

The complaint

Mr B complains about what happened after a payment he made to Sainsbury's Bank Plc went astray. He said that this resulted in confusion. Mr B said he'd been left with missed payments on his credit file, and that wasn't fair.

What happened

Sainsbury's sent Mr B a statement on 14 October 2020, which said he had to pay £159.17 by 9 November 2020. The statement issued on 14 November 2020 shows that this direct debit was returned unpaid. So Mr B had missed his payment due in early November. And that meant the minimum payment due at the start of December 2020 was almost £500.

Mr B contacted Sainsbury's about this on 25 November 2020, well before that next minimum payment was due. He explained he couldn't cover a payment of this size all at once. Sainsbury's agreed he could repay the arrears along with his minimum payment over a three month period; with the first payment of just under £300 due on 21 December 2020.

On 8 January, Mr B contacted Sainsbury's, to say he'd made the December payment, as agreed. But it hadn't been credited to his account. Sainsbury's expressed concern on that call that it had given Mr B the wrong account details. It could see the payment had been made to its debt collection account, not the account Mr B ought to have paid.

Sainsbury's said it would put Mr B's account into dispute, and investigate the missing payment.

On 14 January, Sainsbury's sent Mr B a statement which showed no payment had been made for the previous month. This demonstrates that Mr B's December payment hadn't been located at that point.

On 15 February, Sainsbury's sent Mr B a statement which showed that a payment was credited onto Mr B's account in January. This would appear to be the missing payment, which Sainsbury's had located, and credited to his account. This statement also asked for a minimum payment of £676.04, to be paid by 12 March.

On 19 February, Mr B rang Sainsbury's, well before this payment was due. Mr B explained that he still couldn't cover the full amount due, which was made up of arrears and this month's minimum payment. On this call, Sainsbury's agreed that Mr B could have until 18 March to make this payment.

On 15 March, Sainsbury's sent Mr B a statement which showed no payment had been made for the previous statement, and a late fee had been charged. Sainsbury's had, however, already agreed to wait until 18 March for that money. The March statement didn't reflect this agreement, and it asked for a minimum payment of £901.37, due by 9 April. (This is presumably a mix of arrears and the March minimum payment.)

On 17 March, Mr B made the agreed payment to cover arrears and the February minimum payment, of £676.04. Mr B paid a day earlier than he'd agreed with Sainsbury's.

Mr B said he then tried to pay his March minimum payment. But Sainsbury's was asking for way too much money.

On 8 April, the day before Mr B's minimum payment was due, Mr B wrote to Sainsbury's. He said he hadn't been able to make his minimum payment for March over the phone. And the online system was still asking him to pay over £900. Mr B said he was trying to resolve this, but he couldn't understand why he was being asked to pay such an alarmingly high amount, when he'd already paid almost £700 that month. He said he was worried about falling behind again after making such efforts to bring his account up to date.

On 14 April, Sainsbury's sent Mr B a statement which showed he had made the agreed payment of £676.04, a day early, on 17 March. This statement shows a minimum payment for April of £335.28. And Mr B's credit report suggests the problems with his card and with payments were then resolved.

But Mr B's credit report shows missed payments on his Sainsbury's credit card for December, January, February, March and May. (This appears to be running one month behind Mr B's actual payments, which is not unusual.)

Mr B said the missed payment for December was his fault. But he didn't think showing the rest of these monthly payments as missed was fair. Mr B didn't want compensation, he just wanted these missed payment markers taken off his credit file.

Sainsbury's said that it accepted its agent had made a mistake over the phone, and it had credited Mr B's account with £100. But it said that because Mr B hadn't paid the total due in each of these months, regardless of the incorrect details being supplied, it wouldn't make any amendments to Mr B's credit file.

Our investigator thought this complaint should be upheld. He didn't think marking Mr B's credit file for missed payments during the months of January, February and March 2021 was fair. He noted that when Mr B spoke to Sainsbury's about the payment for December that went missing, the agent gave the impression that Mr B didn't need to do anything further as the account would be marked as 'in dispute'.

