

## **The complaint**

Miss H wanted to decrease her loan repayments with Sainsbury's Bank Plc ("Sainsbury's") when she went on maternity leave. Sainsbury's agreed new loan terms with a reduced monthly repayment but later told Miss H that this shouldn't have been agreed and that she didn't qualify for the new terms due to her reduced income. Miss H says that she would like the original agreement to be upheld and financial compensation.

## **What happened**

Miss H contacted Sainsbury's in October 2019 in relation to her personal loan (taken out in August 2017) as she was due to go on maternity leave and wanted to decrease her monthly payments due to a reduction in income. Following an income and expenditure assessment, Miss H was given a telephone appointment with the underwriters the following day but she didn't receive the call despite taking time off of work for this. Sainsbury's looked into Miss H's complaint about it failing to call her as agreed. It found that Miss H had been let down in terms of service on a number of occasions and paid her £80 by way of an apology.

At the beginning of November, Miss H had the call with the underwriters and went through her income and expenditure. She was offered reduced monthly payments of £99.63 over a term of 139 months. Miss H was happy with these terms and received the documentation in the post which she signed and returned as requested. She says that she made plans with other debtors based on the new monthly repayments.

Miss H received a letter informing her there was a problem with the loan and to call Sainsbury's, which she did. She was eventually reassured that the paperwork was in order and so was under the impression that everything was fine, having heard no more from Sainsbury's. However, when the monthly payment came out in November it was for the original amount of £304.96.

Sainsbury's looked into the matter again in relation the original repayment amount going out of Miss H's account. It found that there had been a system error and that nobody had informed Miss H which meant she was unaware that the old contract was still in place. Sainsbury's paid Miss H £35 in respect of the overdraft fees she had incurred and £35 to apologise for the poor service. Following this, Miss H was then required to complete the application process again to set up the loan.

During this process Miss H was eventually told that there was a problem with the loan as it was above the maximum term which the department was able to offer. She was then called back by someone else at Sainsbury's and told that there was an administrative error and it was unsure if the new terms could be agreed. Miss H was contacted by the complaints team and then by someone who went through her income and expenditure again. She was told that she shouldn't have been offered the new agreement as she would not qualify due to her financial circumstances changing.

Sainsbury's says that the original assessment for Miss H's re-finance request had been based on her financial position at the time of the application and hadn't taken account of her

forthcoming maternity leave and reduced income. The correct information indicated that Miss H would only have £34 surplus of income per month, which was less than half of what the new loan repayments would be.

Sainsbury's says that, as a responsible lender, it therefore couldn't go ahead with a new arrangement which was unaffordable to Miss H. It says that the new arrangement shouldn't have been agreed and that, had the reduced income been considered in the first instance, the application would have been declined at the time.

This meant that Miss H needed to remain on her existing loan agreement, which was for a higher monthly amount. Sainsbury's directed Miss H to its collections team if she was unable to meet the repayments and also gave her information regarding other organisations who could provide advice if she was in financial difficulty. It paid her £150 compensation to apologise in recognition of its error and Miss H's experience.

Our investigator looked at the complaint and found that Sainsbury's should have done more to resolve Miss H's complaint. She found that Sainsbury's did do enough to put things right regarding the failure to call Miss H at the agreed time and regarding the new agreement not being set up properly due to a system error. However, the investigator went on to consider what Sainsbury's should have done once it was aware that the loan should have been declined in the first place. She found that Sainsbury's should have done more to help Miss H when she indicated that she wouldn't be able to afford the loan repayments once on maternity leave.

The investigator said that Sainsbury's should set up an affordable repayment arrangement for Miss H to be backdated to when the new agreement would have started. She said Sainsbury's should then refund Miss H if she'd paid more than she should have (plus interest and any charges). This would put her back in the position she would have been in had she received the assistance she needed when the agreement should have been declined. She said that she was satisfied that, had the new agreement gone ahead, Miss H would have been able to make the repayments. So she didn't think Sainsbury's had acted fairly in applying negative information to Miss H's credit file and recommended that this be removed. The investigator also recommended that Sainsbury's pay Miss H a further £150 for the trouble and upset caused.

Sainsbury's disagreed with this view so the case came to me to make a decision. It said that it did offer Miss H a reduced payment plan in December 2019 when it established that it was unable to offer her a refinanced loan, but that Miss H did not want to do this. It said that a reduced repayment plan would mean arrears would build every month and would result in a credit file impact for each month the plan was in place, as the contractual monthly payments are not met. Sainsbury's says that had this been in place, the account would likely have defaulted by now unless Miss H was in a position to pay back all the arrears that had accrued on her loan. It said the fact that Miss H has maintained payments demonstrates that she does not want this to happen.

