

## The complaint

Mrs N complains Sainsbury's Bank Plc won't reimburse funds she lost when she fell victim to a scam.

## What happened

Mrs N was looking for an investment opportunity online. She was cold called by a trading business called 10 Trading, with an investment opportunity. She built up a rapport with the agent when discussing holidays, private education and other things she could spend profits on.

Mrs N decided to invest; the transactions were as set out below:

Date	Merchant	Amount
7 June 2018	EW*Trading	£935.30 + £25.72 transaction fee
7 June 2018	EW*Trading	£1,869.10 + £51.40 transaction fee
7 June 2018	EW*Trading	£1,869.10 + £51.40 transaction fee
7 June 2018	EW*Trading	£1,869.10 + £51.40 transaction fee
Total		£6,542.60 + £179.92 fees

There was also an additional payment made on 14 June 2018, but this was reccredited back to the account in July.

Mrs N realised something was wrong when she tried to take profits from her investment, but these were constantly declined. And then the trader disappeared altogether. She raised a chargeback claim with Sainsbury's for a return of the funds. Sainsbury's declined to raise a chargeback as it said it was out of time and that she didn't have evidence the trading account hadn't been funded. It also said Mrs N didn't have a valid S75 claim either as the merchant paid wasn't the merchant she was trading with and it couldn't establish a link between the two. Mrs N complained but Sainsbury's stood by its decision.

Our investigator upheld the complaint. Although he agreed Sainsbury's had treated Mrs N fairly in relation to the chargeback and the S75 claim, he found it ought to have intervened in the third payment as the transactions were unusual for the account. Sainsbury's didn't initially reply and so the matter was referred for a final decision.

Sainsbury's then indicated it didn't agree. In summary, it has said:

- Mrs N had used trading platforms before, and disputed payments made to them. So was fully aware of the risks involved with these transactions. It doesn't agree a warning from it would have stopped further transactions.

- It's not unreasonable for it to assume she had carried out suitable checks on the trader before investing. It therefore doesn't agree the transactions were uncharacteristic.
- It doesn't believe it should have known 10 Trading was a scam as it wasn't required to register unless it was in the UK, which it wasn't. It had seen no evidence it was targeting UK customers. The warning issued by the FCA came after the transactions were completed.
- It doesn't believe the outcome reasonable.

Following receipt of these submissions, I needed more information about the previous disputed transaction. Whilst Sainsbury's has been able to show a payment to Stoxmarket on 26 March 2018, and it being reimbursed on 23 April 2018, it hasn't been able to provide any information about that dispute at all. And Mrs N has confirmed she doesn't recall it.

### **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.

Under regulations, and in accordance with general banking terms and conditions, banks and other payment services providers should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even if they were duped into doing so, for example as part of an investment scam.

However, in accordance with the law, regulations and good industry practice, a bank had a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for the losses incurred by its customer as a result.

The payments made by Mrs N were made with her credit. I therefore conclude these were authorised payments – for which Mrs N is liable unless there is evidence that Sainsbury's could and should have done more to protect her, which issue I now turn to.

I'm persuaded Mrs N has fallen victim to a scam. The trader – 10 Trading – had an FCA warning published about it on 17 August 2018. Whilst this was after Mrs N had made her payments, it is only a matter of weeks later, and as such I'm satisfied I can rely on this information. Mrs N also reports that when she tried to withdrawal funds with was met with opposition and the website was finally taken down – these are also hallmarks of a scam.

Sainsbury's is aware of our general approach to its safeguarding and due diligence duties to protect its customers.

Mrs N made a number of payments. But none of them went directly to 10 Trading; rather they went to EW\*Trading. A clear connection between these businesses hasn't been established by either party. In the months leading up to the payments, Mrs N hadn't carried out any new spending on her account at all – she was repaying the outstanding debt only. So when she started spending on 7 June 2018 that was a change in the operation of her account. But the sudden use of a credit card isn't of itself unusual – they are quite often used for large infrequent transactions. I therefore agree that the sudden spending in, and of itself, isn't unusual such that I would expect Sainsbury's to have intervened.

