

The complaint

Mr H complains that Sainsbury's Bank Plc declined to refund money he lost to a scam.

What happened

In October 2022, Mr H was on holiday overseas. While shopping one day he was offered a tablet for £30, which he agreed to buy, but he was told he would need an activation code for it to work and to return to the shop another day to get that code. When Mr H returned to the shop he was persuaded to upgrade the tablet, for a further £130, and was told the activation code to enable the tablet to work in the UK would only be active for 24 hours so he should return to the store the day he was due to fly home.

Mr H went back to the store on 25 October 2022, and was persuaded to buy two 'decoders' and a subscription for unlimited access to various satellite TV channels (which he thought he was paying half the cost of as his wife was charged the other half on a separate account). In total, he thought he was spending £100, in reality he had been charged nearly £7,000. And when he returned to the UK later that day he realised he had been the victim of a scam and contacted Sainsbury's to let it know what had happened.

Sainsbury's looked into what had happened, but ultimately told Mr H that it did not think it was liable for his loss. It said Mr H had authorised the payments using chip and PIN and that it had questioned Mr H about one of the payments at the time and he had confirmed he was happy to make the payment. Sainsbury's also said it would not have been able to pursue recovery of the payments via chargeback or Section 75 of the Consumer Credit Act.

Mr H wasn't happy with Sainsbury's response, so he brought a complaint to our service. An investigator looked into Mr H's complaint, and they felt that Sainsbury's should have intervened in the first payment Mr H made to the scam on 25 October 2022. The Investigator felt that, if Sainsbury's had done so, then the scam would have been uncovered. And they didn't think Mr H should also bear any responsibility for what had happened. So, they recommended that Sainsbury's refund all three scam payments Mr H made, along with the foreign transaction fees he paid.

Sainsbury's did not agree, it says the first payment was not unusual enough for it to have needed to intervene, and that when it did speak with Mr H it would not have been able to identify that he was being scammed. It also said that Mr H had ignored red flags about what was happening to him and had not done enough to ensure the people he was dealing with were legitimate.

As no agreement could be reached, this case was passed to me to decide. I issued a provisional decision on 25 April 2024, explaining why I considered that Mr H's complaint should be upheld in part.

Mr H and Sainsbury's have both confirmed that they accept the findings set out in my provisional 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.

In my provisional decision I explained the following:

"It isn't in dispute that Mr H authorised the payments he made to the scammers. And the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made. There are though some circumstances in which a bank may still be reasonably expected to reimburse a customer for payments made to a scam.

So, I've considered whether Sainsbury's should have done more to prevent Mr H from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular payment. For example, if it was particularly out of character.

But Sainsbury's has a difficult balance to strike in how it configures its systems to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud. There are many millions of payments made each day and it would not be possible or reasonable to expect a bank to check each one. And, in situations where Sainsbury's do intervene, I would expect that intervention to be proportionate to the circumstances of the payment.

In this case, the first payment Mr H made was for £3,483.61, and I acknowledge that in the context of Mr H's usual spending this was a relatively large amount. I also acknowledge that it was a payment to an overseas retailer. However, it's evident from Mr H's statements that he had already made several smaller payments to other businesses in the country where he was on holiday, so further overseas spending in that country would not have seemed so out of the ordinary. The payment was also made using chip and PIN, and so inherently a less risky payment than, for example, an online payment, as Mr H would have to have been present to make the payment himself. Considering that this was also a credit card account, and credit cards are often used for one-off larger transactions, I don't think this initial payment would have been out of character enough to have flagged as a potential fraud risk to Sainsbury's.

However, I do think the second payment Mr H made to the scam, for £2,612.71, was unusual enough to be seen as potentially suspicious. I say this because, while this payment was still not what I would consider to be a particularly high payment, it was the second payment within minutes to the same retailer. So, I think it's right that Sainsbury's should have intervened at this stage, and I can see that Sainsbury's did so, calling Mr H to ask him to confirm he was happy with the payment being made. The question I must then consider is whether this intervention was reasonable, and should it have broken the spell and uncovered the scam.