Sainsbury's said that a reduced payment plan (and ultimately a default) would have a greater impact on Miss H's credit file than the two missed payments it has recorded. It said these were recorded correctly and give an accurate reflection of what happened therefore Sainsbury's did not agree that they should be removed.

### My Provisional Decision

In my provisional decision dated 23 April 2021 I set out the following:

“Having looked at the evidence there are some aspects where I take a different view from our investigator. I've explained my reasons further below.

*Failure to call Miss H for telephone appointment*

I've first considered what Miss H has said about Sainsbury's not calling her at the time arranged for her telephone appointment in October 2019.

I appreciate that this was inconvenient for Miss H as she had taken time off work and was keen to discuss the issue in order to reduce her payments before she went on maternity leave. However, Sainsbury's accepted that she had received a poor service in this regard and gave her £80 by way of an apology for the trouble caused. I think that this was reasonable in the circumstances and I can see that the call was re-arranged and took place within a short period of time following this.

*Failure to amend the repayment amount after the contract was signed*

I've looked at what Miss H has said about Sainsbury's taking the original repayment amount out of her account in November 2019.

I think it was reasonable for Miss H to assume that the reduced payment would be taken from her account. She had completed and returned the loan paperwork for the new agreement showing the reduced amount and when she contacted Sainsbury's it also reassured her that everything was fine. Sainsbury's did not contact Miss H to indicate there was a problem following this.

Clearly when the higher repayment was taken out of Miss H's bank account, this caused her some distress and resulted in her going into her overdraft as she hadn't accounted for the extra amount being taken. However, Sainsbury's apologised for the poor service in relation to this and gave her £35 in addition to £35 to cover the overdraft fees she had incurred. I think that this was reasonable in the circumstances.

*Offering the new agreement with reduced repayment terms for which Miss H did not qualify*

I'll now turn to the main part of Miss H's complaint, which is regarding the fact that, after being offered a new agreement with reduced repayments and signing the contract for this, she was told that she shouldn't have been offered the new terms. Whilst I accept that Miss H had signed the contract I don't think it was unfair of Sainsbury's to have gone back on its decision not to offer the new agreement for the reasons set out below.

Before agreeing to an application for credit, businesses need to make sure they lend in a responsible manner. To do this they are required to carry out appropriate checks. There isn't a set requirement of what a business must do in every instance. But the checks need to be borrower-focused and proportionate to the application being made. These checks usually include an assessment of whether the person requesting credit can afford to make and sustain the repayments, taking account of their financial situation and other outgoings.

The reason Sainsbury's says it offered Miss H the new arrangement initially was because its assessment had been based on her financial position at the time of the application rather than taking account of her reduced income when she went on maternity leave.

Once Sainsbury's had carried out an assessment of Miss H's income and expenditure for when she would be on maternity leave, it found that she would only have £34 of disposable income per month. In light of this, it would have been irresponsible for Sainsbury's to have made an agreement which would require Miss H to make repayments of almost £100 as these would have been unaffordable for her based on the information she provided. So I'm satisfied that the new arrangement wouldn't have been agreed had Miss H's reduced income been considered at the outset. And for that reason I also can't agree that the agreement be put in place retrospectively.

Whilst I accept that Miss H's existing repayments were for a significantly higher amount than they would have been under the new arrangement, those terms were based on Miss H's situation at the time she took the loan in August 2017. Sainsbury's would not be required to reassess Miss H's ability to make these repayments throughout the loan as a matter of course. However, if Miss H were to fall into financial difficulties and be unable to make the repayments, Sainsbury's has a regulatory obligation to treat her fairly.

#### *What should have happened?*

I now need to go on to consider what *should* have happened at the outset when Miss H called to decrease her monthly repayments. This will enable me to decide how to address the errors which were made and to put Miss H back in the position she would have been in had they not happened.

Sainsbury's says that if the application had been declined initially – as it should have been – it would have discussed a suitable repayment plan if Miss H advised she was unable to maintain the existing repayments. I can see from the customer notes that Miss H contacted Sainsbury's at the end of December 2019 looking for assistance as she wouldn't be able to afford the repayment going forward due to her forthcoming maternity leave and reduction in income.

During this call Miss H was offered the option of either applying a 30-day hold on the account for her to seek financial advice or starting the 'age out' process to ensure the burden of having to pay the monthly repayment was removed while she couldn't afford to do so. This process would have involved a plan to make reduced (or no) payments which were affordable to Miss H. However, this would eventually result in the account defaulting if the contractual payments were not kept up to date, which Sainsbury's says would be likely to have happened within 3-6 months. Any payments less than the contractual amount would also be recorded as late payments on Miss H's credit file whilst in a repayment plan.

