

## The complaint

Mr K complains that Sainsbury's Bank Plc ('Sainsbury's') won't refund two payments he says he didn't make.

## What happened

Mr K says that he made some credit card transactions in March 2021 but didn't receive a statement so decided to make a payment of £100 in April to avoid incurring fees or impacting his credit rating. Mr K called Sainsbury's about his statement, but he was unable to pass through security. He was asked to send in documentation to reset his security details. Mr K then found out about disputed transactions on his account which I have set out in the table below.

Date	Time	Amount	Location
13/03/21	12:35	£9.20	supermarket
13/03/21	13:33	£4,999.87	wholesaler/supermarket
13/03/21	13:46	Declined payment of £3,287.50	
<b>Total</b>		<b>£5,009.07</b>	

The disputed transactions were made around two hours away from where Mr K lives. He says he wasn't in the area and has provided information from his employer to prove this. Mr K also says that he has never shared his card or security information with anyone.

I have set out below a brief summary of events in this case:

26/02/21 – call to Sainsbury's from someone claiming to be Mr K to update details (address, mobile telephone number and email address)

02/03/21 – call from same person as last call, requesting that an additional cardholder be added to the account

06/03/21 – call from the same individual to say they had lost their card and requesting a new one. The caller also asked for a PIN reminder

Mr K says he didn't make these three calls and Sainsbury's accept they were made by an unknown third party.

08/03/21 – new card issued

13/03/21 – disputed transactions listed above made using the replacement card that had been issued to the new address. There was a failed attempt to log into Mr K's online banking later that afternoon and also a call in which the caller didn't pass the security questions asked.

07/04/21 – Mr K made a payment of £100 to his credit card account

10/04/21 – fraud claim reported to Sainsbury's

12/05/21 and 19/05/21 – calls with Sainsbury's fraud department

Sainsbury's hasn't agreed to refund the disputed transactions. It says that Mr K accepted in the above calls with its fraud department that he made the £9.20 payment to a supermarket. The subsequent larger disputed transaction was made in the same area (and using the same replacement card) and so Sainsbury's say Mr K made or authorised it, and that he knew about the change of details and replacement card. Sainsbury's also points out that Mr K didn't use his credit card from September 2020 to early March 2021 (when he made a few small transactions) so there was little opportunity for compromise. Finally, Sainsbury's say that making a payment towards an account isn't typical behaviour of someone who is the victim of fraud.

#### *Our investigation so far*

The investigator who considered this complaint recommended that it be upheld, together with a compensation payment of £250 to reflect the additional stress and inconvenience Sainsbury's caused. She said this because after listening to call recordings and speaking to Mr K, she wasn't persuaded Mr K said he made the £9.20 payment. On balance, the investigator thought there had been a misunderstanding, possibly because of a language barrier, and that Mr K accepted he shopped in the supermarket concerned – but not that he made the payment outside of his local area. She also said that when each of the three calls were made to change details the caller wasn't Mr K or his son as the voices were different.

Other factors led the investigator to say Mr K didn't make or authorise the disputed transactions. For example, Mr K provided evidence he was at work in his local area when they took place, contact details were changed to an address many miles from where Mr K lives, and attempts were made to clear Mr K's account.

Sainsbury's didn't agree with the investigator's findings. It said:

- Mr K clearly told Sainsbury's he made the £9.20 transaction. The larger payment was made using the same card very shortly after the £9.20 payment and in the same location. Given these points, Sainsbury's couldn't accept that one payment was genuine and the other wasn't.
- Mr K wasn't confused when he listed three supermarkets he last used the card in, which included the one in which the £9.20 transaction was made. And he last used his card in the supermarket the disputed transaction was made in over a year before.

#### **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.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

The relevant law here is the Payment Services Regulations 2017. Broadly speaking Mr K is responsible for any payments that he has authorised (either by making them himself or allowing someone else to) and he isn't responsible for unauthorised payments except in more limited circumstances.

Overall, I'm persuaded Mr K didn't make or authorise the disputed transactions and so Sainsbury's should refund them. I have reached this conclusion because:

- I'm satisfied that shortly before the disputed payments were made account information was changed by an unknown third party. I've listened to the calls and the voice of the caller is very different to Mr K's. Following on from this, an unknown third party was able to request a new card be sent to the new address that had been registered. The caller also asked for a PIN reminder. The replacement card was then used to make the transactions (one contactless and the larger payment using Chip

and PIN). Although the third party was able to get through Sainsbury's security process, in two of the calls he said that the credit card bill was paid by direct debit – which was incorrect.

