

The complaint

Mr K complains that Sainsbury's Bank Plc (Sainsbury's) defaulted his loan and passed the debt to a debt collection agency.

What happened

Mr K had a loan from Sainsbury's, and he was struggling to make the payments. In 2015, he fell behind with repayments. In July 2015, Sainsbury's sent Mr K a Notice of Default and the default was registered on 16 September 2015. In April 2017, Mr K agreed to pay a final amount of £10,390 in settlement of the outstanding balance of £13,845. Sainsbury's agreed to this and said they'd showed the debt as 'partially settled' on his credit file. The agreed payment was to be in six instalments of £1,732. The first five were paid, but the final one wasn't, leaving a balance of £1,732. Sainsbury's sold the outstanding debt to a debt collection agency (DCA).

Mr J complained. He said he thought the last instalment had been paid. The default wasn't fair – he had been paying in £1 a month to avoid that. As a result, he could get any credit – which he needed to do. He didn't know the outstanding debt had been sold to a debt collection agency. He said he only found out recently when they wrote to him to ask for payment. His debt was fully paid up and so should not have been marked as 'partially settled' but 'fully settled' on his credit file.

In their final response, Sainsbury's said they'd agreed to accept a settlement of £10,390 for the debt, but only £8,660 had been paid by Mr K. The remaining balance was sold to a debt collection agency. If Mr K could provide proof that he'd made the sixth payment, they would close the account. So – they said they'd acted fairly.

Mr K didn't agree with this and brought his complaint to us. Our investigator said Sainsbury's had fairly issued a Notice of Default in July 2015 and registered the default in September 2015. This was fair – but he said that the default would be removed from Mr K's credit file after six years – which had now passed. So, by now, his credit file was clear. In discussion with Sainsburys, they said they'd agreed to write off the remaining balance of £1,732 in September 2017 – and not pass Mr K's debt to the debt collection agency. For that, they offered a compensation payment of £75 – which our investigator felt was reasonable.

Mr K didn't agree and asked that an ombudsman look at his complaint

I reached a provisional decision in which I said:

I can see that Mr K ran into difficulties with payments to his personal loan and the last instalment was paid to it in March 2015. Sainsbury's then issued a Notice of Default in July 2015 and registered the default on 16 September 2015. I've looked the statements for the personal loan – and I can't say that Sainsburys made an error in defaulting the loan – because the payments had stopped. This was in line with normal banking practice for dealing with situations where loan payments aren't being made.

In 2016, Mr K paid in six payments of £1 – he says he did this to prevent the default – but I have to say that unfortunately, that was too late - as the default had been registered prior to that happening. So, what that meant was that the default remained on Mr K's credit file for six years from September 2015 – so by now, the default should've been removed. But – I can't say that Sainsbury's were wrong in registering the default in September 2015 – and so between then and now – Mr K would not have been to get credit easily.

Looking at what happened in 2017 – Mr K says he thought he had paid the last instalment of £1,732. But Sainsburys don't have any record of that – and asked Mr K to come forward with evidence that he had paid the money – I can't see he has done that. But based on what I've seen – there isn't any evidence to show that Mr K paid the last instalment. And so – he still owed £1,732.

Mr K has said to us that on his credit file his debt should be shown as 'fully settled' – as he has paid it off. But – I've seen that he didn't pay off the whole debt because the balance was £13,845 in 2015 – and he only paid £8,660 towards it – so Sainsbury's were right in marking his credit file as 'partially settled' – as this was accurate. Even if Mr K had paid the last instalment – the marker would have been the same – as he would have paid £10,345 towards the debt.

Mr K says he wasn't aware the remaining debt had been passed to a debt collection agency. And it's here that I think Sainsbury's should've done better, Mr K had made five out of the six agreed payments and was therefore cooperating and trying to put things right – and so Sainsbury's should have told Mr K what they were doing – when they passed the debt to the DCA. But based on the evidence I've seen, they didn't. Mr K has said that he could've paid the last instalment of £1,732 if he'd known – but he didn't. But Mr K should note that even if he had paid off the remaining debt – this still wouldn't have changed the default which was correctly registered in September 2015.

