

The complaint

Ms C complains that Sainsbury's Bank Plc ("Sainsbury's") hasn't refunded the money she lost when she fell victim to a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving the reasons for my 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 uphold this complaint in part.

- I'm persuaded that Ms C fell victim to a scam. Following payments made through other banks, she used her Sainsbury's credit card to pay \$5,000 to a cryptocurrency exchange provider. This was made up of two payments: one for £3,087.54 (plus fees) and one for £771.88 (plus fees). It's unclear whether this provider is legitimate as there's not much information online about them. But, from there, the money seems to have been sent on to a company which had an International Organisation of Securities Commissions ("IOSCO") warning that was already present at the time of the transactions. And Ms C has told us that the payments were made by allowing an individual to access her account using 'AnyDesk'. So, all of this together persuades me that these payments were ultimately sent on to a fraudster.
- While Ms C didn't make the payments herself, it's clear she was aware they were being made. And she confirmed later that she'd authorised the payments. So, I'm confident she authorised the payments by way of 'apparent authority'. The starting position is that Ms C would be liable for the payments she authorised. And Sainsbury's has a duty to execute payment instructions without undue delay.
- 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 recognised that these payments were "*suspicious*". It said that this was because the account had become active after a period of inactivity, not because the transactions themselves were suspicious or because it had any concerns about the merchant. Because of this, it said the payments were processed but it wanted to verify the activity was genuine. So, it applied a block to the account following these payments and said future transactions would be blocked until it confirmed the activity was genuine.

- I'm not persuaded that Sainsbury's went far enough here, given it had identified a potential fraud risk with these payments. It deemed them suspicious enough to block the account *after* the payments. But this doesn't feel like a proportionate response, especially when I factor in that the payments were clearly being made on a credit card to pay for cryptocurrency. As they had identified the payments as suspicious, I don't think a text message to confirm Ms C had authorised the payments and the blocking of the account following the payments was a proportionate check for payments totalling almost £4,000. It's not clear what it would have done if Ms C had said the payments were, in fact, not her. And the failure to carry out a proportionate check did indeed lead to a fraudulent loss here.
- Had Sainsbury's intervened before processing these payments, I think it's likely the scam would have been unravelled. Here, there were the clear hallmarks of a scam: the use of AnyDesk; a well-known public figure supposedly endorsing the investment; and a principal scam company with an IOSCO warning. I feel confident that Ms C would have been honest as the next payment she tried to make – of \$2,000 with another bank – was stopped. And, as a result of this and its intervention, Ms C realised she'd been the victim of a scam.
- Sainsbury's didn't raise a chargeback as it said it had no evidence the merchant hadn't provided the goods or services as described. So it doesn't appear that any of the funds were recovered.
- I've also considered whether Ms C should be held partly responsible for her loss. And I think she should be. It doesn't appear she carried out sufficient, or potentially any, research. But, while there was an IOSCO warning about the principal scam company, Sainsbury's has said it was unable to locate this, even once aware of its existence. So, had Ms C carried out appropriate research, it's possible that she also wouldn't have located this adverse information, considering Sainsbury's' greater experience and knowledge of this type of portal.
- That being said, I think Ms C should reasonably have asked more questions of the scammer when being asked to pay \$5,000 as I'm not satisfied the reason she was given – a need to pay quickly as the trade was dropping in value – made sense. I understand that the scammer manipulated her and created a sense of panic, but I feel there was more she could reasonably have done. I therefore consider a reduction of 20% of her total refund is fair in these circumstances – and Ms C has agreed to this within informal communication prior to this decision.
- Sainsbury's doesn't feel that a deduction of just 20% is fair. This is partially for reasons I've already addressed above – a failure to research the company – but it has referenced Ms C making high risk investments she has no experience of, which had no guaranteed returns, as well as allowing access to her device through AnyDesk. But, while at the centre of many scams, people have also made large profits as a result of cryptocurrency investments. It's clear she fell victim to a sophisticated scam, and I think it would be fair to say she was overly trusting. But I don't consider this to mean she should be held equally responsible. I maintain that the bank failed to meet its obligations. It didn't appropriately intervene and, in this case, I think it should be held responsible for the majority of the loss.
- I note that Sainsbury's offered £100 in compensation, with £50 of this being for the delays involved. As Sainsbury's offered this as compensation, seemingly for service-related matters, and it's already been paid, I see no reason to make a finding on this aspect.

My final decision

For the reasons given above, I uphold this complaint against Sainsbury's Bank Plc. I direct it to:

- Refund Ms C 80% of the scam payment (as well as associated fees, interest, and charges); and
- Pay Ms C 8% simple interest per year on this amount for any time in which Ms C would have been in credit on her account had it not been for the scam.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 26 March 2023.

Melanie Roberts
Ombudsman