- All of the transactions, and the later declined transaction, were made in the same area. This area is approximately two hours away from where Mr K lives and works. He's also provided evidence that demonstrates he was at work near his home when the disputed transactions were made.
- Sainsbury's main reason for holding Mr K responsible for the transactions is that it says in calls he accepted he made the £9.20 payment to a supermarket but not the later transaction. This places Mr K, or someone acting on his behalf, and the replacement card in the area where the disputed transactions took place. This is an important point that I need to address.

I'll start by considering the call on 12 May 2021. The advisor discussed three payments to supermarkets or similar in the area where Mr K lives, and Mr K accepted that he made them. The advisor then referred to the £9.20 payment in a different supermarket and Mr K said 'yes' indicating he'd made the payment. The advisor took some time to set up a password with Mr K and to explain CIFAS because Mr K didn't understand and asked for things to be repeated. He also asked the advisor to speak more slowly, and I note that in regard to a different point Sainsbury's own records say that the advisor was unable to probe more due to a language barrier.

I turn now to the call with Sainsbury's on 19 May 2021. At the beginning of this call Mr K explained that he'd appreciate it if the advisor spoke slowly as he has some communication issues. He accepted he'd made the Tesco payment but when the location was discussed Mr K was very clear that all the transactions he'd made had been in the area where he lives and that he hadn't been out of that area for over a year. He confirmed later in the call that he'd never been to the area where the disputed transactions took place and that maybe he didn't understand as he uses the supermarket where the disputed transaction took place, but only in his local area.

Whilst I understand the point Sainsbury's has made about Mr K accepting he made the £9.20 transaction, I consider it more likely than not that Mr K misunderstood what he was being asked. It's clear that Mr K shops at the supermarket concerned and the last payment he made on his account before 3 March 2021 (when he started to use his card after a break) was to the same supermarket. But I think Mr K was clear throughout his communications that he only used his card in his home area, and records Sainsbury's has provided support this. There are examples in the calls of Mr K not understanding what he was being asked and I think we need to consider the whole picture to reach a fair answer in this case. So I'm persuaded Mr K agreed he'd made low value payments in a number of supermarkets before the disputed payments but not that he did so in a supermarket some distance from his home.

- Following the disputed transactions, a further transaction was attempted. The payment was declined as it would have taken Mr K above his credit limit. There was also a failed attempt to log into Mr K's online banking. Fraudsters usually try to make as many payments as possible in a short space of time before their crime is detected, so these actions are in keeping with fraudulent activity. It seems likely the log in attempt was to establish Mr K's credit limit.
- Mr K has provided evidence which shows that another credit card provider wrote to him at the end of February 2021 to ask him to make contact as it needed to check some details to rule out fraud. There was no fraud on this account following the other bank's interaction. So it seems that fraudsters may have also attempted to gain access to Mr K's other credit card account.
- All transactions on Mr K's credit card account from August 2018 onwards were made

in the area where Mr K lives. So transactions outside of this area were unusual for Mr K. The larger transaction isn't in line with Mr K's usual spending activity which is a point Sainsbury's has raised in its file. In the past the transactions made by Mr K were low in value so a payment of nearly £5,000 was very unusual.

- I don't think the fact Mr K didn't use his credit card for some months before the disputed transactions is significant. It's clear from past statements that he didn't use his credit card account frequently.

The investigator recommended that in addition to refunding the disputed transactions Sainsbury's pay Mr K £250 to compensate him for the additional stress and inconvenience its handling of his claim caused. I consider this is a reasonable award. I don't believe that the Sainsbury's advisors who spoke to Mr K took into account his stated communication difficulties, which should have been apparent in any event. I'd have expected them to adapt their approach and ask Mr K clear and simple questions or suggest that he get support from someone else given how important his responses were.

Overall, I agree with the investigator's findings and have set out below how Sainsbury's should resolve this complaint.

### **My final decision**

I require Sainsbury's Bank Plc to:

- Restructure Mr K's credit card account as if the disputed transactions didn't take place;
- Refund any payments Mr K has made towards the disputed transactions amounting to £5,009.07 together with interest at the rate of 8% simple per year from the date of payment to the date of settlement;
- Pay £250 compensation; and
- Remove any negative markers relating to the disputed transactions from Mr K's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 4 January 2023.

Jay Hadfield  
**Ombudsman**