Sainsburys have also told us that they decided to write off the outstanding balance of £1732 – and not pursue Mr K for it. But instead, and contrary to this they passed the debt to the DCA – this was an error. In the meantime, Mr K had received letters from the DCA – which had clearly caused him stress and anxiety. He was surprised and upset to find out that the debt remained when the DCA contacted him recently. But equally, he hasn't made a case to us that, for example, he has been called and pressurised frequently by the DCA in the meantime. Sainsbury's have told us that they will remove the outstanding balance and default from Mr K's credit file now – which they were due to do as six years have passed.

Sainsbury's had agreed to write off the debt and shouldn't have passed it to the DCA. And then – they didn't tell him they were passing the debt to the DCA. And so – this meant that Mr K was surprised and upset when the DCA contacted him. And so – I think that an increase in the amount of compensation here is appropriate – to £200.

Responses to the provisional decision:

Sainsbury's agreed, but Mr K didn't. He said:

1. He wasn't advised of the default in September 2015. And in October 2017 – he contacted Sainsbury's and they didn't say there were any arrears then.
2. He wasn't aware the debt of £1,732 was being written off
3. He wasn't notified the debt was being passed to a DCA.
4. The default was put on the account even though it was agreed the debt would be

settled at the lower amount. This wasn't fair – and it had been on his record for six years.

5. He had got hassle from the debt collector and has been denied credit because of the default against his name.

6. The stress and anxiety suffered warrants a higher amount of compensation.

I now need to consider Mr K's points and make a final 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.

1. I looked again at Sainsbury's records and these show that Mr K was sent a Notice of Arrears on 11 May 2015, and then a Notice of Default on 10 July 2015. The letter notifying him that a default was to be registered was sent on 16 September 2015 – with the balance at £13,896.53. Mr K says he didn't receive these letters – but in all fairness, Sainsbury's can't be held responsible if all three letters weren't delivered or received by Mr K. So, the evidence suggests that he was notified of the arrears, and the subsequent default.

I can see that in October 2017 Mr K was sent a completion letter for the debt then outstanding. I haven't seen the letter, but I can then see that the debt passed to the DCA in November 2017 was £1,732 – so I must assume the completion letter showed that balance. So – I assume that Mr K was then made aware of the outstanding balance by way of the letter.

2. When a bank decides to write off a debt, that's their own internal decision – they essentially say they can't get the money back so they write it off in their books. So – I wouldn't expect them to let Mr K know of that.

3. Looking at whether Mr K should've been advised about the transfer of the debt to the DCA – I think he should have been. And as I said in my provisional decision, the evidence suggests he wasn't told. So, I consider I've covered this point in the provisional decision.

4. On the default – this took place in September 2015 – before Mr K agreed with Sainsbury's to settle the debt for a lower amount, in April 2017. So – the default was always going to be registered then and remain on Mr K's credit file from that time. The fact that, later, he came to an arrangement with Sainsbury's was a separate issue and wouldn't affect the previous default. And I think that he had difficulty getting credit for six years was likely due to the 2015 default, not because of the settlement he later made with Sainsbury's or the outstanding debt.

5. Regarding the debt collector – I've considered this. On the one hand, Mr K has said that he wasn't aware of the debt – but also he now says he got hassle from the DCA as they called him a lot. He has now said to us - the calls were unannounced. In all honesty, I'm not persuaded that Mr K can argue this both ways. The provisional decision (and award of compensation) is for Mr K's complaint that he wasn't aware of the debt – and I'm not going to change that.

6. Mr K says he suffered stress for what happened. I've considered this again. Mr K's complaint is about the discovery of the outstanding debt of £1,732 – as the default was

earlier, in 2015. I've looked at what he said to us in his original complaint – while there have been some unfortunate family problems, it's not clear to me what the impact of the outstanding debt of £1,732 has been - and I'm not persuaded there is a strong case for an increased award for distress and inconvenience.

And so, having considered Mr K's further points, my final decision is the same as the provisional decision.

My final decision

I uphold this complaint, and Sainsbury's Bank Plc must:

- Pay to Mr K £200 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 February 2022.

Martin Lord
Ombudsman