

complaint

Mr T complains that Sainsbury's Bank Plc have continued to pursue him for a debt despite acknowledging that he was a victim of identity theft, and have failed to remove adverse entries on his credit file related to the debt.

background

In July 2017 a credit card account was opened in Mr T's name with Sainsbury's Bank.

Mr T was away travelling from December 2016 to October 2017. He'd arranged for his mail to be forwarded to his sister's house. He first became aware of the account in early September 2017 when a statement was received showing a balance of around £6,000.

Over the next few months Mr T spoke to various departments within Sainsbury's repeatedly. On 10 November he wrote to the bank providing information it had requested and asking it to stop sending him demands for payment. But he continued to receive these.

In mid-December 2017 Mr T sent a lengthy letter of complaint to Sainsbury's, setting out the background and asking again that it cease sending demands, that it acknowledge he didn't owe it any money and for any adverse entries to be removed from his credit file.

In late January Mr T contacted the bank as he hadn't had a reply to his December letter. A customer service representative spoke to Mr T on 29 January. The bank's notes said:

"I explained to customer about CIFAS and agreed £20 to cover registration costs for this. £80 D&I also offered for our service.

I explained fraud would take care of the balance and his cr file but I would monitor the a/c to ensure all this is completed and that fraud write to him as advised."

Sainsbury's also sent its written response to the complaint on 29 January. It said it hadn't received his letters of 10 November and 15 December but didn't dispute he'd sent them as its fraud department had recently relocated. But it now had the letters and had sent them to its fraud department who would write to him confirming action by 2 February 2018. It enclosed a cheque for £100 compensation. This included £20 for Mr T to register with CIFAS.

However Mr T continued to be chased for the credit card debt, including by a debt collection agency. After more exchanges with the bank in an effort to sort it out, in mid-April 2018 Mr T complained to us.

Our investigator spent several months endeavouring to get a response from Sainsbury's as to why the actions hadn't yet been taken. Sainsbury's said it was having issues getting the file back from the debt collectors. In the meantime demands and then statements continued to be sent to Mr T.

On 9 August 2018 Sainsbury's wrote to Mr T accepting that the account had been opened fraudulently in his name. It said that the account would be closed and it would update the information held at credit reference agencies.

Shortly after that our investigator gave his view on the complaint. He said Mr T had experienced nine months of delay and uncertainty. He'd been distressed by the bank not doing what it said it would and by the comments on his credit file. Mr T had told us he'd had to defer some investment opportunities and found it necessary to subscribe to a credit reference agency's reports at £14.99 a month. He thought the bank should pay Mr T £650 compensation, and remove all reference to the account on Mr T's credit files.

Sainsbury's said it was happy to pay Mr T's credit reference agencies expenses but taking into account the delay it felt £200 compensation would be reasonable. Our investigator didn't agree, but put this offer to Mr T, who rejected it.

In mid-September our investigator wrote to Mr T saying his complaint was awaiting a decision from an ombudsman and could he let us know if there was a delay in correcting his credit file.

In early November Mr T told us that the credit file had still not been corrected. He provided us with evidence showing that he needed to re-mortgage his property in January and that Sainsbury's failure to correct the credit file would affect his ability to do so.

Another investigator (who had taken over the file from our previous case handler, who I have also referred to as an investigator to avoid confusion) asked Sainsbury's several times for an explanation. In mid-November the bank told us that it had removed all information concerning the account from one of the credit reference agencies on 15 August 2018 but unfortunately the bank reported the debt again at the end of August. The bank asked for it to be removed and it said the change had been instantly updated on the credit reference agency file.

On 15 August it had also contacted two other credit reference agencies but both companies didn't complete Sainsbury's request. Sainsbury's said it wasn't clear why. One agency had instantly updated its report but the other would take three to five days.

When the case came to me for decision I asked our investigator to find out whether the information had been removed from Mr T's credit file and whether he had been able to re-mortgage successfully. He confirmed that it had and he was able to.

I issued a provisional decision on 25 February 2019. My provisional findings were:

The main issue I need to decide is what compensation Mr T should receive. The bank has agreed that the account was opened fraudulently and that Mr T isn't liable for the debt, so I don't need to deal with that.

Subject to any comments I receive on this provisional decision, I propose to tell Sainsbury's to pay Mr T £750 for his distress and inconvenience and a further £179.88 for the cost of a year's subscription to a credit reference agency at 14.99 a month, if he wishes. I'll explain why.

The bank doesn't dispute that Mr T sent it what it asked for in order to establish the fraud in November 2017. He had to resend it in January. Yet it took until 9 August 2018 for the bank to formally decide and notify Mr T that he wasn't liable for the account.

