DRN-3047339

The complaint

Ms H complains that Sainsbury's Bank Plc was irresponsible in agreeing to let her have a loan. She is struggling to repay it and thinks it should be written off or reduced. She has been represented by a debt charity, which I shall refer to as "M".

What happened

In April 2019 Ms H contacted Sainsbury's Bank by telephone to apply for a loan. She had no previous relationship with the bank.

A loan of £7,500 was approved and the funds transferred to Ms H's account with another bank. The loan was to be repaid over 42 months at a little over £192 a month.

On behalf of Ms H, M later said that Sainsbury's Bank should not have agreed to the loan. M explained that Ms H suffers from a mental health condition and had no recollection of making the application. The details that were provided to the bank were not correct. The application recorded that Ms H had a salary of some £18,000 a year; in fact, she was dependent on benefits. She also has two dependent children. M said that the bank had not carried out appropriate checks and that, had it done so, it would have realised that Ms H could not afford to repay the loan. The complaint was referred to this service.

One of our investigators considered what had happened. He agreed that Sainsbury's Bank had not carried out appropriate checks before approving the loan. Had it done so, he thought it was unlikely the loan would have been approved. To resolve the matter, the investigator thought that any loan payments that had been made should be deducted from the capital amount of the loan and all interest and charges should be removed.

Sainsbury's Bank did not agree with the investigator's view and asked that an ombudsman review the case.

One of my ombudsman colleagues did that and issued a provisional decision. He was broadly in agreement with the investigator, although he said too that Sainsbury's Bank should remove any adverse credit information from Ms H's file. The first ombudsman was however not in a position now to issue a final decision and so the case was passed to me for further review.

Because I was likely to reach a different conclusion from that reached by the investigator and the first ombudsman, I issued a provisional decision. I set out below my findings:

When deciding whether or not to lend money, a bank should make checks to ensure that the lending is affordable for its customer. It should carry out proportionate checks. What is proportionate depends on the circumstances at the time – which might include, for example, the size of the loan, the lender's existing knowledge of its customer, the length of the loan and the payments needed.

I make the observation too in this case that it is not for me to decide whether the loan was affordable. It appears to be agreed that it was not. Rather, I must consider what the bank did *to satisfy itself of that and whether it should have done more.*

Sainsbury's Bank had no existing relationship with Ms H. In deciding whether or not to approve the loan, it therefore relied to a very large extent on information that she provided. It made further checks on some matters, including checks with credit reference agencies and checks of Ms H's address and bank account. But much of the key information, including information about Ms H's income and outgoings, came from her. Ms H does not dispute that she provided information that was inaccurate – including that she was employed with an annual salary of £18,000, that she needed the loan to buy a car and that she had no dependents.

My starting point here is that the bank was entitled to proceed on the basis that what Ms H had told it was true and accurate. I would not expect it to turn a blind eye if there was a reason to think the information it was given might not be accurate, but neither would I expect it as a matter of course to seek further proof of what it was being told. In particular, I would not usually expect a bank to check a customer's salary details for a loan of this size.

M has said that Ms H does not recall applying for the loan because of her mental health difficulties. But the bank, not having any existing relationship with her, would not have known about those issues. I would note however that the information that Ms H provided was entirely plausible. The bank had no reason to question it and – as I have said – no wider obligation to do so.

I do accept of course that further questions would probably have led Sainsbury's Bank to a different lending decision. For example, Ms H would not have been able to produce pay slips or other evidence of her salary. Indeed, further questions would have shown not only that the loan was not affordable, but that Ms H had provided a lot of information which was not true. However, I must decide not whether further questions would have revealed the truth but whether the bank – in keeping with its obligation to make proportionate enquiries – should have asked them.

In my view, there was nothing in the application that suggested further checks were needed. The details Ms H provided were completely plausible. The bank says, and I accept, that it checked Ms H's bank account statement (from which the loan payments were to be made) to ensure it was in her name and included her address. That however was a check to ensure that she was not setting up a direct debit from someone else's account. It was not a salary check.

For these reasons I believe that Sainsbury's Bank carried out appropriate and proportionate checks before agreeing to the loan.

I note however that the loan has now been defaulted and that the bank is seeking to negotiate settlement of it – in line with its obligations to customers who are in financial difficulties. I would encourage Ms H (with the help of M) and the bank to continue to seek a satisfactory arrangement. I do not propose however to issue any direction to that effect or otherwise to make any award.