The call note sets out that Miss H was advised of the potential impact of the options on her credit file, her direct debit was cancelled as she could not afford the monthly repayments and she was signposted to websites and given details of a debt counselling charity. At this stage Miss H opted to have the 30-day hold applied to give her more time to figure out the best course of action. Following this, Miss H did not ask to go onto a repayment plan and although payments were missed in January and February 2020, the account was brought up to date before the March 2020 repayment.

As set out above, it is my view that, had Miss H's reduced income been taken into account at the outset, the new arrangements wouldn't have been agreed. Sainsbury's has confirmed that the reduced repayment plan or a 30-day hold would

have been the only options available to Miss H if she was unable to meet the contractual payments.

I'm not minded to say that Sainsbury's should set up a payment plan retrospectively to be backdated to when the new agreement would have started and that it should refund Miss H if she'd paid more than this (plus interest and charges). This is because I think it is fair to put Miss H back in the position she would have been in had everything happened as it should. So I think if things had happened as they should have then Miss H would have been given those two options at the outset rather than being offered the new agreement.

It appears that Miss H chose not to go onto a reduced payment plan when this was offered at the end of December 2019 so I think it most likely that she would have made the same decision had this been offered when she first contacted Sainsbury's in October 2019. So I don't think she is in a different position now to that which she would have been in had the reduced payment plan been offered at the outset. And therefore I don't think Sainsbury's needs to do any more in respect of arranging a payment plan or refunding any amounts in respect of what has happened since the new agreement was discussed. Clearly if Miss H contacts Sainsbury's in the future if she is in financial difficulties then it will need to consider her circumstances at that time in determining payments going forward.

It is my view that once Sainsbury's had accurately considered Miss H's reduced income and potential financial difficulties it did act fairly towards her in order to try and help her manage her repayments by giving her the option of a reduced payment plan (which she didn't take) and a 30-day hold on the account. It also provided her with details of other organisations which may be able to help her.

Our investigator recommended that the missed payment information on Miss H's credit file should be removed as she was satisfied that Miss H would have been able to make the reduced repayments had the new agreement gone ahead. I also disagree with this. The new agreement should never have been offered so I don't think any redress should be based on what would have happened if it had gone ahead, rather it should be based on what should have happened.

Had Miss H gone on a repayment plan when it was offered, this would have been recorded on her credit file. Miss H chose not to and wanted to continue making the contractual repayments – which appears to have been as she didn't want her credit file to be impacted. However, if Miss H was unable to make the contractual repayments then it is my view that this should be shown in the credit file as an accurate reflection of the repayment history. So I don't think Sainsbury's need to do anything to amend Miss H's credit file.

Miss H says that Sainsbury's has put a mark against her credit file for late payment which has damaged her credit rating. She says this was due to Sainsbury's not keeping to the new agreement and her not having enough money in the bank as she didn't realise. However, Sainsbury's has confirmed that the late mark recorded on credit file related to missed payments at the beginning of 2020. And for the same reasons as above, I don't think this is unreasonable as it accurately reflects the fact that Miss H hasn't been able to meet the contractual repayments."

I also set out the following in relation to what Sainsbury's should do to put things right:

"As set out above, I don't think Miss H is in a different position now to that which she would have been in had everything happened as it should in terms of the existing

loan. However, I am of the view that the fact that the new arrangement was offered and then later declined was a significant error by Sainsbury's. Given that the sole reason Miss H was asking to re-finance in the first place was because she was going on maternity leave and would have a reduced income, it is not clear why Sainsbury's didn't take into account that reduced income before offering the new loan agreement. This was compounded by the history of this case where Miss H was not contacted as she should have been at the outset; was told that there was a problem once she had sent the agreement back; was then reassured that everything was fine when she contacted Sainsbury's (when this was clearly not the case); was not told that there was a problem and only found this out when the original repayment amount came out of her account causing her to go overdrawn; was then required to complete the loan application process again only to be told that she shouldn't have been offered a loan at the outset. This whole process took a prolonged period of time and caused Miss H significant distress as she was already worried about her financial situation – hence contacting Sainsbury's in the first place.

Miss H, who was heavily pregnant at the time, says that she was signed off work early with stress. She says the matter completely ruined the final months of her pregnancy and put the health of her and her baby at risk. She suffered with post-natal depression and has anxiety due to worrying about money. It has also put her more into debt as she had made arrangements to pay amounts to other debtors based on the new agreement with Sainsbury's. Miss H says that she is in arrears with her council tax and her credit cards are at the limits and she is only able to afford the minimum repayment. She also says that she has now fallen behind on the loan payments again, which has affected her credit report.

