

## **The complaint**

Mr G complains that Sainsbury's Bank Plc ("Sainsburys") won't refund transactions totalling £314.06 which he says he didn't authorise.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, on 13 August 2022 two payments were taken from Mr G's Sainsburys credit card which he says he didn't authorise. Sainsburys and Mr G were unable to agree about things, so Mr G referred his complaint about Sainsburys to us. Our Investigator was unable to resolve the matter informally, so the case has been passed to me for 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 this complaint for materially the same reasons as our Investigator.

The regulations relevant to this case are The Payment Services Regulations 2017. In short, banks will generally be liable for unauthorised payments; and a payment out of someone's account can only be authorised if the payer has consented to it. So, whilst in this case Sainsburys has provided information that the two disputed payments in USA for the same amount to the same merchant were made by Apple Pay and in person, it's not enough for Sainsburys to show how these payments were *authenticated*. To decide that Mr G authorised the payments, I'd also need to be persuaded that Mr G most likely *consented* to them.

In this case the clarity of the technical information provided by Sainsburys isn't convincing. But Sainsburys has said, itself, that these were 'in person' Apple Pay transactions made in the USA on 13 August 2022. Mr G has said he wasn't in the USA at the time. Sainsburys in my view hasn't provided persuasive evidence refuting this. And I note that technical information Sainsburys has sent suggests Mr G's card was used in the UK for petrol on 10 August 2022 and 15 August 2022, making it unlikely, in my view, that Mr G is being untruthful about this.

I understand Sainsburys' fraud prevention measures stopped two further attempted transactions to the same merchant in USA for exactly the same amount (again) on 13 and 14 August 2022, which appear to have again been 'in person' Apple Pay transactions. As our Investigator pointed out, such repeated transactions for the same amount to the same merchant are rather akin to the type of activity we might expect to see if this was fraud (which presumably Sainsburys agreed with hence its intervention).

And in the absence of anything which persuades me Mr G is being untruthful about him neither consenting to these transactions nor personally being in USA to authenticate them, it

seems to be more likely that something has gone amiss – and Mr G has somehow been tricked into his card being set up on Apple Pay on a third party's device, which has then been used to make the transactions without Mr G's consent – rather than Mr G not being honest about things. I've thought carefully about the technical information Sainsburys has provided in this respect, but like I've said I don't think it's particularly convincing. I can see Sainsburys, itself, had what appears to have been legitimate and understandable concerns about things during its investigation. And it's not necessary to know or show exactly how things might have happened; fraudsters use increasingly sophisticated and tricky methods. And it's enough to be satisfied that it's most likely here that Mr G did not consent to these transactions.

I'm satisfied Sainsburys should therefore refund to Mr G the disputed payments totalling £314.06 plus any fees or charges that may have been incurred in relation to them. Sainsburys should also pay Mr G interest on the amount it refunds calculated at 8% simple per year from the date of loss to the date of settlement.

### **My final decision**

For the reasons explained, I uphold this complaint and I require Sainsbury's Bank Plc to pay Mr G:

- £314.06; plus
- any associated fees and charges (if any); plus
- interest on this amount calculated at 8% simple per year from the date the payments were taken from Mr G's account to the date of settlement (if Sainsburys deducts tax from this interest, it should provide Mr G with the appropriate tax deduction certificate).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 December 2023.

Neil Bridge  
**Ombudsman**