However, Mrs N was making multiple transactions to the same party in one day. They were also to a new payee and were international payments. This can be a common scam indicator. Like the investigator, I find the third and subsequent payment was unusual and

uncharacteristic such that Sainsbury's systems ought to have triggered an alert and the payment paused, pending further intervention – such as making enquiries, or giving a scam warning.

Had Sainsbury's carried out its due diligence and duties and asked Mrs N about the payment, I have no reason to doubt she would have explained what she was doing. Whilst I accept it had not duty to protect her from a poor investment choice, or give investment advice, it could have provided information about the steps a customer can take to ensure as far as is reasonably possible, that they are dealing with a legitimate person – such as checking the trader was regulated either here or abroad.

In saying this, I'm particularly mindful that the way this scam came about, with Mrs N being cold called by a trader was typical for a scam but not for a legitimate investment opportunity and Sainsbury would have more knowledge about that than a layperson.

I haven't been provided with any evidence that Sainsbury's intervened before the payment was made. Had it done so, I'm satisfied Mrs N would have taken heed of a warning from her trusted bank and looked into the opportunity further and checked whether the trader was regulated here or abroad. I'm persuaded an intervention by Sainsbury's would likely have exposed the scam, and caused Mrs N to stop trading, thereby preventing any losses. So Sainsbury's should reimburse payments three and four.

But that isn't the end of the matter. I also need to consider whether Mrs N ought to bear some responsibility for the situation in which she finds herself. Sainsbury's has referred to an earlier payment Mrs N had made to a similar platform which she disputed. And it has argued that this meant Mrs N had knowledge of the risk she was entering into. I have considered this carefully, particularly as Mrs N was looking for an investment opportunity. And as the previous payment also appears to have gone to a trader, this would suggest Mrs N might have some experience.

However, I've also taken into account that this earlier payment was only a few months before those in dispute. And although Sainsbury's believes Mrs N knew the risk as the previous payment had been disputed, it appears to be making assumptions as to why the transaction was reimbursed. I accept the statement refers to the refund as 'dispute amount' but it hasn't been able to provide any information as to what that dispute was. So its far from certain it's because Mrs N believed she had fallen victim to scam. Mrs N doesn't recall what happened, which isn't surprising given the passage of time. But it seems to me this could have been for an unauthorised transaction or some other such reason, particularly as there had only been a month between the payment and the reimbursement. Overall, I'm not persuaded this is persuasive evidence of Mrs N's knowledge of risk of trading or scams such that I find it fair to make a deduction for contributory negligence.

Mrs N made a chargeback claim with Sainsbury's for the transactions. However, I broadly agree with the investigator that a chargeback claim had no prospect of success; particularly as it does appear funds were loaded onto a platform. But even if they weren't Mrs N's claim was out of time; the service is provided at the point of loading the platform which should happen immediately, and it isn't an ongoing service. As Mrs N's claim was made more 120 days from the date of her transactions they are out of time. The 540-day limit doesn't apply to transactions of this nature and only generally apply if the service isn't expected to happen within the 120-day period – for example a holiday or theatre tickets booked sometime in advance. In any event, chargeback rights only exist against the merchant paid, but that wasn't the merchant Mrs N was 'trading' through or that wouldn't refund her funds or allow withdrawals. I'm satisfied Sainsbury's didn't do anything wrong in relation to the chargeback claim.

I have also considered whether Mrs N could have raised a valid s75 claim. But as explained by Sainsbury's and the investigator, the requirements for a valid claim haven't been met and neither party has been able to show a link between EW\*Trading and 10 Trading. I'm therefore satisfied Sainsbury' dealt with this fairly.

Finally, Mrs N has sent in some letters which she believes supports her position that Sainsbury's doesn't pay attention to detail or review things properly. I have considered these letters but am mindful they are in relation to a different matter and sent a number of years after the transactions in dispute. I therefore don't find them material to my consideration.

### **My final decision**

For the reasons given, my final decision is that I uphold this complaint. I require Sainsbury's Bank Plc to:

- Reimburse the third and fourth payments, and associated transaction fees to Mrs N's credit card account.
- Pay 8% interest on any credit card repayments Mrs N made towards the balance arising from those disputed transactions and any associated interest and charges.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 13 July 2022.

Claire Hopkins  
**Ombudsman**