

The complaint

Ms G has complained that Sainsbury's Bank Plc won't refund a transaction which she says was taken in error without her consent.

What happened

In summer 2022, Ms G booked a hotel room for some acquaintances for £180. The hotel took Ms G's Sainsburys credit card details to secure the booking, clarifying that this was just for security and not for payment – payment would be taken on the day of departure.

The acquaintances paid the hotel bill themselves on the day of departure. However, Ms G's Sainsburys credit card was also charged £180 by the hotel's management software.

The payment showed up under a different trading name to the hotel, as it went through the software company. So Ms G didn't recognise the company. She reported the payment to Sainsburys as unrecognised.

Sainsburys tried a chargeback, but this failed, with the merchant showing that the payment related to a hotel booking for which Ms G had provided her card details. Sainsburys held Ms G liable for the payment. Ms G came to our service. She was unhappy that Sainsburys held her liable, and with the way it had handled things.

Our investigator looked into things independently and upheld the complaint. They found that the payment was unauthorised – the terms clearly stated that Ms G's card details were taken just for security, and the guests had paid for the booking themselves. Sainsburys didn't agree, so the complaint's been passed to me to decide.

I sent Sainsburys and Ms G a provisional decision on 28 August 2023, to explain why I thought the complaint should be upheld. In that decision, I said:

Sainsburys' technical evidence shows that the payment in dispute used Ms G's genuine card details. But this is not enough, on its own, for Sainsburys to hold Ms G liable – it only shows that the payment was properly authenticated. Sainsburys also needs to be able to evidence that Ms G consented to the transaction. Otherwise, it has to refund it. The onus is on Sainsburys to evidence that Ms G consented to this payment.

It appears that Sainsburys has several misunderstandings about this matter, which has caused it to erroneously hold Ms G liable for the payment in dispute.

The booking email from the hotel confirms that the price was £180, and that the reservation was secured with Ms G's card details with no deposit. The terms and conditions reinforce that Ms G's card details were taken to secure the booking – rather than for payment – and state that the bill would be settled on the day of departure. The merchant's documents which Sainsburys received confirm that the bill was indeed settled in full on the day of departure by a different card – not this one (Ms G states this was her acquaintance's). So per the terms, the £180 taken from Ms G's credit card should not have been charged. And Ms G did not consent to this payment – she only provided her details to secure the booking.

It looks like some confusion arose because the disputed payment showed up on Ms G's statement under a different name to the hotel. So it makes sense why Ms G reported it as unrecognised, even though it turned out to relate to a booking she'd made. The disputed payment had a different name because it was taken by a hotel management software company. Sainsburys suggested that this company was a booking website which Ms G must've used, which it thought had probably charged her a fee of £180 or so to book the hotel. This suggestion doesn't seem to be based on any objective evidence. It is not a hotel booking website, it's hotel management software. It looks like the hotel erroneously took a payment through its software using the card details Ms G had supplied to secure the booking – against the terms of the contract and without Ms G's consent.

Sainsburys argued that the terms said the hotel would take a payment from Ms G within one month before the booking. But again, it is mistaken. Those terms are about cancellations made within one month of the booking – i.e. if the customer cancels one month or less before the booking, the hotel reserves the right to charge full price. This reservation was not cancelled, and it was paid in full by the guests on the day of departure per the terms, so the cancellation terms are not relevant.

Sainsburys pointed out that the bill the acquaintances paid was £188 rather than £180, so the amounts don't match. I don't find this small difference to be significant here. Ms G says the extra £8 was because the guests used the bar, which makes perfect sense. And the merchant's documents confirm that the acquaintances' payment related to the same booking Ms G had made with a booking price of £180.

Sainsburys says the room in question costs between £300 to £400 a night, so it suggested that the total takings of £368 were probably correct. It's unclear where it got this information. The hotel's website lists the base price for this type of room as £180, and both the booking confirmation and the merchant's documents set out clearly that the price was £180 total for this particular booking. I am satisfied that the price was £180 here.

Sainsburys suggested that Ms G might have amended the booking in such a way that the price went from £180 to £368. But the merchant's documents show that the reservation went ahead on the dates booked, with a booking price of £180 as booked, per the price on the website and the booking confirmation. There is no evidence to substantiate that Ms G amended the booking such that she had to pay an additional £180 or so. Again, if Sainsburys wishes to hold Ms G liable for this payment, the onus is on it to evidence her liability. It can't hold her liable on the basis of theoretical scenarios with no evidence to substantiate them.

