DRN-2820163

## The complaint

Mrs G's complaint is being brought on her behalf by a company - who I'll refer to as company C. They complain that Sainsbury's Bank Plc (Sainsbury's) lent to Mrs G irresponsibly. Company C say Mrs G wants the balance outstanding on the account to be written off.

## What happened

Mrs G was accepted for a credit card by Sainsbury's in October 2014 with a limit of £1,000. The following credit limit changes were applied to her account:

| July 2015 | March 2016 | November 2016 | November 2017 | June 2018 |
|---|---|---|---|---|
| £1,400 | £1,800 | £2,400 | £1,200 | £1,600 |

Payments were made by Mrs G up until November 2018. The account then defaulted in February 2019 and no further payments were received until June 2019. Company C complained about Sainsbury's decision to lend to Mrs G and requested documentation. There was further exchange in correspondence between company C and Sainsbury's during which Sainsbury's paid a total of £80 compensation for delays in responding and providing information to company C. Sainsbury's didn't uphold the complaint about their decision to lend.

Our investigator looked into things for Mrs G. Sainsbury's told us they were satisfied the appropriate checks were met when Mrs G applied for the account. And, Mrs G maintained the required payments since the account opened in October 2014 until November 2018, which confirms she had the means of making payment up to this time and contradicts the claims made that she was unable to manage payments at the time of application. Sainsbury's said, any fees and interest applied to the account have been in line with the terms and conditions which Mrs G agreed to in the signed credit agreement. They stopped charging any fees and interest when the account defaulted, to stop the balance increasing and allowing any payments received to reduce the balance. Sainsbury's said they won't be writing off the outstanding balance. They said, Mrs G hasn't made payment towards the account since July 2019 and they advised her to contact their Recoveries team to discuss an affordable repayment plan.

After considering all of the evidence, I issued a provisional decision on this complaint to Mrs G and Sainsbury's on 14 April 2021. In my provisional decision I said as follows:

> "*We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.*
>
> *Sainsbury's needed to take reasonable steps to ensure that they didn't lend irresponsibly. In practice this means that they should've carried out proportionate checks to make sure that Mrs G could repay the credit in a sustainable manner. These checks could take into account a number of different things, such as how*

*much was being lent, the repayment amounts and the consumer's income and expenditure.*

*The first point I've addressed is whether I think Sainsbury's carried out reasonable and proportionate checks. Section 5 of the Consumer Credit (CONC) sourcebook, in place at the time, outline that the assessment that Sainsbury's needed to complete should've been dependent on, and proportionate to, a number of factors – including the amount and cost of the credit and the consumer's borrowing history.*

*CONC also provides guidance on the sources of information Sainsbury's may have wanted to consider as part of making a proportionate assessment. It then gives examples of factors a firm must consider and refers to whether the information the firm has is sufficient and whether to obtain additional information from the customer and any other sources of information to use.*

*Account opening*

*Sainsbury's is free to decide how to set its lending criteria but they should complete proportionate checks to ensure borrowing is sustainable. I can see we've asked Sainsbury's for evidence of the information they took into consideration when opening Mrs G's account and also when applying the credit limit increases. Sainsbury's say they no longer hold these records so aren't able to provide any information. Sainsbury's do say when a customer applies for a credit card, they carry out appropriate checks to ensure the product is appropriate for the customer. They say the decision is based on the information supplied by the customer and what they obtain from the Credit Reference Agencies (CRA). They say they were satisfied the appropriate checks were met when Mrs G applied for the account.*

*The agreement signed by Mrs G when opening the account shows her gross annual income as £21,000. Given that this is noted on the agreement, I think this is information Sainsbury's will have taken into account. There's no other evidence which shows what other information Sainsbury's obtained from Mrs G, such as details of her monthly expenditure. They do say they take into account information provided by CRA's.*

*I haven't been provided with any evidence of what information Sainsbury's asked for from the CRA's and what the results of those searches were. I can't therefore say in this case whether those checks were reasonable and proportionate. So, I've looked at what information I would expect Sainsbury's to have obtained to get a full understanding of Mrs G's financial circumstances.*

*I believe it would be reasonable and proportionate for Sainsbury's to take into account Mrs G's total secured/unsecured borrowing. And, how Mrs G was performing against other accounts and, in particular, whether there were any late payment markers or missed payments and whether any accounts were in default.*

*Sainsbury's say, when they look to increase a credit limit, they take into account whether a customer has incurred any late fees or over limit fees on their Sainsbury's account.*

*So, I feel it's reasonable to expect Sainsbury's to have taken similar information into account – albeit in relation to accounts with other lenders - when opening Mrs G's account. So, I've looked at Mrs G's credit file to see what the result of those searches would've been.*

