

The complaint

Mr A complains Sainsbury's Bank Plc registered a fraud marker at Cifas, the national fraud database and closed his account. He doesn't think it's done so fairly.

What happened

I issued my provisional decision on this complaint, setting out what I intended to decide and why. I invited both parties to let me have any further comments and information before I reconsidered the matter. Below is a copy of my provisional decision.

Copy of provisional decision

What happened

A summary of what happened is below.

Mr A held a credit card account with Sainsbury's. In November 2023, following a review it closed the account and loaded a misuse of facility marker at Cifas.

Mr A contacted Sainsbury's to complain about this but the bank was satisfied the steps it had taken were correct.

Mr A complained to Cifas, and it looked into whether Sainsbury's had enough information to make the filing to it. Its decision was that the matter had been correctly reported, based on the evidence the bank had – which it considered was sufficient. It gave Mr A some further details that the matter related to chargeback claims he'd made. In the circumstances, Cifas said it wouldn't be removing the entry.

Mr A also contacted us. He said he didn't think Sainsbury's had treated him fairly or been transparent about why it had taken the course of action it had. He believed it had discriminated against him and breached industry regulations and UK law.

One of our investigators looked into the matter but she didn't think Sainsbury's needed to do anymore. She was satisfied Sainsbury's evidence for recording the marker had also met the relevant requirements of Cifas. And she hadn't seen any evidence Sainsbury's had discriminated against him or that it was wrong to close the account.

Mr A disagreed and maintained he'd been treated poorly. He said the matter was having a profound effect on his life. When the investigator didn't change her mind, the complaint was put forward for an ombudsman's 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.

Mr A has other cases with our service. But my review is purely about Sainsbury's recording a fraud marker and closing his account. I'm also conscious that Mr A has been in touch with

our service, keen to have an answer on this complaint due to the effect the marker is having on him. So, I will deal with this matter below.

Our investigator in her outcome letter laid out Cifas's requirements to its members for placing a fraud marker. I won't repeat all that here, but I will highlight that Sainsbury's must have 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. So, in order to decide whether Sainsbury's acted fairly, I need determine whether it had enough evidence to meet the above standard of proof to load the Cifas marker.

Sainsburys has sent this service some confidential information, and it has asked us not to share this. I would like to explain that our rules allow us to receive evidence in confidence. We may treat evidence from financial businesses as confidential for a number of reasons – for example, if it contains information about other customers, security information or commercially sensitive information. It's then for me to decide whether it's fair to rely on evidence that only one party has seen. It's not a one-sided rule; either party to a complaint can submit evidence in confidence if they wish to, and we'll then decide if it's fair to rely on it. Here, the information is sensitive and on balance I don't believe it should be disclosed. But it's also clearly material to the issue of whether Sainsbury's has treated Mr A fairly. So, I'm persuaded I should take it into account when deciding the outcome of the complaint.

Mr A is already aware that the marker was filed in relation to chargeback claims he made. He doesn't believe Sainsbury's have met the relevant threshold. However, he's gone through Cifas's own complaints procedure and had an outcome to say it has. Having looked at Cifas's conclusions but also weighed all the other information independently, I'm satisfied the evidence Sainsbury's has is clear, relevant, and rigorous enough to justify its actions on the filing it made. For completeness, I don't believe Sainsbury's delayed filing the marker. This was lodged in November 2023, which is when the account was closed. Looking at Cifas guidance to its members, I'd expect both things to happen broadly at the same time and after the business had completed its review.

On the issue of closing Mr A's account, there's provision within the account agreement for Sainsbury's to do that. Given why it made the loading, I'm satisfied the immediate closure was in line with the account terms and conditions. I understand Mr A is upset with the bank's actions and not least because of the impact this matter is having on him, but I haven't seen anything to suggest Sainsbury's has discriminated against him or breached rules and regulations.

I'm sorry to disappoint Mr A but I'm not going to require Sainsbury's to do anything more in relation to this complaint.

My provisional decision

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

Summary of responses

Sainsbury's responded to say that it accepted my provisional decision and didn't have anything further to add.

Mr A responded to say he disagreed with my provisional decision. He felt the decision was procedurally unfair, flawed, unsupported by clear evidence and had disregarded consumer protection laws, regulations, and principles of natural justice.

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.

It's clear Mr A feels strongly about his complaint. I have read and considered everything that he's provided, including his pack. As an informal dispute resolution service, we are tasked with reaching a fair and reasonable conclusion with the minimum of formality. In doing so, it's not necessary for me to respond to every point made, but to concentrate on what I consider to be the crux of the issue.

I note that Mr A has provided information relating to the merits of his chargeback claims, request for refunds and how those matters were dealt with (I can understand why he may have done that). But I'm not reviewing the chargeback claims (those are the subject of a separate case). So, whilst relevant for background, I will deal with Sainsbury's decision to load a misuse of facility marker and its closure of the account.

I'm fully aware of the principles that underpin the requirements on firms before they can load a misuse of facility marker. I've thought about why Mr A feels he's been treated unfairly in relation to this but based on the information I've seen; I remain satisfied the threshold for filing the marker has been met – the information the business has is detailed and compelling. Cifas has also given Mr A its decision on this, stating it's satisfied Sainsbury's had enough to record the marker.

I understand why Mr A would like disclosure of the information that Sainsbury's provided in confidence – he references natural justice. However, as I explained, our rules allow me to receive and handle information in this way. I can see that he's previously engaged with Sainsbury's about this because it referred to his DSAR in communications with him. It set out why it wouldn't be disclosing information he was seeking and referred him to the ICO. Weighing everything, I also remain satisfied with my decision to handle the information in the way that I have.

Where a marker is filed, Cifas requires that the facility is closed. Given my conclusions on this (as above), I have found Sainsbury's where correct to close the account in the circumstances that it did. Finally, Mr A alleges there have been breaches of rules, codes of practice, industry guidance etc but I simply haven't found any unfairness in relation to this. I realise he will be bitterly disappointed with my conclusions. But of course, he's not obliged to accept my decision. However, for completeness this ends our process in considering his complaint.

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 Mr A to accept or reject my decision before 17 March 2025.

Sarita Taylor
Ombudsman