Our investigator said there was no evidence Mr B was contacted with an update once the money was found and applied to the account on 25 January 2021. He would have expected Sainsbury's to do that. And then Sainsbury's agreed an arrangement for Mr B to defer a payment. Although this might've been informal, it was still an agreement.

Our investigator thought it would be fair for Sainsbury's to mark Mr B's credit file as in '*an arrangement to pay*' for December, January, February, and March 2021. He also said late payment fees charged in March and April should be refunded.

Mr B said he would agree with this. But Sainsbury's didn't agree. At first, it said it would remove the late payment marker for February, but not January or March. And it said missed payments for November and December 2020 were correctly recorded. It said these missed payments showed Mr B was in some financial difficulty, which should be on his credit file.

Sainsbury's said Mr B owed £617.70 by 8 January 2021, so even if the payment for December hadn't gone astray, a missed payment would be on his credit file. Sainsbury's said it would remove the late payment marker for February, it thought it was understandable Mr B did not make a payment in February 2021 as he was expecting an update.

Sainsbury's said Mr B paid late in March, and even when a formal payment plan is in place,

missed payments are still recorded even if the customer is making the payments agreed.

And Sainsbury's said that our investigator hadn't suggested amendments after this.

But then Sainsbury's changed its mind. It wouldn't remove the February late payment marker after all. It thought all these missed payment markers were correctly recorded. And it didn't think it should remove a record of Mr B's financial difficulty from his credit file as this would give a false impression to other lenders about how he managed the account.

Sainsbury's also didn't agree that it should refund fees for March and April 2021. It felt that by then it had allocated the payment from December to the account and made clear what payments were required. It said Mr B hadn't paid in January and February so it would have expected him to have the money to pay the arrears.

Our investigator still thought the payments for each month should've been recorded as an arrangement to pay rather than stating an arrears number. Reporting a level of arrears for each month wasn't a true reflection of how the account has been run. Other lenders would think Mr B hadn't done anything to try to address the arrears - when he had.

Because no agreement was reached, this complaint was passed to me for a final decision.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

There are five missed payment markers on Mr B's credit file. Four of these show for December 2020 to March 2021, they are likely to refer to payments due early in the previous month. There's then one for May, but again likely to refer to a payment due in early April.

We know Mr B didn't make the payment requested on his October statement. There's a returned direct debit on his November statement. Mr B's account was one month in arrears then. It's fair for this single missed payment marker to show on Mr B's credit file.

In November, Mr B reached an agreement with Sainsbury's to pay off his arrears over three months. Sainsbury's has insisted that from this point on, Mr B's account would always have shown as in arrears, even if all three payments were made and credited to his account.

Sainsbury's hasn't told us how many months of arrears it has recorded on Mr B's credit file, or how many months it thinks would have been recorded, if things had gone to plan. I've not currently requested additional evidence on this point, because I've also not been able to see that Sainsbury's had explained to Mr B the full impact of a payment plan on his credit file.

When someone enters into an agreement to make up missed payments, I'd expect Sainsbury's to explain to the customer what the impact of this will be on their credit file, for the lifetime of that agreement. So if reaching an agreement to pay later will mean another payment will be recorded as missed, I'd expect Sainsbury's to make this clear to Mr B.

We don't currently have direct evidence on what was said on the call of 25 November 2020, when this payment arrangement was set up. Sainsbury's may wish to supply this now, and if it does so, that may change my view on this point.

But the evidence we do have now of a call recording where a payment agreement was set up (on 9 February) does include what appears to be a standard script for arrangements. So I think it's reasonable to assume that the same thing was said on the 25 November call.

That script doesn't include an explanation of the future impact on Mr B's credit file. Without direct evidence on this point, my current view is that it isn't likely Mr B was warned about future missed payment markers when he made the November agreement either. And that in turn means it wouldn't be reasonable for Sainsbury's to continue to place late payment markers on Mr B's file, if he had paid in line with the agreement set up in November.

This finding is relevant for December's payment, where Mr B did pay, but the payment went astray, due to what both sides seem to accept was wrong information given by Sainsbury's. I don't think a late payment should be recorded for that month (the second missed payment of the sequence on Mr B's credit file), or any late fees charged. I see this fee was refunded.