*The Sainsbury's account was opened in October 2014. At this point, Mrs G had six open accounts; three are credit/store card accounts, one mortgage account, one mail order account and one mobile supplier account. So, the next point I've considered is, had these checks been carried out, whether they would've shown that Mrs G was more likely than not able to sustainably repay the credit. And, being able to sustainably repay credit is described as doing so without undue difficulty, while being able to meet other commitments and without having to borrow further. I've looked at Mrs G's credit file to see how she was performing against these accounts with other lenders at the time Sainsbury's opened the account. The information on the credit file doesn't show any defaults on any of these accounts at the point the account is opened.*

*It's not clear from the credit file what her total borrowing was, but nothing I have seen suggests there was any adverse information at this point. So, in view of the information from the CRA's, Mrs G's income and the level of borrowing, I don't think Sainsbury's made an unfair decision to lend.*

*Credit limit increases*

*I can see we've asked Sainsbury's to provide information showing what checks they carried out when applying the credit limit increases. Sainsbury's say they no longer hold these records but they have provided details of the process they follow when deciding whether to apply a credit limit increase. Sainsbury's have sent a screenshot of a decision tree which shows an increase/decrease can be applied in one of two ways; a customer can ask for it, or Sainsbury's can apply an automated change. The decision tree sets out the options available to a consumer in how they want the credit limit increase to be carried out. The options are:*

- *"Customer must accept the offer – this will not be applied automatically*
- *Offer is automatically applied after 39 days (unless the customer declines or accepts the offer early)*
- *Customer doesn't want to be considered for an automatic increase*
- *In the case of an automatic decrease, there is no customer action required and the decision cannot be overridden by telephony. If the customer is disputing a limit decrease this must be submitted in writing".*

*The decision tree describes the actions required in order for a credit limit increase to apply. It says, to increase a limit, a customer needs to have held a Sainsbury's credit card for at least six months. And, the account should not have had any late fees, over limit fees or credit limit changes in the six months prior to the request. It says the system will generate a letter letting a customer know they are eligible for an increase and the new limit. It says, if the customer has chosen to have the limit automatically applied then the increase will take effect 39 days from the date of the letter if the customer doesn't call to accept or decline it.*

*Sainsbury's say, when they make a decision to increase a credit limit, a customer always has the option to decline it.*

*They say, their systems review accounts regularly and if an account has been well managed and they don't receive any adverse information from the CRA's to make them aware of any external issues, then they may increase the credit limit.*

*Sainsbury's say Mrs G maintained the required payments since the account opened until November 2018. They say this shows she had the means to manage her* *account. I've looked at how Mrs G was handling her account. The credit limit increases were made between July 2015 to June 2018. I can see in the early part of this period regular payments were made with no late fees or over limit fees being charged.*

*Mrs G's credit card statement for March 2016 shows available credit of £137.10 against the credit limit of £1,400. The minimum payment required is £28.41 with a payment required date of 29 March. Mrs G's April 2016 statement shows the credit limit has increased to £1,800 but Sainsbury's have charged a late fee as no payment was received in March. Mrs G's August statement shows the minimum payment required is £13.34 with a payment required date of 26 August. The September statement shows a late fee charge as no payment was received in August.*

*The July 2017 statement shows Mrs G went over her credit limit by £36.52 so she's charged an over limit fee. The August statement shows Mrs G went over her credit limit by £94.42 so she's charged an over limit fee and a late fee for not paying the minimum payment due in July. The October statement shows Mrs G was charged a late fee for not making her minimum payment by the required date.*

*The July 2018 statement shows the credit limit increased to £1,600 and there's a late fee as no payment was received in June. The October statement shows Mrs G went over her credit limit so she's charged an over limit fee. The November statement shows Mrs G went over her credit limit and didn't make a payment the month before. So, she's charged an over limit fee and late fee. The same happens in December, January 2019 and February. And, in March Mrs G is charged an over limit fee.*

*When looking at the credit limit increases – and reasonable and proportionate checks, I've applied the same considerations as I did when I looked at the account opening. Sainsbury's say they take into account whether there's any adverse information from CRA's. I've looked at the information reported to the CRA's which I think Sainsbury's should've taken into account – in order for the checks to be reasonable and proportionate - for the first increase in July 2015. This shows a number of active accounts open at the time the limit is increased but no defaults on any of the accounts. Looking at Mrs G's Sainsbury's statements, I can't see there were any late or missed payments, or that she went over her credit limit. So, I don't think it was unreasonable for Sainsbury's to increase the limit to £1,400.*