Other arguments from Sainsburys centre around the chargeback process. But again, I'm afraid it has misunderstood what it's responsible for. It was good of Sainsburys to attempt a chargeback for Ms G. And I appreciate that the attempt failed after some miscommunication between the two parties. But a chargeback was just one way that Sainsburys could try to recover the payment. Even if the chargeback failed, it still had to refund the payment if it was unauthorised. And here, I've found that it most likely was. So that would mean Sainsburys can't hold Ms G liable for the payment, regardless of the chargeback.

This matter has now been ongoing for over a year, in significant part because Sainsburys mishandled things. Indeed, it ended up not even responding to Ms G's complaint due to an error on its part. It's disappointing that this matter has got to such a late stage. I understand that Sainsburys has caused Ms G some real stress and frustration here. That needs to be put right too.

I said I'd consider anything else anyone wanted to give me – so long as I received it before 11 September 2023.

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.

In response to the provisional decision, Ms G confirmed she had nothing further to add.

Sainsburys commented that it didn't have much of this information earlier. And I do sympathise to some degree – it's part of why I issued a provisional decision rather than a final decision and gave it further time to respond.

With that said, Sainsburys claims that Ms G refused to provide any documents about the transaction. But she simply didn't recognise it at first – which was completely understandable as it was an unauthorised payment to a merchant whose name didn't match anyone she'd dealt with – so she didn't think she had any relevant documents to give. Then she missed a letter from Sainsburys because she was away. I can't see that she ever refused to provide documents. In fact, Ms G tried to engage with Sainsburys further and raised a complaint, but as far as I can see Sainsburys was the one who didn't respond to her complaint.

Sainsburys argued that it couldn't have resolved the case without our service's involvement. I don't agree. It focused too much on the chargeback process when that was only one method of getting Ms G's money back and it was still responsible for investigating and refunding potentially unauthorised payments. It held her liable for the payment based on misinterpretations of the relevant rules and evidence. And it doesn't seem to have addressed Ms G's complaint before she brought it to us. Had it investigated her complaint properly and taken a more reasonable approach, Sainsburys could have resolved this matter itself without our involvement. This was not an especially complex matter.

Sainsburys questioned why I didn't think this payment was processed online. I'm unsure where it got this impression from. I never said or reasonably implied that the payment was not processed online. I simply pointed out that it was made through the hotel's management software, and not through a third party booking website as Sainsburys claimed. It's quite normal for software to operate online these days.

Sainsburys felt the entry mode showed that Ms G had booked through a third party and had used the merchant before. It might help if I clarify that the entry mode simply shows that the payment was made using card details which had been entered at some point previously, as opposed to being keyed in there and then. So if a customer gives a merchant their card details, and the merchant saves those details and later takes a payment – even the same day – it will show as having been made using saved details, even if it's the customer's first time using that merchant. In this case, Ms G gave the hotel her card details to secure the booking, which the hotel would have saved in case of things like cancellation. The hotel then used her saved card details to take an undue payment through its software in error. The fact that the card details were saved on some software does not necessarily mean that Ms G booked through a third party or that she'd used that merchant before. I hope this helps to clarify things for Sainsburys.

Sainsburys said it had location and IP data, though it chose not to provide this. I'm unsure what the relevance of this data was, and since Sainsburys chose not to provide this now or at any of the earlier opportunities it had to provide information, and since the final deadline has passed, I'm unable to take account of it.

Lastly, Sainsburys said it was willing to pay the proposed redress in order to get the case resolved. I'm grateful to it for agreeing to do so, and hope this will help both parties to repair their relationship and move forward from the matter.

Putting things right

I direct Sainsbury's Bank Plc to:

- rework the account to remove the disputed payment along with any related interest and charges;
- if, after reworking the account, it emerges that Ms G has made overpayments to pay for the disputed transaction, Sainsburys should refund those overpayments. It should also pay Ms G 8% simple interest on them, payable from the date of each overpayment until the date they're refunded[†]. This is to compensate Ms G for the time she didn't have her money;
- remove any negative information relating to this incident from Ms G's credit file, if any exists; and-
- pay Ms G £125 compensation for the trouble and upset it caused.

[†] If Sainsburys considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, it should tell Ms G how much tax it's taken off. It should also give Ms G a tax deduction certificate if she asks for one. Ms G may be able to reclaim the tax from HMRC if she doesn't normally pay tax.

My final decision

I uphold Ms G's complaint, and direct Sainsbury's Bank Plc to put things right in the way I set out above.

If Ms G accepts the final decision, Sainsbury's Bank Plc must carry out the redress within 28 days of the date our service notifies it of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 10 October 2023.

Adam Charles
Ombudsman