

The complaint

Mrs S complains that Sainsbury's Bank Plc ("Sainsbury's") failed to refund transactions she didn't recognise.

What happened

Mrs S noticed a number of unusual transactions had been made using her credit card account. All the transactions used Apple Pay and were carried out in the USA. Mrs S was on holiday at the time in a different country, whilst her card (linked to the disputed transactions) was locked away at home and no one else had access to it. Mrs S contacted Sainsbury's about these transactions and asked for a refund.

Mrs S said she didn't request Apple Pay to be added to her account, although she'd seen a message about it from Sainsbury's. Mrs S explained that she didn't respond to the message as she wasn't intending to use it as a payment method.

During the investigation carried out by Sainsbury's, Mrs S felt that they treated her poorly and didn't believe her story. Sainsbury's didn't offer any refund based on the authorisation of Apple Pay on her account after they'd sent Mrs S a message about it and received confirmation from her. Sainsbury's later closed Mrs S's account. Mrs S complained about her treatment and Sainsbury's again looked into what had happened.

Sainsbury's later accepted that overall, they'd let Mrs S down with in terms of their service towards her claim, but not in their decision to hold her liable for the disputed transactions. It was also accepted that Mrs S was given misleading information about the need to make payments towards her account while the investigation was ongoing.

Sainsbury's removed interest and charges accrued during the complaint and offered Mrs S £100 to recognise the poor service she'd received. Sainsbury's advised that payments were now necessary against the outstanding balance.

Unhappy with their response, Mrs S brought her complaint to the Financial Ombudsman Service for an independent review where it was looked into by one of our investigators.

Both parties were asked for information about the issue and Mrs S explained her situation at the time of the disputed transactions. She was able to confirm that:

- No one else had access to her card.
- Only her family had access to her phone but hadn't applied for Apple Pay.
- She hadn't applied for or accepted Apple Pay.
- She was on holiday at the time of the first disputed transactions, but in a different country to where they took place.
- A message about Apple Pay was seen on her phone but ignored.
- No One Time Passcodes (OTPs) were shared with anyone else.

Sainsbury's provided details of their investigation, call recordings and records of the transactions themselves. In summary, their case was that:

- All the disputed transactions were carried out via Apple Pay.
- This was applied for and authorised through Mrs S's account and registered phone, requiring an OTP to be responded to.
- There was no point of compromise to explain how a third party could have obtained Apple Pay without Mrs S's knowledge.
- Sainsbury's accepted they'd let Mrs S down with their service and delays to the investigation into her complaint.
- Charges and interest were refunded up to the date of the final response letter, based on misleading information about payments provided to Mrs S at the beginning of Sainsbury's investigation.
- Mrs S had continued to fail to pay towards her outstanding balance which accrued additional charges.
- £100 was offered to recognise the lack of service provided to Mrs S.

After reviewing the evidence, the investigator thought that as there was no plausible explanation how Mrs S's account could have been compromised, that she was likely responsible for the disputed transactions. They thought Sainsbury's offer of £100 for the customer service and the removal of charges up to the final response letter was issued was both fair and reasonable.

Mrs S strongly disagreed with the investigator's outcome and continued to deny being responsible for them. Mrs S wanted an Ombudsman to review her complaint, which has now been passed to me for a decision.

After examining the evidence provided by the parties, I asked Sainsbury's to review their position about the disputed transactions based on some of their characteristics and the type of merchants used to take the payments. After considering the matter again, Sainsbury's accepted that Mrs S wasn't responsible and offered to:

- Refund the disputed transactions totalling £1,313.38.
- Refund all fees and charges associated with the disputed transactions.
- Update Mrs S's credit file to remove arrears and late payment markers.
- Pay Mrs S £250 by way of an apology.

Mrs S accepted the refunds from Sainsbury's but didn't think the offer of compensation was sufficient based on the stress caused throughout the time this matter has been going on. Sainsbury's later clarified that the offer in total was £350 (to include the earlier £100) as an apology.

I issued my provisional findings on the merits of Mrs S's complaint on December 2023. In my provisional findings, I explained why I intended to uphold Mrs S's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

What I've provisionally 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.