*Applying the same considerations to the later increases, I believe this should've highlighted to Sainsbury's there were problems with Mrs G's financial situation. Sainsbury's decision tree says they look to see whether an account is well managed and also the account should not have had any late fees, over limit fees or credit limit changes in the six months prior. Mrs G's Sainsbury's account statement shows she was charged a late fee for missing her payment in March 2016. Despite this, Sainsbury's increased her limit the following month. And, this goes against their decision tree criteria as Mrs G has been charged a late fee within six months of the increase.*

*The same applies for the December 2016 credit limit increase. The statements show Mrs G was charged a late fee four months prior for missing a payment. This again goes against the terms of their decision tree criteria. Following this credit limit increase, there's further charges applied to Mrs G account. This time, there's two occasions she's charged a late fee and two occasions she's charged an over limit fee.*

*Looking at the information reported to the CRA's, Mrs G, at the point the credit limit increase was applied in April 2016, had 12 open accounts with other lenders. There was one mail order account, eight credit/store accounts, one mobile supplier account, one mortgage account and one unsecured loan. It's important to note here, a number of these accounts were credit/store accounts which had been open for over 12 months. And, in December 2016, this had increased to 14 open accounts.*

*There's no evidence of the checks Sainsbury's carried out but I think reasonable and proportionate checks should take the above information into account. And, had Sainsbury's done so, I would've expected them to look into this further and raise queries about Mrs G's financial situation. As mentioned, I can't say whether Sainsbury's did raise further questions, but I think the combination of the open accounts and late fees and over limit fees show Mrs G was struggling financially and wouldn't be able to repay the extra credit in a sustainable manner. So, I think Sainsbury's decision to increase Mrs G credit limit in April and December 2016 was unreasonable.*

*Mrs G appears to have made a significant payment to clear most of her balance and the credit limit is reduced to £1,200. Sainsbury's don't have a record to show why the limit was reduced but they believe it was on Mrs G's request. This though leads me to the next point, which is the further credit limit increase in June 2018 – seven months after the limit was decreased. At this point, Sainsbury's would clearly have been aware Mrs G had financial problems. I say this for the reasons I've set out relating to the June and December credit limit increases. In addition to this, Mrs G had 19 open accounts with other lenders. And, while I can't see there were any defaults registered against any of these accounts at the time, it should've been clear that Mrs G was increasingly reliant on short term borrowing.*

*What further persuades me that Sainsbury's have acted unreasonably is that seven months earlier Mrs G had asked them to decrease the credit limit. And, I believe this was due to there being problems with her financial situation. The information from the CRA's would've shown that position hadn't changed much when it came to applying the increase in June 2018. So, I think Sainsbury's have acted unreasonably in applying this credit limit increase, as well as the previous two. And, they should refund any interest and charges from April 2016.*

*I can see from October 2018 Mrs G finds herself in a position where she can't keep up her repayments to Sainsbury's. And, she's charged late fees and over limit fees. It's not clear what the change in circumstances was and whether Sainsbury's was a cause of this, but the fact remains that, at this point, Mrs G was over her increased credit limit with Sainsbury's - a limit which, for the reasons set out above, I feel shouldn't have been in place. So, I think it's reasonable for Sainsbury's to pay compensation of £100 to reflect the trouble and upset to Mrs G*".

So, subject to any further comments from Mrs G or Sainsbury's, my provisional decision was that I was minded to uphold this complaint.

Mrs G or company C haven't responded to my provisional decision. Sainsbury's have replied to say Mrs G's application disclosed she was working full-time and was earning £21,000 – and also disclosed £11,000 as other household income. They say Mrs G's unsecured debt was £900. They say the credit limit increase from £1,400 to £1,800 occurred on 10 March 2016, which was prior to the missed payment for March's statement. They say the credit limit increase took into account CRA data which showed Mrs G's unsecured debt had increased to £28,000 but it was being serviced and well maintained.

Sainsbury's say the increase to £2,400 occurred in November 2016. They agree Mrs G missed a payment in August and a late fee charged in September. But they say Mrs G had made a payment for the account balance to May's statement and this would be viewed favourably in their assessment. They say stable levels of debt and the absence of any adverse markers didn't suggest any risk factors. They say it's not uncommon for customers to miss the occasional payment or go over limit from time to time due to oversights rather than financial difficulty.

I can see Sainsbury's have commented on what happened with Mrs G's account in 2017. They say Mrs G's account was brought within limit with the required payment at the beginning of August and the payment in September was one day late. They say a payment was then made to clear the full balance.

In relation to the 2018 increase, Sainsbury's say Mrs G's unsecured debt reduced to £21,000 which indicates steady repayment. They say her internal and external repayment record showed payments were being maintained on all debts. They say it was in the months immediately after this that she drew down on the card by an additional £500.