I've listened to the conversation Sainsbury's had with Mr H about this second payment. Mr H says he's done a deal, and Sainsbury's tells Mr H the amount of the payment, and he seems surprised by the amount he's been told. But Mr H then speaks with someone in the background at his end who says it is a payment for a guarantee and will be refunded to him. Mr H therefore confirms that he's happy for the payment to go ahead. Sainsbury's says it wouldn't have been clear to its agent that there was the potential for this to be a scam payment from this conversation, but I disagree. I think that, given the clear involvement of a third party, and the reference to a 'guarantee' that Mr H had apparently been unaware of

until that point, it would have been reasonable for Sainsbury's to ask some more detailed questions about what he was buying and why.

And, had it done so, I think it would have very likely come to light that something untoward might be going on. Sainsbury's would have been aware that Mr H had already made a payment of over £3,000 to the same retailer, and that the details of what he thought he was paying for were very unlikely to be legitimate. I think if Sainsbury's had explained the high likelihood that this was a scam to Mr H then it is very likely he would not have made this payment or any further payments to the scam.

So, with all this in mind, I'm currently minded to say that Sainsbury's did miss an opportunity to uncover the scam Mr H was a victim of from the second payment on 25 October 2022 onwards, so it should bear some responsibility for refunding the second and third payments Mr H made on 25 October 2022.

I've then thought about whether Mr H should also bear any responsibility for his loss. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in all of the circumstances of this complaint.

In my judgement, I think there were aspects of what happened here that should have given Mr H pause for thought. Specifically:

- Mr H has said the store he was dealing with was a 'bucket and spade' type tourist shop, so I think he should have questioned why such a shop was apparently selling decoders and subscriptions for television services.*
- Mr H has said himself that he did not really understand the technical aspects of what he was buying, it's therefore difficult to understand why he didn't seek more expert advice to ensure he was buying something legitimate.*
- The three disputed payments were made via chip and PIN, and the amounts would have been visible on the terminal when Mr H was inputting his PIN. Mr H says the scammers covered the screen of the terminal so he didn't know how much he was paying. But when Sainsbury's called him and told him one of the payments was for over £2,000 – far in excess of what he thought he was paying – Mr H doesn't seem to have questioned this in much detail with the scammer or taken steps to ensure that the next payment he made was for a known amount.*

I'm satisfied that Mr H should have been more cautious given the unusual circumstances of these payments and the apparent inconsistency in what he thought he was paying and what he was actually paying that was highlighted when Sainsbury's called him. So, I think Mr H did have a role to play in what happened and I think that the amount Sainsbury's should pay to him in compensation should fairly and reasonably be reduced to reflect that role. I think that a fair deduction for these payments is 50%.

I've also thought about whether Sainsbury's could have done more to recover the funds after Mr H reported the fraud. But I'm satisfied that it could not have done more here. Given that there was apparently no evidence to show what Mr H had agreed to pay, it's unlikely a chargeback on the basis that the goods were not as described or on the basis that the incorrect amount had been taken would have any reasonable prospect of success. Additionally, Section 75 of the Consumer Credit Act would not apply here as Mr H has said the total he agreed to pay was £100, and so under the limit for Section 75 claims.

Overall, having considered the matter carefully, I am currently intending to find that Sainsbury's should refund 50% of the disputed payments made from the second payment on 25 October 2022 onwards (inclusive) – representing a refund of £1,735.24. Sainsbury's

should also refund the non-sterling transaction fees associated with this amount, along with any interest charged on this amount.”

Sainsbury's has accepted my provisional findings and confirmed it has no further comments to make. Mr H has also accepted my findings, but has nonetheless expressed his disappointment. He maintains that there was nothing indicating to him that he might be being scammed, and that he feels Sainsbury's could have done more to protect him. I appreciate Mr H taking the time to comment, and can entirely understand his disappointment, but while I have thought carefully about all he has told us through the course of this complaint, my findings remain unchanged from those set out in my provisional decision.

Putting things right

To resolve this complaint Sainsbury's should:

- Refund to Mr H 50% of the payments made to the scam on 25 October 2022 from the second payment onwards (inclusive).
- Refund to Mr H any non-sterling transaction fees relating to the amount being refunded.
- Refund to Mr H any interest that was charged on the amount being refunded.

My final decision

I uphold this complaint in part, Sainsbury's Bank Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 June 2024.

Sophie Mitchell
Ombudsman