

The complaint

Mr M complains that Sainsbury's Bank Plc (Sainsbury's) should have defaulted his personal loan earlier than they did.

What happened

In July 2018, Mr M took out a personal loan of £15,000 with Sainsbury's. Monthly repayments were £302.15 over 60 months. The APR was 8%. Payments were made each month up to and including February 2019. On 1 March 2019, Mr M went onto a debt management plan (DMP) with a debt charity. The schedule of debts totalled £36,248 with five creditors. Payments of £368 a month for the five creditors were agreed – including £100.91 for the Sainsbury's personal loan – which then had a balance of £13,747. The payments to the DMP were maintained until April 2020 – when a reduced payment of £50 a month was made. And after that, payments were between £50 and £70 a month, rather than the agreed £368. The payments to Mr M's loan with Sainsbury's also reduced significantly, and Sainsbury's agreed with the debt charity to default Mr M's personal loan in May 2020. A default was registered in July 2020. Later, in February 2021, Mr M agreed with Sainsbury's to settle the loan with a payment of £9,381 – 75% of the debt then outstanding. The account was shown as 'partially settled' on his credit records.

Mr M complained – he said that Sainsbury's should've defaulted his loan in May 2019 – as his other creditors had done. He said he wanted to apply for credit as soon as possible and to have the default on his credit records for six years from July 2020 wasn't fair. He also said that in their final response, Sainsbury's said they'd had no contact with the debt charity until May 2020 – which wasn't correct.

Sainsbury's said they'd correctly defaulted Mr M's loan in July 2020. They advised Mr M of their intention to default in May 2020, sent him a Notice of Default on 11 May 2020 and registered the default on 12 July 2020. They said their first confirmed contact with the debt charity was in May 2020, and they didn't intend to mislead Mr M in their final response.

Mr M didn't agree and brought his complaint to us. Our investigator said that Sainsbury's should have defaulted his loan in March 2019 – that was when he told Sainsbury's that he couldn't afford the repayments and entered the DMP. His payments to Sainsbury's via the DMP were £200 lower than the contractual payments – so it was clear he couldn't afford the loan from then. She said that in line with the ICO guidance, the default should be applied in March 2019.

Sainsbury's didn't agree. They said that normally, DMPs are for three to six months – sometimes 12 months. And – their process is that they like to allow customers the time of the whole payment plan to see if they can clear the arrears. Which is what they did in Mr M's case.

And so – Mr M's complaint has come to me to review.

I reached a provisional decision where I said:

There are valid arguments on both sides of this complaint. On the one hand, Sainsbury's say that they were trying to help Mr M by allowing him to go through the DMP to see if he could deal with the financial problems he had – and get himself straight. Of course, such an approach has a lot of merit – and many customers in financial difficulty would welcome that approach. On the other hand, sometimes following a process can lead to an unfair outcome in certain circumstances – which is what I think has happened here.

The guidance for dealing with defaults is laid down by the Information Commissioner's Office (ICO). This says when a consumer is at least three months behind with their payments then a default may be registered. And it would expect a default to be registered by the time the consumer is six months behind with their payments. It is the business' responsibility to put an entry on the credit file. This cannot be taken off unless it is an error.

And so – I've considered Mr M's complaint in the light of this guidance.

Mr M's personal loan contract was to make monthly payment of £302.15 a month for 60 months starting in July 2018. He made those payments successfully until February 2019 – when the last one was made. I've seen that he entered a DMP with the debt charity on 1 March 2019 – at that stage, the loan balance was £13,747. As part of the DMP agreement, Sainsbury's were to receive £100.91 a month – which was over £200 less than the contractual amount. Also, the payment to Sainsbury's was only about £9 a month more than the interest on the outstanding loan – so there was little prospect of making any inroads into the capital amount owed. But importantly – the debt charity wrote to Sainsbury's on 18 February 2019 and showed them what Mr M's situation looked like. The letter showed that Mr M owed the five creditors £36,248, and his income and expenditure showed surplus income of £368 a month. And that was after allowing for the fact that his mother helped him out by paying his rent and utility bills. To me, this was a clear sign that Mr M couldn't afford to pay back his debts, including the loan from Sainsbury's.

I can see from the notes on Mr M's account that he called them on 1 March 2019 to tell them about the DMP. There's also a note to say they'd received the letter from the debt charity. But – unfortunately, there isn't anything on file to say that Sainsbury's considered the DMP and thought about what to do. Nor was there a reply from Sainsbury's to the letter from the debt charity – which might have set out how Sainsbury's were to deal with Mr M's debt. The notes say they discussed with Mr M on the call on 1 March 2019 “...*credit file impact, contact, interest, fees, potential for default...*” – but nothing more than that. On 25 March 2019 – the notes mention “*possible charge off*” – which would mean a default. Later, in May 2019 – the notes say that interest would be stopped. In June 2019, the notes say the DMP “*arrangement set for 4 months*” – but I can't see there was a review undertaken then. So – it looks to me as if Sainsbury's didn't properly get to grips with the DMP arrangement, Mr M's circumstances - and what that might have meant for the repayment of the loan and Mr M's credit file.

Looking at the payments to the loan – the DMP payments of around £100.91 a month were made between March 2019 through to March 2020. But – those payments were clearly a lot less than the contractual amount and so that by May 2019 – Mr M was three months in arrears. I hear what Sainsbury's have said – that they were trying to be helpful to Mr M – but in this case, given his circumstances, it didn't look likely that he was ever going to be able to get to a situation where he could repay his debts, and so the fairest thing to do was for Sainsbury's to apply the default at that stage – in line with the ICO guidance.

And so – my provisional decision is that Sainsbury's should remove the default dated July 2020 – and replace it with a default dated May 2019.

Responses to the provisional decision:

Neither Sainsbury's or Mr M had any comments.

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.

As neither Sainsbury's or Mr M had any comments, I won't be departing from my provisional decision, and for the reasons I gave in it.

And so – my final decision is the same as the provisional decision.

My final decision

I uphold this complaint. Sainsbury's Bank Plc must:

- Replace the default on Mr M's credit file registered in July 2020 with a default in May 2019.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 February 2022.

Martin Lord
Ombudsman