

The complaint

Ms C is unhappy that Sainsbury's Bank Plc haven't made reasonable adjustments in consideration of her disabilities which affect her ability to have taken advantage of a promotional offer on a money transfer that Sainsbury's were offering.

What happened

Ms C wanted to take advantage of a money transfer offer being advertised by Sainsbury's. However, Sainsbury's required customers wanting to access the offer to contact them by telephone, which Ms C was prevented from doing because of the effects of her disabilities.

Sainsbury's offered some alternative solutions to Ms C. These included Ms C using a text-relay service or appointing an authorised representative to speak with Sainsbury's on her behalf. Ms C explained that neither of these options were viable solutions for her and asked Sainsbury's to allow her to access the offer via email, text, or letter. But Sainsbury's explained that their security requirements for the offer had to be undertaken by phone and so weren't willing to make any further adjustments as Ms C would like. Ms C wasn't happy about this, so she raised a complaint.

Sainsbury's responded to Ms C and confirmed that they felt the alternative options they'd already offered were reasonable adjustments and that they weren't willing to consider her as having passed the necessary security protocols by written correspondence as she was requesting. Ms C wasn't satisfied with Sainsbury's response, so she referred her complaint to this service.

One of our investigators looked at this complaint. They didn't feel that Sainsbury's had taken sufficient account of Ms C's disabilities or made reasonable adjustments for her. Because of this, they recommended that this complaint be upheld in Ms C's favour and that Sainsbury's should work out a way to allow Ms C to take advantage of the offer without the need for any form of telephone contact. And they also said that Sainsbury's should make a payment of £200 to Ms C as compensation for the trouble and upset this matter had caused her.

Sainsbury's didn't agree with the view of this complaint put forwards by our instigator, so the matter was escalated to an ombudsman for a final 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.

I issued a provisional decision on this complaint on 12 October 2023 as follows:

Ms C has complained that Sainsbury's has failed their duty to make reasonable adjustments under the Equality Act 2010. While we do take relevant law and regulation into account when arriving at our decisions, our remit is focussed on determining whether we feel a fair or unfair outcome has occurred – from an impartial perspective, after taking all the factors and circumstances of a complaint into consideration. As such, I've considered this complaint

from that perspective. If Ms C wants a decision that Sainsbury's has breached the Equality Act 2010, then she'd need to go to Court.

Sainsbury's have explained that their security protocols for money transfers are such that customers are required to verbally pass security with them. And Sainsbury's have explained that it isn't possible under their security protocols for a customer to pass security in a non-verbal manner. Conversely, Ms C has explained that the effects of her disabilities are such that she'd unable to contact Sainsbury's by telephone as they require.

Sainsbury's have been provided with a description of Ms C's disabilities by our investigator, and so I won't repeat that description here. But I will state that I'm satisfied from Ms C's testimony that it isn't reasonable for Sainsbury's to expect her to speak with them by telephone as their standard process requires.

In circumstances where a customer has a disability that reasonably prevents them from complying with a policy maintained by a business – as is the case in this instance – it would generally be expected that the business would make reasonable adjustments to facilitate their customer being able to achieve their objective via alternative means.

Sainsbury's say that they have made reasonable adjustments for Ms C. Specifically, Sainsbury's gave Ms C the option of passing telephone security by either using a text relay service or by appointing an authorised third-party to speak to Sainsbury's on her behalf.

But Ms C has explained to this service that she's unable to use a text relay service because doing so has a similar detrimental effect on her as a phone call does, because of her disabilities. And she's also explained that she doesn't have anyone whom she trusts to act as a representative on her behalf. And I'm satisfied from Ms C's explanation that the two alternatives Sainsbury's proposed aren't suitable for her.

However, while I accept that the alternatives offered by Sainsbury's aren't suitable for Ms C, it doesn't necessary follow from this that Sainsbury's haven't made reasonable adjustments for her. And this is because I feel it may be the case that the nature of Ms C's disabilities might be such that, in this instance, there is no reasonable adjustment that Sainsbury's could make which would allow Ms C to access the promotional offer as she would like.

Ms C may argue that Sainsbury's could reasonably make the adjustment that she's requested all along – which would be to allow her to pass their security protocols via a written method, potentially by email or by text message. But the Equality Act 2020 does allow for businesses to have limitations on how people with protected characteristics can access their services, if it can be demonstrated that any limitation is the result of a business 'achieving a legitimate aim'.