As Sainsbury's have now accepted that Mrs S wasn't responsible for making the disputed transactions and refunded them (or in the process of doing so), I'm not going to further

address the issue of authorisation of these payments.

It's apparent to me from reading the evidence that Sainsbury's didn't think that there was a plausible explanation showing how Mrs S's account was compromised with the Apple Pay feature being used by an unknown third party. The evidence they assessed showed that Mrs S's device both requested and confirmed the addition of Apple Pay to her account, but it's also apparent that Mrs S wasn't aware of this. So, based on the technical evidence, I wasn't totally surprised Sainsbury's held her liable until they were asked to look at the matter again.

Sainsbury's accepted that they'd let Mrs S down with how they dealt with her concerns, including information given to her and delays dealing with the issue. Mrs S was left stressed and worried by the ongoing nature of the debt she faced.

Mrs S was told about the need to pay her outstanding balance when Sainsbury's wrote to her with their final response letter. Prior to this she was under the impression she didn't need to continue to pay whilst it was under investigation. Sainsbury's removed the fees and charges up to that point (the date of the final response letter), including removal of any markers against her credit file. I think Sainsbury's response here was an appropriate way to recognise the misleading information provide to Mrs S.

I understand Mrs S doesn't think Sainsbury's offer of compensation is high enough when it was communicated to her that it was £250. It's now been clarified that this is in additional to the initial £100 offered by Sainsbury's, making the total compensation £350. Given the trouble experienced by Mrs S and the length of time this has gone on, I think Sainsbury's offer is both a fair and reasonable way for them to recognise the impact this had on Mrs S.

The package of redress proposed by Sainsbury's puts Mrs S back in the financial position she was prior to the disputed transactions taking place on her account and recognises the distress and inconvenience suffered by her.

During the fallout from these transactions, Sainsbury's also decided to close Mrs S's account. The timings of this closure indicate it was prior to Sainsbury's full understanding of what had gone on. Whilst I understand why they probably closed it (outstanding payments on the account left unpaid), I think the closure was a bit hasty given the final position of the complaint.

My understanding is that Mrs S was reluctant to pay towards the outstanding balance after Sainsbury's told her they would need payment (after the final response letter was sent to her) so I think at some point, they would probably have closed it anyway as this would likely be a breach of the terms of the account. As the account was already blocked, I don't think the early closure had any additional practical impact, although I recognise that overall, Mrs S would have felt more stressed and worried as a result of their actions.

I also understand from Mrs S that she continues to have issues with Sainsbury's, but this complaint deals only with the points she'd raised about the original disputed transactions that were investigated by Sainsbury's. Any other complaints would be dealt with separately and I won't be further commenting on them here.

I'm currently intending to uphold this complaint and recommend that Sainsbury's (who have already offered the following):

- Refund the disputed transactions £1,313.38 to Mrs S if not already done so.
- Refund all fees and charges associated with the disputed transactions.
- Update Mrs S's credit file to remove arrears and late payment markers related to the disputed transactions.

- Pay Mrs S £350 by way of an apology.

I invited Mrs S and Sainsbury's to give me any more evidence and information they wanted me to consider before issuing my final decision. Mrs S didn't have any further evidence to add, but she did think the level of compensation was disappointing. Sainsbury's didn't have anything further to add about the complaint.

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, and as neither party had anything further for me to consider, I see no reason to reach a different conclusion. I recognise that Mrs S has consistently argued that she should be due a greater sum from Sainsbury's, given the experience she had with them. But, my thoughts (as set out in the PD) are that I think £350 is a fair and reasonable amount to recognise the stress and inconvenience caused to Mrs S. So, this final decision confirms the findings set out in my provisional decision.

Putting things right

In order to finalise this complaint, Sainsbury's should now:

- Refund the disputed transactions £1,313.38 to Mrs S if not already done so.
- Refund all fees and charges associated with the disputed transactions.
- Update Mrs S's credit file to remove arrears and late payment markers related to the disputed transactions.
- Pay Mrs S £350 by way of an apology.

My final decision

My final decision is that I uphold this complaint and Sainsbury's Bank Plc are instructed to settle the complaint as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 9 February 2024.

David Perry
Ombudsman