constructive if not actual notice that the payee might not be a legitimate merchant — therefore, I'm satisfied it's reasonable to say Sainsbury's Bank, in order to meet its obligations summarised above, reasonably ought to have spoken with Mrs B on 27 April 2018 to check everything was in order before it processed the payment, to protect her from the possibility of financial harm.

Since Sainsbury's Bank ought well to understand that an 'authorised scam' (like this one, where Mrs B authorised the payment but was nonetheless scammed), is – by definition – authorised by the customer, it ought to have understood that asking a customer to confirm

whether a transaction was genuine or not, without surrounding context and potential probing, would be insufficient, in a case like this, to fully protect a customer from the potential of financial harm. So I think here Sainsbury's Bank reasonably ought to have asked Mrs B who the payment was intended for and for the basic surrounding context, and to have then proceeded appropriately from there – with the intention to disturb or unearth a potential fraud or scam.

I have no reason to believe Mrs B wouldn't have been open and honest with Sainsbury's Bank. Sainsbury's Bank ought then to have quickly learned from its conversation with Mrs B the basic background to the intended payment – that the payment was for an 'investment' with Greenfields Capital, following Mrs B responding to a Greenfields Capital advert.

As I've already stated, IOSCO published a warning about Greenfields Capital on 13 March 2018. And whilst I think this ought reasonably to have been sufficient by itself, at the time of Mrs B's payment and the conversation Sainsbury's Bank ought to have had with Mrs B on 27 April 2018 – the FCA warning would also have been visible. Sainsbury's Bank reasonably ought to have been aware that at the time binary options/forex traders offering services in the UK were required to be regulated by the FCA. Greenfields Capital wasn't regulated by the FCA; nor was it licensed or regulated abroad as far as I'm reasonably aware.

In such circumstances, whilst Sainsbury's Bank had no duty to protect Mrs B from a bad bargain or give investment advice, it could have explained to her that there was a regulatory warning (or regulatory warnings) and invited her to look more closely into this trader. It could have also reasonably explained customer experiences with unregulated and unlicensed high-risk investment traders are that customers would often be prevented from withdrawing available balances, or from withdrawing them entirely until they'd been duped into making more and more payments. After all, at that time, there was information in the public domain – which Sainsbury's Bank really ought to have known about even if a lay consumer ought not – about the very high risks associated with binary options trading, including many warnings of potential fraud (e.g. Action Fraud's June 2016 warning; the European Securities and Markets Authority's July 2016 warning; the Financial Conduct Authority's consultation paper of December 2016; and the Gambling Commission's December 2016 scam warning that "*an unlicensed operator is likely operating illegally*"; City of London Police's October 2017 report noting victims had lost 'over £59m' to binary options fraud; Visa's Business News publication of October 2017 where it expanded its chargeback scheme rules to cover binary options and investment disputes arising from merchants often unlicensed and unregulated deploying 'deceptive practices'; and so forth).

So I think Sainsbury's Bank ought to have at least given Mrs B a stern warning about the risks. And ultimately, whilst I can't be certain, I think it's most likely that Mrs B would have taken the warnings from Sainsbury's Bank seriously, and decided that the risk of continuing to 'invest' with Greenfields Capital was too high to accept. So I think it's most likely that had Sainsbury's Bank done what it reasonably ought to have done, Mrs B wouldn't have proceeded with this payment.

I've considered whether Mrs B should bear some responsibility for this payment by way of contributory negligence. However, I think Mrs B was still at this point totally in the dark and simply didn't appreciate what she was doing or the potential consequences of her actions. She thought she was simply investing with a legitimate merchant and, due to her inexperience and lack of information, didn't realise the potential risk of being scammed, or the prevalence of such scams. Sainsbury's Bank has argued that Mrs B should have, herself, carried out checks before investing with Greenfields Capital – and that had she done so, she would have seen the warnings referred to above. However, I don't think Mrs B would have been as aware here as Sainsbury's Bank ought to have been around scams like this, their rise in prevalence, or how to spot them. So whilst there may be cases where a reduction in

compensation due to contributory negligence is warranted, in circumstances like this where I think it was Sainsbury's Bank's failure to do what it reasonably ought to have done which was the salient reason (beyond the scam itself) why Mrs B lost this money, I don't think this case is one of them.

Putting things right

If Mrs B hadn't made the payment, she wouldn't have lost the £4,999 to the scammers. She also wouldn't have incurred interest or charges on that amount on her credit card (if she indeed did). Mrs B has also been deprived of this money since she paid it. So to put things right, Sainsbury's Bank should:

- pay Mrs B £4,999 to reimburse the payment lost to the scam; and
- refund Mrs B any interest and charges she incurred on her credit card account as a result of that payment; and
- pay Mrs B interest on those amounts, from the date they were paid to the date of settlement, calculated at 8% simple per year.

My final decision

For the reasons I've explained, I uphold this complaint and I direct Sainsbury's Bank Plc to:

- pay Mrs B £4,999 to reimburse the payment lost to the scam; and
- refund Mrs B any interest and charges she incurred on her credit card account as a result of that payment; and
- pay Mrs B interest on those amounts, from the date they were paid to the date of settlement, calculated at 8% simple per year. If Sainsbury's Bank deducts tax from this interest, it should provide Mrs B with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 4 August 2022.

Neil Bridge
Ombudsman