

## **The complaint**

Mr G complained because Sainsbury's Bank Plc refused to refund him for a payment he said he didn't make.

## **What happened**

On 27 November 2022, Mr G was at an outlet shopping centre. The payments which went through his account that day were:

- At 12.50, an undisputed £321.55 payment to a retailer;
- At 13:25, a £110 payment to a different retailer, which I'll call R. This is the payment Mr G is disputing;
- At 14.45, a £204 payment, also to retailer R, which I'll discuss below;
- At 15.22, an undisputed £126.90 payment to a different payee at the centre; and
- At 16.42, an undisputed £15.98 payment to a food outlet at the centre.

When Mr G received his statement in December, he saw the payments and contacted Sainsbury's about the £110 payment. He explained that he'd been in retailer R's shop and had bought goods totalling £314. He'd paid for these by £110 in cash, and £204 on his Sainsbury's credit card. Mr G provided the retailer's receipt, which shows the total of £314, paid by £110 in cash and £204 by card. The date and time match those on Sainsbury's records for the £204 payment.

Mr G also contacted retailer R, which told him that it had other brands which used its payment systems, so the disputed £110 payment might have been made online, or to one of its other brands, but Mr G said he hadn't done so. He wanted to know what the store had done with the £110 cash which he'd paid.

Both payments to retailer R were authorised using Mr G's genuine card, and his correct PIN. The records indicated that the £204 payment had taken place at the outlet shopping centre where Mr G had been, but the £110 payment was listed at a different city. Mr G googled retailer R and contacted its branch in that city, but was told there was no £110 transaction for his card, and none for that amount that week.

Mr G asked Sainsbury's to raise a chargeback dispute with the merchant, but Sainsbury's didn't do so because the circumstances didn't fit the eligible chargeback codes. The £110 payment at 13:25 couldn't go through as unauthorised, because it had been authorised using Mr G's genuine card and correct PIN. Nor could it be coded as the retailer taking more than agreed, when Mr G had said that he hadn't agreed to a £110 transaction at all.

The fraud team at Sainsbury's considered what had happened, but didn't agree to refund Mr G. It wrote to tell him that it had thoroughly investigated, but had decided that there hadn't been any fraudulent activity. That was because Sainsbury's couldn't establish how the card and PIN had been compromised. The card had been in Mr G's possession, and he'd confirmed that it hadn't been lost or intercepted at any point.

Mr G wasn't satisfied and contacted this service.

Our investigator didn't uphold Mr G's complaint. He couldn't see how anyone else could have stolen the card, used it, and returned it to Mr G without him knowing. He didn't think the activity was typical of fraud, because if a third party had taken the card, he'd expect to have seen other attempts to use the card to spend as much money as possible – and there hadn't been any other such attempts. The investigator also said that he didn't think Sainsbury's had been wrong not to raise a chargeback for Mr G. That was because there wasn't a chargeback-valid reason, and Mr G's PIN had been entered. The investigator thought that even if Sainsbury's had raised a chargeback, it would have been declined.

Mr G didn't agree. He said he was very disappointed that the investigator had taken the stance that he had used the card with chip and PIN. He said the investigator hadn't made any reference to the cash payment he had made, which didn't appear to have been considered. He wanted to know where this cash was. He said he hadn't used the card for the £110 transaction and felt he had been cheated out of £110.00. Mr G asked for an ombudsman's 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 understand why Mr G thinks that the disputed £110 payment must have something to do with the £314 genuine transaction to retailer R. It's a natural assumption when he paid for part of that transaction by £110 cash.

However, I think it's unlikely that the disputed £110 payment had anything to do with the £314 purchase at 14.45. That's because the disputed payment took place over an hour earlier, at 13.25. When the disputed £110 payment was made at 13.25, the retailer couldn't have known that Mr G would, over an hour later, make a £314 purchase which he'd pay for partly by handing over £110 cash. So even if there had been any way for a hypothetical dishonest shop employee to steal Mr G's cash at 14.45 and put it through as another transaction on Mr G's card, the timing just doesn't fit.

I've seen the records which show that the disputed £110 payment was, like the other payments, made using Mr G's genuine card and correct PIN. Mr G's card wasn't lost or stolen, and he made undisputed transactions both before and after the disputed £110 payment. So if anyone other than Mr G made the transaction, they'd have had to obtain his card after the last undisputed payment at 12.50 and before 13.25 when the disputed payment took place. They'd then have had to return it to Mr G, without his knowledge, before 14.45.

It's unlikely a third party fraudster would have tried to return Mr G's card in this way, and much more likely that they'd have kept on spending up to Mr G's credit limit. There are no failed transactions, and Mr G's credit limit was significantly above his outstanding balance at that point. So there would have been potential for any third party fraudster to have stolen much more than £110. It seems inexplicable that any third party fraudster unknown to Mr G wouldn't have spent what they could, and would instead have attempted the high risk action of returning his card to him.

As well as possessing the genuine card, any third party fraudster would also have had to have known Mr G's correct PIN. He said he hadn't written this down. I've seen no record of failed transactions, and there are 10,000 possible combinations of a four-digit PIN, so I can't see how this could have happened.

Taking these factors into account, I think it's more likely than not that it wasn't a third party fraudster unknown to Mr G who carried out the disputed transaction.

I've also looked at the location recorded for the transaction. The records show it as a city which was many miles from the outlet centre where Mr G was located both before and after the disputed £110 payment. I agree with Mr G that it wouldn't have been practical for him to have carried out the undisputed 13.25 transaction, travelled to the other city, and back in time for the 14.45 transaction. But the location isn't definitive, as Sainsbury's has explained that this records the location where the payment was processed, not where the transaction took place.

It's possible, however, that the fact that the £110 payment was processed in a different location from the £204 payment which formed part of the £314 purchase, might still help us in regard to where that transaction happened. Retailer R's main brand store processed its payments at the outlet centre, as the location on the compute record shows. But it's possible that the other brands which retailer R mentioned to Mr G, might have processed their payments in the city listed for the £110 payment. I've googled the outlet centre which Mr G visited, and there currently appear to be other shops listed for two of the brands linked to retailer R. So it's possible that the £110 payment was to purchase goods at one of the other two shops linked to retailer R.

In terms of who carried out the disputed £110 transaction, for the reasons stated above, I think it's unlikely it was a third party fraudster, or that it was linked to the later £314 purchase. That leaves two possibilities:

- Someone with Mr G that day carried out the disputed transaction, either with or without his consent; or
- Mr G has forgotten the transaction, which could have happened at one of retailer R's other branded shops at the outlet centre. It would be understandable that as retailer R's name is on the statement, Mr G would have associated it with his later £314 purchases, rather than the brand name on the shop where it might actually have taken place.

But in either scenario, Sainsbury's isn't liable to refund Mr G.

Finally, I've also considered whether Sainsbury's should have submitted a chargeback to the relevant card scheme on Mr G's behalf. Chargebacks are run by, and decided by, the card schemes, and are subject to the individual scheme's rules. The schemes have set chargeback reasons, and I don't think Mr G's situation here would have fitted into any of the set reasons. So I don't consider Sainsbury's had to submit a chargeback here, and I think it's likely that if it had done, the chargeback scheme would have declined it.

Taking all these factors into account, I find that Sainsbury's isn't liable to refund Mr G for the disputed £110 transaction.

### **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 G to accept or reject my decision before 21 August 2023.

Belinda Knight  
**Ombudsman**