I agree with our investigator that by late January Sainsbury's had given Mr T the impression that it accepted the account was opened fraudulently. But it still passed the account to a debt

collection agency that sent Mr T demands for payment. This took months to resolve and then Sainsbury's itself re-commenced sending Mr T statements demanding payment.

I can see from the information that Mr T has provided and the bank's own system notes that Mr T called and emailed the bank a great many times over the period from September 2017 to when he brought his complaint to us in order to try and resolve the issue. He was passed around departments of the bank without any resolution.

And even when the bank accepted the account was fraudulent it still didn't ensure that Mr T's credit files were accurate. It is clearly Sainsbury's error that the debt was re-reported in late August 2018 to a credit reference agency. Sainsbury's says it's not clear why the other two credit reference agencies didn't act on its request to remove the account information. But given both agencies didn't process the request I think it is reasonable for me to conclude on the balance of probabilities that the error lay with Sainsbury's. And even if I'm wrong about that, in my view given the history of this case Sainsbury's should've followed up with the credit reference agencies to ensure the information had been removed.

Mr T has told us that he's experienced a great deal of inconvenience from trying to get this resolved. I agree. He shouldn't have had to do anything after 10 November 2017 when he sent Sainsbury's the information it asked for to establish the fraud. Instead he's been put to a great deal of effort.

He also says it's caused him considerable stress, which I don't doubt. And the stress continued for a considerable period of time.

Mr T told us and the bank he's had to defer investment opportunities until his credit reference files were amended. The bank has said if he can prove this caused him a financial loss, it will compensate him. As Mr T says, this can't really be done. But I am entitled to take it into account when considering the distress and inconvenience to Mr T.

At a late stage when he'd been told his credit reference agency files would be amended Mr T experienced further stress as to whether it would be corrected in time to allow him to re-mortgage.

Taking all of this into account, I consider that a further £750 is a fair and reasonable amount of compensation for Mr T's inconvenience and distress. The bank points to the delay as only justifying £200. I don't agree. It's more than just delay, as I point out above.

I'm also minded to tell Sainsbury's to give Mr T a further £179.88 for the equivalent of a year's subscription to a credit reference agency. Mr T felt he had no choice but to subscribe to an agency to obtain a report due to Sainsbury's actions. In my view, this was a reasonable step. It's not clear to me when Mr T began his subscription, but it is likely to be some time after January 2018. I've suggested the equivalent of a year, as I know Mr T checked his report in December 2018 to finally establish that the account had been removed. I've allowed for some additional months in case Mr T wishes to check his report again.

My provisional decision was that Sainsbury's should pay Mr T a further £750 compensation for his distress and inconvenience and £179.88 compensation for a subscription to a credit reference agency report.

Mr T accepted my provisional decision. Sainsbury's said that the compensation was higher than it would expect on a case of this type. It felt my PD hadn't clearly articulated its position on our investigator's view. It said that:

I would like to stress we did understand the £650.00 suggested by the adjudicator was to include the potential loss of income due to the lost investment opportunities which is why we suggested it would be fairer to purely compensate for the delay and service (£200.00) and then to repay a finite amount for the loss rather than bulk this altogether, I don't think this is clearly articulated in the provisional view. However taking into consideration the point that Mr T cannot quantify this, I recognise a higher award should be made. I am comfortable and would expect to reimburse the costs incurred by Mr T in obtaining his credit file.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I still think my provisional decision is the right one, for the same reasons.

Sainsbury's still feels the compensation awarded to Mr T is too high. And it has clarified why it responded to our investigator's view on compensation in the way it did. It recognises that since Mr T can't quantify his loss from having to defer property investment decisions, a higher award than the £200 it suggested is justified. And it's happy to reimburse the credit file costs.

However Sainsbury's haven't given any reasons why it considers the award for distress and inconvenience was too high. It says it's higher than it would expect for a case of this type. But the facts and circumstances of all our complaints are unique. And Sainsbury's hasn't mentioned that the amount also takes into account the events after our investigator's view. These events included a further adverse report on Mr T's credit file, causing some very considerable stress to Mr T as to whether the file would be corrected in enough time to enable him to re-mortgage at a good rate. In my view this caused him a good deal of distress given that he had hoped the situation had been resolved.

I've set out in my provisional findings the reasons why I consider £750 to be fair and reasonable compensation for the distress and inconvenience Mr T experienced. I've reviewed the file and thought about it carefully, and I still consider it to be the case. So I will make my final decision in the same terms as my provisional one.

my final decision

My final decision is that Sainsbury's Bank Plc must pay Mr T:

- (a) a further £750 compensation for his distress and inconvenience. To be clear, this is in addition to the £80 already paid.
- (b) £179.88 compensation for a subscription to a credit reference agency report.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 12 April 2019.

Helen Wheatley
ombudsman