

The complaint

Mr N complains that Sainsbury's Bank Plc (Sainsbury's) hasn't refunded the money he lost when he fell victim to a scam.

What happened

Mr N had been in contact via WhatsApp with someone posing as a new friend who offered to help him improve his financial situation. With their assistance, he'd made an initial payment through another banking provider and made a profit on this. It seems he continued to make payments through other banks, believing he was investing his money and making good returns on it.

In October 2020, Mr N made a payment of £5,225.85 to MoonPay using his Sainsbury's credit card. He believed this payment was to cover tax that had to be paid to release his returns. But he soon realised he'd been the victim of a scam and that his money had been lost.

Sainsbury's said that while the payment flagged with its automated fraud prevention measures and an SMS was sent, Mr N had confirmed he'd authorised the transaction and that it couldn't have done more to stop the transaction.

Our investigator considered this complaint. They upheld it on the basis that they believed an appropriate intervention by Sainsbury's would have unravelled the scam. And they didn't think Mr N should bear responsibility for the loss with the information that had been provided.

Sainsbury's disagreed. It said it had no concerns over the merchant so couldn't have issued a warning about them and it said it didn't contact the consumer. Had it done so, it believes it would have learned that Mr N was acting on financial advice and said this wouldn't have resulted in a warning or the payment being blocked.

The complaint was passed to me. I obtained further information in the form of the WhatsApp conversations between Mr N and the scammer. As a result of this, I contacted both parties informally, as I'm allowed to do, to let them know that provisionally I felt that the responsibility for the payment to the scammer should be shared. Mr N was disappointed but accepted this – but Sainsbury's wished to proceed to formal 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.

Having done so, I partially uphold the complaint for these reasons:

- It's not in dispute that Mr N fell victim to a scam. His payment of £5,225.85 was ultimately sent to a fraudster. But, as he authorised the payment, the starting position is that Mr N would be liable for it.

- But there are some situations where we believe that banks – taking into account relevant rules, codes and best practice – ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. If Sainsbury's failed to do so, and that failure led to a fraudulent loss, it might be fair to hold it liable.
- In this case, Sainsbury's has recognised that this payment was 'out of the norm' for Mr N. Because of this, the payment flagged on its fraud alert system and a text message was sent to Mr N asking him to confirm he'd authorised the payment. But it isn't enough for Sainsbury's to check that Mr N had authorised the payment – many scam victims do. And while Mr N made the payment to a legitimate cryptocurrency exchange, it didn't follow that he wasn't at risk of financial harm due to fraud.
- Had Sainsbury's carried out its due diligence and duties and asked Mr N appropriate questions about the payment, I have no reason to doubt that he would have explained what he was doing and the true purpose of his payment to MoonPay. He had been given no reason to think he had to hide this information from his bank, and neither had he been coached to tell them something different.
- Had Sainsbury's asked specific questions, I'm satisfied it would have realised that what was happening to Mr N had the hallmarks of a cryptocurrency investment scam. So, I'm persuaded that a meaningful intervention from Sainsbury's at that time would have likely exposed the scam. And I think it's more likely than not that intervention would have stopped Mr N from going ahead with the payment.
- I've also thought carefully about whether Mr N should bear any responsibility for what happened. As I've already explained to him, the scammer was an individual who he'd only just met (virtually) and the level of profits they'd claimed to have achieved themselves was unrealistic. In addition, Mr N expressed doubt within the WhatsApp conversations with the scammer initially. And later on, he expressed further doubt when he was asked to pay tax that he hadn't been warned about previously – this was despite being walked through every step of the process previously. So, even with clear red flags, Mr N proceeded. While I think Sainsbury's should have done more, Mr N should bear equal responsibility because of his contributory negligence.
- I've considered whether Sainsbury's acted appropriately in terms of attempts to recover the money for Mr N. But I'm satisfied there isn't a valid Section 75 claim (under the Consumer Credit Act 1974) as there isn't a valid debtor-creditor-supplier relationship. And a chargeback wouldn't have been successful on the basis that MoonPay – the company the credit card payment was made to – fulfilled the service it was paid for.

It's likely this outcome will be disappointing for Mr N, and I'm sorry he fell victim to a cruel scam. But, despite my natural sympathy for the situation he finds himself in, I can't fairly conclude that Sainsbury's should fully reimburse him.

Putting things right

If Mr N hadn't made the payment, he wouldn't have incurred any interest or charges on that amount on his credit card (if indeed he did so). And he's been deprived of the money he made repaying the amount on his credit card. In taking equal responsibility for the payment to the scammer and in order to put things right for Mr N in a way that feels fair, I require Sainsbury's to:

- Refund Mr N 50% of the scam payment (as well as associated interest and charges);

and

- Pay Mr N 8% simple interest per year on this amount until the date of settlement.

My final decision

For the reasons I've explained, I uphold this complaint and I direct Sainsbury's Bank Plc to pay Mr N in line with what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 21 December 2022.

Melanie Roberts
Ombudsman