M, on behalf of Ms H, responded to my provisional award, and I summarise the points made:

- The complaint was that the lending was irresponsible, but M had also asked the bank to write off the loan on economic and health grounds.

- It is not strictly correct that Ms H accepts she provided incorrect information. She has no recollection of applying for the loan or of anything she might have told Sainsbury's Bank.

- FCA guidance says that it is not enough to rely solely on a statement of current income without independent evidence – CONC 5.2A.16.3.

- Sainsbury's Bank did not ask about other debts, contrary to CONC 5.2A.25.

- The fact that Ms H cannot afford the loan is strong evidence that the credit assessment was inadequate and the lending irresponsible.

- Any credit report would not have shown a history of successful loan management, since Ms H had not previously had any loans.

- It is not the case that the bank is seeking to negotiate a settlement of the loan in line with its obligations. It has been dilatory in dealing with the matter and demanded inappropriate evidence from Ms H without meeting the costs of providing it.

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 note what M says about the characterisation of the complaint. I have considered here whether the lending decision in April 2019 was irresponsible. I stress that I have not considered the steps which Sainsbury's Bank has taken or ought to have taken after it found out that Ms H was struggling to make repayments. I will however comment on that briefly at the end of this decision.

I accept that Ms H has no recollection of making the loan application and that therefore she does not recall what information she did or did not provide to the bank. On balance, however, I think it likely that she did indicate that she was earning £18,000 a year. I accept too that there was no intention to defraud the bank.

Relevant rules and guidance about creditworthiness assessments are included in the Financial Conduct Authority's Handbook at CONC 5.2A. Those rules require a lender to undertake a reasonable assessment of the creditworthiness of a customer before entering into a regulated agreement (CONC 5.2A.4R). In the Handbook, "R" denotes a rule and "G" denotes guidance. CONC 5.2A also provides:

- An assessment must be based on sufficient information of which the lender is aware, obtained, where appropriate, from the customer and where necessary from a credit reference agency (CONC 5.2A.7R).

- The lender must take reasonable steps to determine the customer's income (CONC 5.2A.15R).

- It is not generally sufficient to rely solely on what a customer says about their income without independent verification, for example, by information supplied by a credit reference agency or by third party documentation (CONC 5.2.16G).

- The extent and scope of the assessment should be reasonable and proportionate to the individual circumstances of the case (CONC 5.2A.20R).

- The amount of information taken into account will depend on the level of affordability risk (CONC 5.2A.24G).

- Indications of a high level of affordability risk include where the level of existing debt is high relative to the customer's income (CONC 5.2A.25G).

Overall, therefore, the effect of the rules and guidance is that, in assessing a customer's creditworthiness, a lender should act reasonably and proportionately; what that means in practical terms will vary, depending on the circumstances. There is however no requirement that a lender seek, for example, pay-slips or bank account statements in each and every case. Had the FCA required that, the rules could have said that expressly; they are however written in a way that gives lenders rather more flexibility than that.

Ms H had not previously taken out any loans, so did not have any credit history. That means of course that she had no history either of managing debt or of mismanaging it. The loan application indicates that Sainsbury's Bank did ask about County Court judgments and bankruptcy, but there is no reference to other debt. But, since Ms H had no other debts, a high level of existing debt was not a risk factor in this case.

I accept that Ms H is having difficulty repaying the loan – although I stress that I have not investigated that aspect of the matter. I have not seen, for example, evidence of Ms H's current income and expenditure. But, even if that does show that the loan was unaffordable at the outset, it does not follow that the bank's assessment in April 2019 was inappropriate or that it acted irresponsibly. Whilst in many cases they may overlap, unaffordability does not always equate to irresponsible lending.

For these reasons, I remain of the view that the creditworthiness assessment that Sainsbury's Bank carried out was reasonable and proportionate in the circumstances and that its lending decision was not irresponsible.

Finally, I will comment briefly on M's statement that Sainsbury's Bank is not acting in accordance with its obligations towards customers who are having difficulty repaying debt. In saying in my provisional decision that the bank was seeking to negotiate a settlement, I was not making a finding that it was acting in line with those obligations. There is clearly a dispute about that. Since we have not investigated that, I make no further comment on it, save to note that we may be able to consider it as a separate complaint should that be necessary.

My final decision

For these reasons, as well as those set out in my provisional decision, my final decision is that I do not require Sainsbury's Bank Plc to do anything more to resolve Ms H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 12 October 2021.
Mike Ingram
Ombudsman