

The complaint

Mrs A complains Sainsbury's Bank Plc unfairly declined her chargeback claims and wrongly applied a Credit Industry Fraud Avoidance System ('CIFAS' - the UK's fraud alert service) marker against her name.

What happened

In June 2023 Mrs A made three payments to a business using her Sainsbury's credit card. Mrs A says she was due a refund of the items she purchased as she never received them and had been given a refund receipt for each transaction from the business, dated 29 July 2023.

On 10 August 2023 Mrs A contacted Sainsbury's Bank as the refunds were not appearing on her account. Mrs A was advised she could make a chargeback claim for the amounts and she returned the relevant forms on 16 August 2023. Whilst it reviewed the claims Sainsbury's temporarily refunded Mrs A the amounts.

Upon reviewing the available evidence Sainsbury's decided the refund wasn't appropriate and it debited the amounts Mrs A had claimed. Sainsbury's says it did this after carefully reviewing the available evidence about the purchases and the account activity.

As well as debiting the amounts from Mrs A's card, Sainsbury's registered a CIFAS marker against Mrs A. Sainsbury's said it had met the burden of proof set out by CIFAS to register this and it had acted in line with its legal and regulatory obligations.

Mrs A raised a complaint with Sainsbury's, but it didn't think it had done anything wrong. It said, it had placed the marker in line with its internal policies and regulatory obligations. But Mrs A didn't think this was fair and referred the complaint to our service.

An Investigator looked into Mrs A's complaint and gathered the relevant evidence. The Investigator considered Mrs A's comments but didn't think the complaint should be upheld. The Investigator explained this was because:

- The chargeback claim was fairly assessed, and it was reasonable for Sainsbury's to debit the amounts again from Mrs A's account.
- The loading of a CIFAS marker was appropriate as Mrs A's testimony and evidence wasn't sufficient in explaining the account activity in light of the other evidence it had gathered.

Mrs A didn't accept the Investigator's findings and maintained she had been treated unfairly. The complaint was referred to me – 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 appreciate Mrs A was disappointed by the investigator's opinion. I'd like to reassure Mrs A that I've considered the whole file and what's she's said. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome. No discourtesy is intended by me in taking this approach.

I would add too that our rules allow us to receive evidence in confidence. We may treat evidence from banks as confidential for a number of reasons – for example, if it contains security information, or commercially sensitive information. Some of the information Sainsbury's has provided is information that we considered should be kept confidential. This means I haven't been able to share a lot of detail with Mrs A, but I'd like to reassure her that I have considered everything that he's told us.

I will deal with each key aspect of Mrs A's complaint in turn.

Chargeback claims

Mrs A used her credit card to make the purchases in June 2023 and says she was due a refund as she didn't receive the goods. Whilst there are some protections under the relevant chargeback scheme, there isn't a guarantee of a refund.

The chargeback process is voluntary and run by the card scheme whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them. Such arbitration is subject to the rules of the scheme - so there are limited grounds on which a chargeback can succeed or be deemed a 'valid claim'. Our role in such cases is not to question the card scheme rules, but to determine whether Sainsbury's has acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of Mrs A.

I can see Sainsbury's gathered information from Mrs A about her purchases and interactions with the merchant. Sainsbury's also received detailed information from the payment processor who reviewed the transactions and the merchant activity. Based on the responses received to its queries, Sainsbury's decided there was no entitlement to a refund as set out in the chargeback regulations. Mrs A strongly believes she met the necessary criteria for a refund. However, declining to pursue the claim is a decision Sainsbury's is entitled to make, in light of the chargeback rules and evidence provided. Looking at the information provided – some of which has been provided in confidence - I think Sainsbury's took the appropriate steps to pursue the chargeback on behalf of Mrs A and I think it reached the decision not to refund the amounts to Mrs A fairly.

CIFAS marker

When a bank is a member of CIFAS, it can record a marker against a customer when that customer has used their account fraudulently. This type of marker will stay on a customer's record for six years and will usually make it difficult for that customer to take out new financial products. CIFAS forms an important part of the financial services regulatory framework and is intended to assist in the detection and prevention of financial crime.

In order to file such a marker, Sainsbury's is not required to prove beyond reasonable doubt that Mrs A is guilty of a fraud or financial crime, but it must show that there are grounds more than mere suspicion or concern. CIFAS says:

- There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; and
- The evidence must be clear, relevant and rigorous such that the member could

confidently report the conduct of the subject to the police.

What this means is that Sainsbury's will need strong evidence to show that Mrs A claim for refunds was fraudulent. A CIFAS marker shouldn't be registered against a customer who has acted unwittingly – there must be evidence of a deliberate fraudulent action.

My role is to establish if Sainsbury's has sufficiently demonstrated it has met the burden of proof set out by CIFAS to load the marker against Mrs A. Sainsbury's has provided this service with details of the investigation it carried out following the chargeback claims. This included a detailed review of Mrs A's account activity and the details submitted as part of the chargeback dispute. The information shared to this service as part of the review is considered confidential, and as explained above, I'm unable to disclose the specific details to Mrs A of what Sainsbury's review revealed. However, I must assure Mrs A that I have considered this evidence, alongside her submissions in detail. My review has led me to the same view reached by Sainsbury's – the evidence available equates to more than mere suspicion or concern of fraudulent activity. I therefore find that the marker was loaded fairly.

I appreciate Mrs A will be disappointed with my decision and I fully appreciate the CIFAS marker is having an adverse impact on her. I have listened to Mrs A and her husband's calls with Sainsbury's, and I can see that they are deeply concerned with the handling of the account. But I am satisfied Sainsbury's acted reasonably in taking this action to discharge its regulatory obligations. I hope my decision provides some clarity around why I won't be asking Sainsbury's to take any further action.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 13 February 2025.

Chandni Green
Ombudsman