I think that Sainsbury's requirement for its customers to pass security verbally is a limitation imposed to facilitate the achievement of a legitimate aim – the security of its customers' accounts. And because of this I think that a Court of Law would likely say that limiting how consumers are able to provide security on their accounts in order to keep those accounts secure from fraudsters, should be considered as a legitimate aim, and therefore wouldn't be a breach of the provisions of the Act – although this is, of course, only my opinion.

It follows therefore that I accept that Sainsbury's are fairly entitled to have the security requirements that they do here. And given that I accept that Ms C reasonably can't use either the telephone or a text relay service and doesn't have anyone available to her who can act as an authorised representative on her behalf, the question becomes whether there are any other reasonable adjustments that Sainsbury's can make.

In this instance, upon consideration, I don't feel that there are any other reasonable alternatives that Sainsbury's can offer Ms C. I've considered whether it might have been possible for Ms C to have gone into a branch of Sainsbury's bank and had a private conversation with a staff member who could have completed Sainsbury's security process with her. But even if this was a viable option for Ms C – which hasn't been confirmed – there doesn't appear to a suitable Sainsbury's Bank location close to Ms C for any such private meeting with a staff member to take place.

Unfortunately, it seems to me that there is no reasonable adjustment that Sainsbury's can make that sits within their security requirements – which I'm satisfied its reasonable for them to have – but which allows Ms C to access the promotional offer as she would like. While I can appreciate that this is frustrating for Ms C, I don't feel that it can be said that Sainsbury's have acted unfairly towards her in this regard. This is because, ultimately, there doesn't appear to be any possible way for Ms C, given the effects of her disabilities, to be able to pass Sainsbury's reasonable security requirements in this unfortunate instance.

However, while it follows from the above that I won't be upholding this aspect of Ms C's complaint or instructing Sainsbury's to offer any further alternatives to her, I will be provisionally upholding this complaint in Ms C's favour on another basis. This is because I don't feel that Sainsbury's have taken due consideration of Ms C's disabilities here or provided a reasonable explanation to her as to why they're unable to offer any further alternative solutions to her.

Sainsburys may argue that Ms C didn't provide enough information to them to enable them to do this. But Ms C did explain that she has disabilities that prevent her from using the telephone. And because of this, I feel that the onus was on Sainsbury's to have proactively obtained further information from Ms C – such as why she felt the appointed representative and text relay service options weren't viable options for her – and to have then provided an explanation to Ms C, similar to that which I've outlined above, if they continued to feel that no further options could reasonably be provided to her.

In short, while I don't feel that Sainsbury's have acted unfairly here in regard to not allowing Ms C to pass security in a non-verbal manner as she would like, I don't feel that Sainsbury's have provided a fair standard of service to Ms C surrounding her request to be allowed to pass their security protocols in a non-verbal manner. And I feel that Sainsbury's lack of reasonable engagement with Ms C on this matter has caused Ms C a degree of upset and frustration which shouldn't have been the case.

As such, my provisional decision here will be that I'm upholding this complaint in Ms C's favour on this limited basis only and instructing Sainsbury's to make a payment of £200 to Ms C as compensation for the trouble and upset she's experienced.

In arriving at this amount, I've considered the effects of Sainsbury's poor communication on Ms C, as she's described it to this service, as well as the general framework which this service considers when assessing compensation amounts – details of which are on this service's website. And, having done so, I feel that £200 is a fair compensation amount.

Ms C responded to my provisional decision and explained that she was able to apply for a balance transfer with Sainsbury's without needing to speak with anyone, and so felt that she should also be able to apply for a money transfer in the same way.

However, as explained in my provisional decision letter, I feel that it's for Sainsbury's to set the security requirements for the various products and transfers that they provide.

Additionally, while balance transfers and money transfers are similar in many respects, they are, ultimately, different types of transfer. For instance, with a money transfer, the amount transferred is available to be withdrawn from the recipient bank account immediately. And because of this, I can understand why Sainsbury's would have more stringent security measures in place on money transfers than they do for other, less risky, types of transfer.

Sainsbury's also responded to my provisional decision and confirmed that they were happy to accept it to bring this matter to a close. As such, I see no reason not to issue a final decision here whereby I uphold this complaint in Ms C's favour on the limited basis described in my provisional decision. And I confirm that I do uphold this complaint in Ms C's favour on that limited basis accordingly.

Putting things right

Sainsbury's must make a payment of £200 to Ms C.

My final decision

My final decision is that I uphold this complaint against Sainsbury's Bank Plc on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 14 November 2023.

Paul Cooper
Ombudsman