Clearly, Sainsbury's is not entirely responsible for Miss H's financial situation but its error had a significant impact on her bearing in mind her situation at the time and the background to this case. And I can understand why Sainsbury's error in offering the loan and then rescinding the offer would've been distressing for Miss H. In light of that Sainsbury's should pay Miss H a further £250 for the trouble and upset she's been caused in addition to the sum which has already been paid."

I invited both parties to let me have any further comments and evidence by 23 May 2021.

#### Response to my Provisional Decision

Miss H disagreed with my provisional decision. She says that she understands that Sainsbury's was within its rights to change its mind about the decision but questions why she was repeatedly told everything was fine and going ahead as planned. Miss H says that her maternity pay did not cover the £305 monthly payment of the loan agreement but would have covered the £98 and she would have been £200 better off if the refinance went ahead. She says that she cannot believe that having a baby has meant that she cannot now obtain credit or obtain a mortgage due to the default on her loan and feels discriminated against for having a baby. She says that she wouldn't have been late with the payments if the original finance agreement was upheld and asks that the marks on her credit file are removed. Miss H has said that she is now back to work so the temporary issue with her Sainsbury's loan is now over. She believes all the stress and upset this has caused is worth more than £250.

Sainsbury's has responded to seek clarification on the amount of the payment suggested for distress and inconvenience and has subsequently accepted the findings in the provisional 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.

Following this provisional decision, Miss H has made some further submissions. She says that she understands that Sainsbury's was within its rights to change its mind about the decision but questions why she was repeatedly told everything was fine and going ahead as planned. I considered this in my provisional decision and determined that Sainsbury's should pay a further £250 (on top of the £265 it had already paid for trouble and upset and £35 for overdraft fees) in light of the impact of these actions on Miss H.

Miss H says that the provisional decision states that she would not have been any better off if the original refinance went ahead. She says her maternity pay did not cover the £305 monthly payment of the loan agreement but would have covered the £98 and she would have been £200 better off if the refinance went ahead.

To clarify, the provisional decision set out that Miss H would not have been in a different position now to that which she would have been in had the reduced payment plan been offered at the outset. I understand that Miss H would have had to pay less for her monthly repayments if a refinance had been agreed. However, this could not be agreed due to Miss H's reduced income. The reference in my provisional decision was to the fact that – had Sainsbury's not offered the refinance in error in October 2019 – all it would have been able to offer Miss H was a reduced payment plan (or 30-day hold).

It did offer this in December 2019 and Miss H did not want to enter a reduced payment plan (which would have affected her credit rating) at that point. So, in terms of what Miss H should have been offered at the outset, I think it's unlikely she would have wanted to have a reduced payment plan and therefore she would not have been in a different position, had this been offered earlier.

In relation to Miss H's submissions that having a baby has meant that she cannot now obtain credit or obtain a mortgage due to the default on her loan and that she feels discriminated against for having a baby. I understand Miss H's strength of feeling in this regard. However, I think it is fair to put Miss H back in the position she would have been in had everything happened as it should. This service has made enquiries of Sainsbury's to ask about all the options which would have been available to Miss H had had the refinance not been offered incorrectly at the outset. Sainsbury's confirmed that the reduced payment plan and 30-day hold would have been the only options and that there would have been no option, for example, to have offered Miss H a payment holiday on the loan. Although I've thought carefully about Miss H's personal circumstances, I'm not persuaded that she was treated unfairly by Sainsbury's deciding not to offer this type of concession. And I don't think Miss H would have done anything differently had the two available options been offered to her earlier as set out above.

Miss H says that she wouldn't have been late with the payments if the original finance agreement was upheld and asks that the marks on her credit file are removed. I have already considered this in my provisional decision. Unfortunately, as it was not possible for Sainsbury's to offer a refinance, Miss H was still under a contractual obligation to pay the amount she agreed in August 2017 for the full term of the loan agreement. Because she was unable to meet these payments, the default in the credit file is an accurate reflection of the repayment history and I don't think Sainsbury's needs to do anything more in relation to this. It is of course open to Miss H to apply for a notice of correction in relation to any adverse information on her credit file relating to the loan and why she was unable to make the repayments.

I have considered what Miss H has said but this doesn't change my mind about the outcome

of this case.

### **Putting things right**

In light of the above and my provisional decision, Sainsbury's should pay Miss H a further £250 for the trouble and upset she's been caused in addition to the sum which has already been paid (that is, £550 in total).

### **My final decision**

For the reasons set out in my provisional decision and above, I uphold this complaint and require Sainsbury's Bank Plc to pay Miss H an additional £250 in respect of distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 23 June 2021.

Rachel Ellis  
**Ombudsman**