

The complaint

Mr B has complained that Sainsbury's Bank Plc failed to properly monitor his credit card account or offer him support when he was gambling compulsively. He has asked that it refund all of the interest and charges that have been applied to his account.

Background

Mr B had a credit card account with Sainsbury's between 2009 and 2020. He has said that he used the card primarily for gambling during this time and that all of the associated debt on the card, which was eventually closed in 2019 due to it falling into arrears, was the result of his gambling problems.

Mr B has complained that throughout the time he was using the card, despite the fact that he was either very close to, or just over its £8,800 limit and only making minimum repayments, Sainsbury's failed to properly monitor his account or offer him support when it should've been apparent that he had a gambling problem.

Sainsbury's has said that Mr B maintained the card well until 2018. He continued to meet the minimum payments and there were no reasons for it to assume Mr B was experiencing financial problems. It has said any charges applied to Mr B's account were done in line with the terms and conditions of his account and it hasn't done anything wrong.

Mr B was unhappy with Sainsbury's response and brought the complaint to our service. I issued a provisional decision on his complaint on 7 April upholding it. In it I said that Sainsbury's ought to have realised from January 2018 that Mr B was struggling to manage his finances and stepped in to offer him support. I recommended that Sainsbury's refund all of the interest and charges applied to Mr B's account from that point until the card was settled in May 2020. I also thought it was appropriate for Sainsbury's to pay Mr B £300 in recognition of the distress and impact caused by the bank's lack of support.

Mr B accepted the findings in the provisional decision.

Sainsbury's rejected the decision. In its response it raised the following objections:

- The gambling transactions on Mr B's card showed as cash transactions but weren't cash withdrawals and so wouldn't have been a cause for concern as gambling is just a hobby and a legitimate thing for someone to fund via a credit card
- It's unreasonable to expect Sainsbury's to diagnose Mr B as a gambling addict
- Mr B only missed seven payments in total so it's unfair to expect the bank to have recognised he was struggling financially
- These issues happened prior to the persistent debt guidance from the FCA and so there was no obligation on the bank to have reviewed Mr B's account at the time
- The letters sent to Mr B were sent by the previous administrators of the account and not by Sainsbury's and these letters weren't reviewed
- Mr B didn't tell Sainsbury's about his gambling problem and lots of customers sit at the limit of their cards for prolonged periods of time without it meaning they have financial problems.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've considered all of the objections raised by Sainsbury's, but they don't change my opinion on Mr B's complaint. I explain why below.

Sainsbury's has said that although the gambling transactions showed as cash transactions on the account, they weren't cash withdrawals. While I accept this is the case, I note that Sainsbury's still charged a £3 fee every time Mr B used his card for gambling, which often amounted to multiple additional fees being charged each month. The issue here wasn't whether or not the transaction were cash transactions, I appreciate they were obviously gambling transactions, it's the fact that each £3 fee should've acted as an indicator to Sainsbury's that the card was being used in an extremely expensive way. And the ongoing continuous use of the card in this way should've eventually triggered Sainsbury's into to reviewing how the account was being managed. As I said in the provisional decision

... while I accept that Mr B was making minimum repayments, he was just making minimum repayments. The balance was never reducing significantly and in any given month approximately half of the minimum repayment he was making was only covering the interest and charges that was being applied to the account. The capital amount owed was barely reducing each month. I think this type of account "management" in and of itself should've prompted Sainsbury's to review Mr B's sooner than it did.

While I understand and agree that gambling is both legal and a non-problematic hobby for a large number of people, it is also one that some people can struggle to manage and one that has the potential to cause enormous financial harm. Sainsbury's is aware of this fact and so I would've expected the bank to have considered contacting its customer to check this type of spending wasn't causing him problems.

