

The complaint

Miss F complains about Sainsbury's Bank Plc.

She says that Sainsbury's didn't do enough to protect her from becoming the victim of a scam and would like Sainsbury's to pay her back the money she has lost as a result of the scam.

What happened

Miss F was looking for investment opportunities online and came across 'S'. During a phone call, Miss F was persuaded to begin investing in social mirror trades and made payments to 'E' (which was linked to S) to begin investing.

Sainsbury's fraud department blocked the use of Miss F's credit card – and on speaking with her removed the block. Miss F then made four payments using her credit card for a total of £1,250 in three £250 payments and one of £500.

Miss F then realised that she had been the victim of a scam and made a complaint to Sainsburys.

Sainsburys didn't uphold her complaint, so she brought her complaint to this Service.

Our Investigator considered the complaint and thought that it should be upheld. Sainsbury's disagreed, so the complaint has been passed to me to make 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.

Having done so I've decided to uphold Miss F's complaint for materially the same reasons as our Investigator. I'll explain why.

Was Miss F the victim of a scam?

Sainsbury's has questioned if Miss F was the victim of a scam – and that perhaps she simply lost her investments due to her inexperience in this kind of market. It wonders if it is being asked to compensate Miss F for a 'bad bargain'.

But I don't think this is the case here. The Financial Conduct Authority already had a warning in place for the business that Miss F contacted – and while it appears that Miss F was the one that made contact with the business this doesn't mean that the warning doesn't apply. So, I'm satisfied that Miss F was the victim of a scam here.

Did Miss F authorise the payments?

In line with the Payment Services Regulations 2017 (PSRs), Miss F isn't liable for payments she didn't authorise, unless she failed with gross negligence or intent to comply with the

terms of the account or keep her personalised security details safe.

I don't think it's in dispute that Miss F authorised the payments. She spoke with Sainsbury's when it stopped her using her credit card and confirmed it was her making the payments. I understand Miss M had been tricked into instructing Sainsbury's to make the payments – but while Miss F never intended the payments to go to the scammers, this doesn't change the fact she authorised them and is therefore presumed liable for the loss in the first instance.

Recovery of Miss F's payments

After Miss F made her payments, I wouldn't expect Sainsbury's to do anything further until it was notified of the scam.

The payments were made by credit card – however, she does not enjoy protection under the Section 75 Consumer Credit Act 1974 for the payments that she made. This is because the involvement of a merchant ('E') breaks the debtor (Miss F) - creditor (Sainsbury's) - supplier (scammer) agreement as the 'supplier' in this scenario and according to the statement is the provider ('E') itself. 'E' is not the scammer complained about here.

Also, I don't think recovery would have been possible via the chargeback scheme. Chargeback is a process by which disputes are resolved between card issuers (here, Sainsbury's) and the merchant (here, E). This is because E provided the service requested of it.

Should Sainsbury's have reasonably prevented the payments in the first place?

I can only uphold this complaint if I think that Sainsbury's reasonably ought to have prevented some or all of the payments Miss F made in the first place – therefore preventing the loss before it happened.

Miss F authorised the scam payments in question here – so as I've explained above, she is presumed liable for the loss in the first instance.

That said, as a matter of good industry practice, Sainsbury's should have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

Sainsbury's has said the transactions Miss F made were of low value – and the business she was making the payments to (E) had no warning in place, and so it does not think it reasonable to intervene in payments such as this. It says doing so would not allow it to fulfil its obligations of a seamless trade for its customers. But it then goes on to say that as E was a higher risk company it's likely any transaction made to it would have flagged for additional checks which seems to contradict what it said.

I agree the payments Miss F were making needn't have required an intervention from Sainsbury's - however Sainsbury's *did* intervene. It blocked Miss F's card when she was initially trying to make the payments – and it spoke with her on the phone.

Sainsbury's says it blocked Miss F's card as it hadn't been used in some time – and it wanted to make sure the card was in her possession – not because it had concerns about the payment itself. However, this again contradicts what it has said about *any* transactions to E being flagged as it was a higher risk company.

The fact remains that it did block the payments, and it spoke with Miss F about them. This would have been an ideal opportunity to question her about what she was doing – and if, as it says, it regarded E as a higher risk company, ask what the payment was for, and the surrounding context – and to proceed accordingly. The intention being to disrupt or uncover a potential fraud or scam.

Having listened to the call that took place, Sainsbury's did not do so – it only asked if Miss F had made the attempted payments, and then removed the block from her card which enabled her to complete the transactions.

Had Sainsbury's voiced concerns and questioned Miss F appropriately, then I think it would have unravelled the scam, and stopped the loss from the first payment Miss F made.

Should Miss F bear some responsibility for the loss?

Sainsbury's says Miss F had previously lost money on the same platform – so she should have been aware of the high level of risk that could be involved and it fails to see why she was investing again having lost money before. It also says that a warning would likely not have stopped Miss F from continuing with the payments.

But Miss F believed that her previous losses were as a result of poor performance of an investment when she made the payments complained about here – not that she had been scammed. Sainsbury's were the experts here – and had more knowledge on the intricacies of these types of scams. And as it never provided Miss F with a warning anyway, I fail to see how it can conclude that she would have likely ignored it.

It follows that I am satisfied no deduction for contributory negligence should be made in this case.

Putting things right

Sainsbury's should refund the payments Miss F made to a total of £1,250.

It should also rework Miss F's credit card account to remove any additional interest or charges caused by these payments.

If at any point, the rework results in a credit balance, Sainsbury's should also add 8% simple interest per year from the date of each payment to settlement (less any tax lawfully deductible).

My final decision

I uphold this complaint. Sainsbury's Bank Plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 29 March 2023.

Claire Pugh
Ombudsman