Mr B then contacted Sainsbury's on 8 January. Like our investigator, I think that it's important to note that Sainsbury's took the decision to place Mr B's account in dispute, and also that it gave him no indication of how Mr B could make any future payment. I think that means he had no reasonable expectation that Sainsbury's was expecting him to pay, or that it might record negative information if he failed to do so.

And again, like our investigator, I think Sainsbury's should have got back in touch with Mr B once his payment had been found and credited to his account. It could then have supported him to get his account back on track, as had been envisaged in late November. But Sainsbury's didn't do that. Instead, it sent him a statement on 15 February, which showed that his payment must have been found and credited to his account. The same statement asked for a minimum payment of £676.04, to be paid by 12 March.

On 19 February, Sainsbury's agreed Mr B could have until 18 March to make this payment. Again, if this would continue to affect Mr B's credit file, I would have expected Sainsbury's to warn Mr B of this, so he could make an informed decision. But what it said was "*an arrears balance may have impacted your credit file but we don't know how this will look to other lenders.*" That's a warning of what may already have happened, not what's going to happen as a result of the agreement being made. I don't think that allowed Mr B to make an informed decision. So I don't think it was reasonable for Sainsbury's to record any arrears or missed payment while Mr B was sticking to this agreement, which we know he did.

Two other things on that call are, I think, important. The first is Mr B makes clear he isn't in wider financial difficulties. He is up to date with all other payments. The problem is just with Sainsbury's. I think this is important, because Sainsbury's says removing late payment markers will hide Mr B's true financial position from other lenders. But I don't think there's any evidence he was in wider financial difficulties, and that this was any more than one misdirected payment spiralling out of control.

The second thing is that Sainsbury's tells Mr B that he won't face any fees for being in an arrangement. The agent said "*maintaining your payment arrangement will prevent charges and fees*". But we know Mr B was then charged fees on his March and April statements. Mr B was in an arrangement at the time the March fee was charged.

Mr B didn't pay anything towards the amount requested on his February statement, because that's what he'd agreed with Sainsbury's. So his March statement showed no payment had been made for the previous statement. The March statement asked for a minimum payment of £901.37, due by 9 April. On 17 March, after this statement was printed, Mr B made the agreed payment to cover arrears and the February minimum payment, of £676.04.

I've read the message Mr B sent to Sainsbury's on 8 April. Mr B said he'd tried to pay his monthly minimum. He was still being asked for over £900. Mr B does appear to me to have tried to make a minimum payment, but he hadn't been able to make a payment which had been reduced appropriately to take account of the large sum he'd already paid that month.

Overall, I think Mr B has made reasonable efforts to pay what he owes Sainsbury's. And I think Sainsbury's has, unfortunately, missed opportunities to assist Mr B appropriately. In particular, it ought to have made clear what the consequences of any payment agreements would be, and it ought to have contacted Mr B to set his account back on track once his missing payment was found. I think it's largely because Sainsbury's doesn't seem to have done these things, that Mr B now has a number of missed payment markers on his credit file. And so I think that all but the first of these markers (relating to the November returned direct debit) should be removed. I also think Sainsbury's should refund the late and overlimit fees charged on Mr B's March and April statements.

I must stress that this decision is provisional, and with the provision of further evidence by either side, it may change.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both parties replied.

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.

Mr B agreed with my provisional decision. He said he had recently asked Sainsbury's to close his account, and wanted to know if that might cause any issues.

I would not expect the closure of Mr B's card account to make any difference in this case. Sainsbury's will still be bound by my decision if Mr B accepts it. If Mr B's account is closed, then Sainsbury's can still amend his credit file, and it can pay any refund to him directly instead of crediting it back to his account.

Sainsbury's replied to say it wanted to propose something different. It did accept that some of Mr B's credit file should be amended. But it didn't think it was fair to other lenders to remove all record of his financial difficulty (other than the arrears for November).

Sainsbury's said that credit files record arrears on accounts, so when a customer is one month in arrears, it is recorded as "1". And Sainsbury's said that if the plan had run as intended, Mr B would have had "1" recorded on his credit file from November to February. But, because payments weren't received, the arrears were showing as increasing, during this period.