Sainsbury's has also said it's unreasonable to expect it to diagnose Mr B, or any of its customers, as having a gambling addiction. I agree with the bank entirely on this point and note the provisional decision made no requirement on it to do so. Rather it said that when an account is being poorly managed and used primarily for gambling purposes, when the balance is never decreasing and the consumer is being regularly charged additional fees because the bank processes gambling transactions as cash, it would be good practice for the bank to contact its customer and confirm they are comfortable with how they are managing their account. Particularly given how well documented it is that gambling, unlike other hobbies, does have the potential to cause significant financial harm to consumers and their families.

Sainsbury's has also said that Mr B only missed seven payments over the course of the card's history, and these were spread out over a number of years. Therefore, it feels it's unfair to find that the card was being mis-managed or that the bank should've been on notice that Mr B was struggling to maintain it. However, the indicators I mentioned in the provisional decision were not just about missed payments but also the fact that Mr B regularly exceeded his limit. The bank was adding, not just standard monthly interest, but multiple additional charges for cash and Mr B was never making any real payment towards the capital owed. As I noted in the provisional decision:

... from August 2017 onwards Mr B had been over his limit every single month, bar October 2017 when he had managed to bring the balance down to £8,763.75, approximately £36 under limit. I also note in the same bill the interest charged was £177.49 and the minimum

payment due was £197.18. Meaning if Mr B made the minimum payment the following month, he would reduce the capital owed by less than £20.

This is a recurring theme on Mr B's statements and how he was using his card at the time.

Sainsbury's has also pointed out that the account was administered by a different bank until June 2018 and therefore it doesn't think it's fair that the failure to contact Mr B before this time should sit with it now. However, as Sainsbury's is responsible for the account and there was sufficient evidence that the account wasn't being properly maintained the responsibility for this ultimately sits with Sainsbury's now regardless of which organisation was reviewing the account at the time.

In addition to the above point Sainsbury's has also said that the provisional decision attempted to apply persistent debt rationale retrospectively onto the bank. This isn't the case. The Consumer Credit Sourcebook 'CONC' and Principle 6 of the FCA handbook has always required that businesses treat consumers who are experiencing financial difficulty fairly. I am still of the opinion the way Mr B was managing his account at the time was indicative of someone experiencing financial difficulty and that there was enough evidence of this for the bank to have been aware. Therefore, it failed to treat Mr B fairly as per the long-standing regulatory provisions that predate the persistent debt guidance that followed.

The final point made by Sainsbury's in response to the provisional decision was that Mr B didn't explicitly tell the bank that he had a gambling problem and so it's unreasonable for me to have expected the bank to have treated him as having one.

While I appreciate it is easier for banks when consumers self-identify as vulnerable there is also an understanding that vulnerable consumer's may not be able to do this at the height of their vulnerability. And as I noted in my provisional decision, I think there was sufficient evidence available to the bank to enable it to identify Mr B as potentially vulnerable. I say this because as I've mentioned above, throughout 2017 Mr B was over his limit more months than he was under it, spending nine of the previous 12 months over his limit and only once managing to bring it down by anything more than £100. This means that although Mr B was making the minimum payments due, he was mostly just paying interest and charges and barely servicing the actual debt owed. There were also multiple additional fees added for cash/gambling transactions, as well as penalties for exceeding the card's limit. All of which were flags that Sainsbury's should've picked up on and proactively asked Mr B if he needed any help managing his card. Had it done so I think it would've been able to confirm Mr B was vulnerable and did need its help.

Therefore, my findings remain unchanged and I am still upholding Mr B's complaint.

Putting things right

In order to put things right Sainsbury's Bank Plc should:

- Refund all of the interest and charges added onto Mr B's credit card amount starting from January 2018 until the account was settled in May 2020.
- Pay 8% simple interest on this amount*
- Pay Mr B an additional £300 in recognition of the distress and impact caused by Sainsbury's lack of support and intervention

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

My final decision

For the reasons set out in my provisional decision and repeated above I am upholding Mr B's complaint against Sainsbury's Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 June 2022.

Karen Hanlon
Ombudsman