

## **The complaint**

Mr H complains he was the victim of an investment scam and that Sainsburys Bank PLC didn't do enough to stop that happening or to recover his money.

## **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.

Mr H complains that Sainsburys won't refund the money that he lost as a result of an investment scam. After responding to an advert online which included a celebrity endorsement, he encountered a broker claiming to work for a company I'll refer to as "M". After speaking with the broker, he used his Sainsburys Mastercard to pay £4,580 (plus a £125.95 fee) to a company I'll refer to as "S".

Sainsbury's initially blocked the payment and contacted Mr H. During the call the agent told Mr H the money was being paid to S; an accountant based in Bulgaria. Mr H told the agent he thought he was paying M and he didn't know who S was. He also said he was investing in stocks and shares to generate cash. Sainsburys allowed the payment to be processed and then blocked subsequent attempted payments later the same day.

When Mr H realised, he'd fallen victim to a scam he asked Sainsburys to refund the first payment, but Sainsburys said it wouldn't raise a chargeback under Mastercard's chargeback scheme because the transaction wasn't covered under the regulations. It also said he was unable to make a claim under Section 75 of the Consumer Credit Act 1974 because his contract with S had been to deposit the funds into the trading account and this had been fulfilled. It accepted it had taken longer than expected to respond to Mr H's concerns, so it credited his account with £25.

Mr H complained to this service arguing Sainsburys was jointly and severally liable for any breach of contract or misrepresentation by the merchant and that he was also eligible to raise a request under Mastercard's chargeback scheme.

Our investigator thought the complaint should be upheld. He agreed there were no chargeback rights available to Mr H due to the nature of the payment, but he thought Sainsburys should've done more following the first payment. This is because, during the call Mr H told Sainsburys about the involvement of M and at the time there was a warning about M on the FCA register. Our investigator felt that if Sainsburys had told Mr H about this or advised him to undertake some research, it would've made a difference to his decision to go ahead with the payment. Consequently, he recommended that Sainsburys should refund the payment.

Sainsburys has asked for the complaint to be reviewed by an ombudsman, arguing Mr H wasn't a victim of fraud. It has said the money was paid to an investment platform and that even though there was a risk involved, there are risks with any investment, and this was simply a poor investment choice.

Sainsburys explained it had identified the first transaction as one of concern, placed a block on the account, and contacted Mr H to make sure he was happy to proceed. During the call, it couldn't determine if S was a legitimate company, so it couldn't give him a warning. It said Mr H had no concerns and there were no FCA warnings about S, so its agent provided Mr H with all the information it had about S. This included the fact there had been multiple unsuccessful attempts to take funds and they were based in Bulgaria and recorded as being involved in accountancy and financial services. It had also reminded Mr H that companies may misrepresent themselves or the services they provide and that he should perform suitable checks before making any transaction.

### **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.

#### *Chargeback*

Chargeback is a voluntary scheme run by Mastercard whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Mastercard's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Sainsburys) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Mr H).

Sainsburys didn't raise a chargeback because S had fulfilled their obligations to deposit the funds into a trading account, and I'm satisfied that's fair.

#### *Section 75 of the Consumer Credit Act*

Section 75 applies when there is a debtor-creditor-supplier agreement meaning the payments must go directly to the final supplier for it to apply. In this case, as the payment went via a legitimate merchant (S), the required debtor-creditor-supplier chain is broken because the supplier that Mr H says misrepresented themselves (M) was not a party to the payments. There appears to be no dispute that S provided the service it was required to provide, so I don't consider a Section 75 claim had a reasonable prospect of success.

#### *Should Sainsburys refund any money?*

There's no dispute that the payment was 'authorised' by Mr H. This is because it was made by him using the legitimate security credentials provided to him by Sainsburys. Mr H believes he's entitled to a refund because, even though he authorised the payments, he was the victim of a scam and Sainsburys should have either done more to stop that happening or to help him get the money back.

Banks have various and long-standing obligations to be alert to fraud and scams and to act in their customers' best interests. But these are predicated on there having been a fraud or scam. So, my first consideration must be whether M was operating a scam as Mr H alleges.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk unregulated investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, while customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false

representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

I've carefully considered this, and I am persuaded that at the relevant time M was operating a scam. This is because at the time Mr H made the payment to S, there was a warning about M on the FCA register and as it was providing financial services in the UK, it's likely they were operating a scam.

Mr H tried to make the first payment to S on 8 October and on 10 October, Sainsburys blocked the payment and contacted him to discuss it. During the call, there was a discussion about both M and S, with Sainsburys' agent telling Mr H that S was registered in Bulgaria. But, in failing to further explore with Mr H the circumstances around M's involvement, I'm satisfied the agent missed an opportunity to alert Mr H to the risks associated with the payment he wanted to make. I think it's reasonable to expect the agent to have suggested to Mr H that should investigate M further and, if this had happened, I think it's likely he'd have seen the FCA warning and decided against going ahead with the payment. Consequently, I think Sainsburys should refund the payment, the associated fee and interest.

### **My final decision**

For the reasons set out above, I uphold Mr H's complaint. My decision is that Sainsburys Bank PLC should:

- Refund Mr H £4,580 (plus the £125.95 fee).
- Pay 8% simple interest a year on the refund, from the time of the payment until the time it is refunded.

HM Revenue & Customs may require Sainsburys to deduct tax from the interest it pays Mr H. If it does, and if Mr H requests it, Sainsburys should provide him with a certificate showing how much tax it has taken off so that he may reclaim it if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 December 2022.

Carolyn Bonnell  
**Ombudsman**