

complaint

Mr and Mrs N complain that Sainsbury's Bank Plc wrongly holds them liable for a loan fraudulently taken out in their name.

background

Mr and Mrs N say that, last year, they became aware of a £2,000 loan taken in their names with Sainsbury's Bank in 2014. They say they did not apply for the loan, and that the money from the loan was used to clear debts on other accounts which had also been taken fraudulently in their names. They do not consider that Sainsbury's Bank should hold them liable for the loan.

Sainsbury's Bank did not accept that the loan had been taken fraudulently and so was not willing to release Mr and Mrs N from their liability for it. As things were not settled, Mr and Mrs N brought the complaint to this service where an adjudicator investigated it.

From the evidence, the adjudicator was not persuaded that Sainsbury's Bank should cancel Mr and Mrs N's liability for the loan. So the adjudicator did not recommend that the complaint should succeed.

Mr and Mrs N did not agree and said, in summary:

- Their current account, into which the loan money was paid, has also been the subject of fraud and they have become aware of unauthorised cash machine payments from it as well as unauthorised direct debits including the loan payments.
- They did not realise that the loan money had gone into the current account, or that there was a problem on the account, as they had not received bank statements for some time. They asked for statements, but did not get them. They now accept they should have made more of an effort to get them.
- Once they saw what had been happening, they stopped the direct debit for the loan repayments and complained to Sainsbury's Bank about the loan.
- Their overall financial situation needs to be considered as a whole, in order to arrive at a proper outcome. They have also brought complains about other lenders but the issues should not be dealt with separately.
- The signatures on the loan agreement are not theirs. They have a modest financial life and did not apply for the loan. They have taken out loans in the past, but have not dealt with Sainsbury's Bank.

Mr and Mrs N also provided additional information about their dealings with their current account provider bank.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr and Mrs N have explained that the disputed loan from Sainsbury's Bank is part of a wider network of loans, credit card accounts and cash machine withdrawals from their current account. They say that these financial transactions have all taken place over the last six years without their knowledge.

Whilst I have taken account of what Mr and Mrs N have said about interconnection between these various disputed issues, and how that affects the Sainsbury's Bank loan, this complaint is about Sainsbury's Bank and this final decision is limited to the complaint about the Sainsbury's Bank loan.

Mr and Mrs N say that, at the time the loan was granted and paid into their joint current account, they had not really been keeping tabs on the joint account and had not received statements for some time. So they say they had not realised £2,000 had gone into their account.

Mr and Mrs N also say that their income, outgoings and lifestyle are modest and that they had no need of a loan at that time – though they accept they had taken loans in the past with various lenders. However, looking at Mr and Mrs N's joint account statements leading up to the point at which the loan was paid in, I can see that the account had been under considerable pressure for some time – frequently overdrawn virtually to the limit.

The loan money had the effect of reducing the overdrawn balance on the account. Withdrawals made from the account after that included what are clearly normal household outgoings like insurance, fares and council tax. Regular monthly repayments to the loan account left Mr and Mrs N's joint account from October 2014 onwards.

I have taken account of what Mr and Mrs N have told us about what they believe has been a complex and covert identity theft carried out on them over some six years, resulting in money being borrowed, withdrawn and transferred between accounts in their name without their knowledge.

But it is difficult to see why a fraudster who knew enough about Mr and Mrs N to be able to apply to Sainsbury's Bank for the loan in their names and copy their signatures on the agreement, would then arrange for the money to go into their established joint current account. This is not, in my view, in keeping with usual patterns of identity theft loan fraud.

Overall, I have not found Mr and Mrs N's evidence persuasive. I find, on a balance of probabilities, that Mr and Mrs N are responsible for the loan. It follows that Sainsbury's Bank is not obliged to waive the loan or return the repayments Mr and Mrs N have made to it.

Sainsbury's Bank has told us that, whilst the loan must be repaid, it is prepared to work with Mr and Mrs N to arrive at an affordable repayment plan. That seems a fair approach.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs N to accept or reject my decision before 11 April 2016.

Jane Hingston
ombudsman