Sainsbury's also say the decision tree they have provided relates to their current process. But they had different eligibility in place when the credit limit increases were applied to Mrs G's account. They say they would still have gone through a thorough creditworthiness assessment. And, they feel it's not accurate to assess the current criteria – including the requirement to have no missed payments or over limit status – against the limit increases in this case.

Sainsbury's say removing any record of adverse information, including the default, would risk a breach of their duty to support responsible lending since Mrs G did have payment difficulties. They say other lenders should be aware of this. They say Mrs G is entitled to add a Notice of Correction to her credit file.

**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.

Having done so, I've decided to uphold the complaint for the reasons set out in my provisional decision and copied above.

I have carefully considered Sainsbury's comments but I'm not persuaded this shows they have lent responsibility. It appears the credit limit increase to £1,800 preceded the non-payment in March 2016 so I can't take into account the missed payment which then generated a late payment fee. But, I believe Sainsbury's have still acted unreasonably by increasing the limit in March 2016. I say this for two reasons. Firstly, Sainsbury's say they take into account information received from CRA's. This shows that, from the time the Sainsbury's account was opened, Mrs G had doubled the accounts she held with other lenders - with the majority of the open accounts being credit/store accounts.
And secondly, Mrs G's unsecured debt had increased from £900 to £28,000 in the same period. While Sainsbury's say this was being serviced, I believe Sainsbury's should have looked beyond that factor and probed further into Mrs G's financial position. I think this would've shown an increasing level of reliance on short-term borrowing. And, it's not too long after, that problems arise for Mrs G with her missing the payment in March. So, while I accept Mrs G's credit file doesn't show any defaults or otherwise adverse information relating to payments for this period, it's clear from the increase in the number of accounts and the significant increase in the sum total of the unsecured borrowing that the repayment of any additional credit would be unsustainable.

In relation to the November 2016 increase, I do take on board Sainsbury's points. While oversights might occur in relation to payment, I haven't seen any evidence which suggests that was the case here. By this point, there has been two missed payments which have generated charges. It's also important to note that Mrs G, while still holding the same accounts with other lenders, has opened two further credit card accounts since the last credit limit increase. I think this again shows increasing levels of reliance on additional borrowing to make ends meet. So, I believe, on the balance of probabilities, the missed payments in March and August were, more likely than not, down to financial difficulties and unsustainable repayment rather than an oversight in payment.

At the point Sainsbury's increase the limit in June 2018, they will have been fully aware of the history of Mrs G's performance against the account. And, this shows charges for late payments and going over limit. Sainsbury's will also have been aware that only seven months earlier, Mrs G had requested her limit be reduced – and this was brought down by 50%. So, while I have taken into account Sainsbury's comments about Mrs G's external repayment record, I don't agree her internal repayment record showed it was an account which was well maintained. In addition to this, Mrs G had opened five further accounts with other lenders, since the previous increase, which shows she was becoming increasingly more reliant on borrowing.

I have taken into account Sainsbury's comment about the decision tree not applying in this case. So, I haven't measured Sainsbury's actions against the decision tree. I have however considered other material information which I think shows Mrs G wouldn't have been in a position to repay any additional borrowing in a sustainable manner.

**Putting things right**

I've taken the view that Sainsbury's lent irresponsibly to Mrs G when they increased her credit limit on all occasions from March 2016. I therefore consider this is irresponsible lending and Sainsbury's should put this right by refunding any interest and charges. I've also taken the view that Sainsbury's should pay compensation of £100 for trouble and upset caused to Mrs G by increasing her credit limits.

Mrs G's credit file shows a default has been registered against her Sainsbury's account. I understand Sainsbury's point about a credit file showing a true account of a customer's payment history. I've decided there came a point in March 2016 where Sainsbury's should've realised that any further lending was clearly unsustainable. So, Sainsbury's should take steps to record a query against the missed payments on Mrs G's credit file from March 2016.

**My final decision**

My final decision is that I uphold the complaint. Sainsbury's Bank Plc must:

- Refund the interest and any charges incurred as a result of the credit card limits being increased from March 2016;

- Pay simple interest on this amount at the rate of 8% a year;

- Record a query as described on Mrs G's credit file. Mrs G can also place a Notice of Correction on her file noting how the situation arose which led to the account not being paid on time; and

- Pay compensation to Mrs G in the sum of £100 for the trouble and upset caused.

* HM Revenue & Customs requires Sainsbury's Bank Plc to take off tax from this interest. Sainsbury's Bank Plc must give Mrs G a certificate showing how much tax it's taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 9 July 2021.

Paviter Dhaddy
**Ombudsman**