Sainsbury's said November was showing as 1 Month in arrears, which it thought all sides understood to be correct.

Then Sainsbury's said December was showing as 2 months in arrears. It thought this should be reduced to 1, as this is how it would show if the payment Mr B made hadn't been lost.

And Sainsbury's said January was showing as 2 months in arrears. The payment from December had been allocated by this point (stopping the arrears from increasing to 3). But Sainsbury's said if another payment had been received that month, it would have been 1.

Sainsbury's said February was currently showing at 3, but if the plan had run as intended, it would have shown as 0.

So Sainsbury's proposed to make those amendments to Mr B's credit file. It said that after February, no further change was needed, March was 0. And the file should run as 0 for the remainder of the loan term as it was never in arrears again before Mr B cleared the balance.

Sainsbury's said it didn't want to be accused of misleading other lenders. It thought this resolution would fairly represent Mr B's situation during this period.

Sainsbury's appreciated I felt it should have told Mr B that a plan would result in arrears being recorded on his credit file. It said this was detailed in the account terms and conditions, and it would usually remind customers of this when setting up a plan. But it said the call where the plan was first set up, on 25 November 2020, ended abruptly and it could not reach Mr B when it tried to call back. It sent notes from the time of this call, although not the call recording itself.

Sainsbury's said most of the fees charged during the relevant period had already been refunded, but it would make sure any which were missed were also refunded.

In my provisional decision above, I set out my view that Mr B ought to have been told about the impact a payment plan would have on his credit file, at the point where he agreed to it. I said we didn't have direct evidence of the call when Mr B first set up a plan, on 25 November 2020. Whilst we still have no direct evidence on this, Sainsbury's has supplied notes which suggest that this call dropped, and it did try to get back in touch with Mr B, without success.

But I also said we do have another call recording, from 9 February. That seemed to me to include a standard script for payment arrangements. Whilst we now know that this wasn't said to Mr B in November, I still think it's reasonable to assume that this is what Sainsbury's would have said to him at the time. And I didn't think that script allowed Mr B to make an informed decision to enter into a payment plan, for the reasons I have set out in my provisional decision above.

So even if Sainsbury's had managed to get back in touch with Mr B in November 2020, it still doesn't seem likely that it would have provided him with the information he needed to decide whether to enter into a payment plan.

I don't know what options Mr B may have pursued, instead of a payment plan. But he has told us, and Sainsbury's, that he wasn't in any wider financial difficulties. And he also said he had some savings he could access. So, although Sainsbury's has assumed that Mr B would still have entered into a payment plan, I don't think I can assume that Mr B would have done so if he had been told about its impact.

So I don't think what's gone wrong here happened just because the call dropped on 25 November 2020. I still think that Sainsbury's should amend Mr B's credit file, starting from the marker relevant to December 2020.

I noted a series of further problems after this. In brief, Sainsbury's put Mr B's account in dispute when his December payment went astray. It told him he had the wrong account details, but it didn't indicate how, or indeed, if, he should make another payment. It didn't contact Mr B when it had finally found and allocated his December payment. It didn't provide a warning about the future impact on his credit file when he spoke to it in mid-February to set up a fresh payment plan. And it then asked for over £900 as a minimum payment at the start of April, without making any allowance for the fact that Mr B had already paid almost £700 of this sum.

Sainsbury's is concerned that it would be misleading other lenders if it removed a record of missed payments from Mr B's credit file. I understand this concern, but I think that in this particular case, the contribution that Sainsbury's has made to the position in which Mr B has found himself, is such that the amendment I proposed is required to provide a fair and reasonable outcome to this complaint. So I won't adopt the amended version that Sainsbury's has suggested.

I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that Sainsbury's Bank Plc must amend Mr B's credit file to remove any negative markers for the time between November 2020 and May 2021 (except the single missed payment marker relating to Mr B's November 2020 returned direct debit). And it must refund the late and overlimit fees charged on Mr B's March and April statements.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 August 2022.

Esther Absalom-Gough

Ombudsman