

The complaint

Mr E complains about how Sainsbury's Bank Plc (Sainsbury's) handled his personal loan.

What happened

Mr E took out a personal loan for £25,755.83 with Sainsbury's in April 2017. The contractual monthly payment was £387.89. The initial attempt by Sainsbury's to take the monthly direct debit payment for August 2020 was returned unpaid. Sainsbury's second attempt to collect the payment was also returned unpaid. The subsequent monthly payments following the unpaid direct debit from August 2020, were all paid successfully. But the account was still in arrears of £387.89 from the missed payments in August 2020.

Sainsbury's wrote to Mr E in September 2020 to notify him of the arrears. As no reply was received, Sainsbury's issued Mr E with a default notice in October 2020. Sainsbury's later defaulted the loan in March 2021 and the credit reference agencies were informed.

Following the receipt of the default letter sent to Mr E in March 2021, Mr E contacted Sainsbury's to say that the missed payment was an oversight due to the personal challenges he faced because of the pandemic, and that he didn't receive the default notice. He offered to repay the arrears, reinstate the monthly contractual payments and asked for the default to be removed.

Sainsbury's responded to Mr E's complaint to say that they did issue him with a notice of default and as no payment was received the account was passed to recoveries. While Sainsbury's empathised with Mr E's circumstances at the time, they explained that they can only restore an account back to normal where a bank error had occurred. And as no error in the process of defaulting the account had been made, Mr E's account would remain in recoveries. But they did acknowledge the difficulties Mr E experienced when trying to contact Sainsbury's complaints team and offered him £50 in compensation for the poor service he received. Unhappy with Sainsbury's response, Mr E contacted our service to further his complaint.

One of our investigators considered Mr E's complaint and they didn't find that Sainsbury's had defaulted the account unfairly and had followed the correct process when dealing with the missed payment and arrears. They also found the £50 compensation offered was fair and reasonable for the service Mr E received when making his complaint to Sainsbury's. The investigator considered what Mr E said about his personal circumstances at the time and concluded that Sainsbury's didn't need to do anything more.

Mr E rejected the investigator's findings and asked for a final decision as he said the investigator's findings didn't take in account his extenuating circumstances and reasons why he missed seeing the notice of arrears and default notice. But the investigator didn't think Mr E's circumstances meant that Sainsbury's hadn't treated him fairly in the way they dealt with his account arrears. So, the complaint has been passed to me and I issued a provisional decision.

What I said in my provisional decision dated 28 March 2023

It's not in dispute that Mr E was in arrears, and that the arrears were outstanding for at least three months. The Information Commissionaires Office (ICO) set guidelines for lenders to follow. The ICO guidelines say that a lender can default an account when payments are three to six months in arrears. And that's what happened here.

So, I'm satisfied that the default has been applied in line with the account terms and industry guidance. And based on what I've seen, Sainsbury's did enough to put Mr E on notice as to what action would be taken if the account wasn't brought up to date with the outstanding payment. But in hindsight - considering that Mr E had only missed one payment, and then continued to make his monthly contractual payments after that, Sainsbury's actions seem disproportionate – particularly given Mr E's personal circumstances.

I've thought about what Mr E said about his circumstances around the time the default notice was issued. I asked Mr E for further information on the specifics of the personal difficulties he'd mentioned and the impact this had on his day to day living at the time. Mr E explained he'd had a mental breakdown around September 2020, and that it was also around this time that he was diagnosed with Asperger's. Mr E's Asperger's means he struggles to deal with multiple tasks.

Mr E has also told us – as a business owner, in September 2020 his focus was keeping his employees in work and setting up home working due to the pandemic, rather than focusing on home life and bills and any type of admin task. As a result, mail went unopened for some time and some mail was even lost. Mr E said he wasn't aware of the missing payment but continued to pay the monthly instalments thereafter. It wasn't until he got contacted by the business that Sainsbury's sold the debt onto, that he was made aware of the default. As soon as he became aware he immediately tried to rectify the situation by contacting Sainsbury's and offering to clear the arrears.

I've had a conversation with Mr E, and while I had no reason to disbelieve what he told me about his circumstances, I asked if he'd be able to provide me with evidence which backs up what he had said about his medical situation in September 2020. Mr E's provided me with a letter dated September 2020 from a third-party medical expert, a Consultant Psychiatrist. The letter explains Mr E's personal challenges and that his mental health was at a crisis point at this time.

Taking into account that Mr E only missed one payment, and considering his very difficult and challenging circumstances at the time, which I'm persuaded are material as to why he didn't respond to the letters sent to him by Sainsbury's about the account arrears, I find that Sainsbury's should remove the default from Mr E's credit file, take back the debt and allow Mr E to repay the debt in line with the original lending terms of the loan.

I've thought about the £50 compensation Sainsbury's have offered Mr E for the poor service he received in making his complaint to them. I consider this sum to be a fair for the inconvenience Mr E experienced as although this delayed the initiation of Mr E's complaint - he was still able to get his concerns logged with Sainsburys within a short space of time and was subsequently able to refer his complaint to this service.

I've also thought about whether a further award for compensation for the distress and coincidence caused to Mr E is warranted given his account was defaulted. But I've found that Sainsbury's defaulted Mr E's account correctly at the time – it's only now – because Mr E has told us more about his circumstances, that I find that Sainsbury's need to reverse the action they took on Mr E's account. So, I don't find that any further compensation is due here.

Responses to my provisional decision

I invited both parties to send any additional comments or evidence they had before reaching a final decision.

I'd previously discussed my findings with Mr E, which he accepted – so he didn't provide a response to my written provisional decision.

Sainsbury's responded to accept my provisional decision. It confirmed it had initiated the process to purchase back the debt from the third-party collection agency. It pointed out that this process could take several weeks to complete and that they couldn't amend Mr E's credit file until the process was completed. But they confirmed at this point the default would be removed.

Sainsbury's also said due to the age of Mr E's loan and because they have upgraded their systems, Mr E's loan is not compatible with the current platform used to host loan products. But they confirmed that when Mr E's account has been brought back in house, they will contact him to discuss a suitable solution for managing the account, which they will ensure has no detriment to Mr E or negative impact to his credit file

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 both parties have accepted my provisional findings and haven't provided any further information for me to consider, I see no reason to depart from the conclusion reached in my provisional decision.

I've thought about what Sainsbury's has said in terms of actioning the outcome of the complaint. And I find this reasonable in the circumstances. I urge Mr E to promptly respond to Sainsbury's when they contact him to make arrangements for managing the outstanding debt.

My final decision

For the reasons set out above, I'm upholding Mr E's complaint.

Sainsbury's Bank Plc are to remove the default from Mr E's credit file and take back the debt they sold. Sainsbury's Bank Plc should also make arrangements with Mr E to allow him to clear the arrears and arrange for him to continue making monthly payments to repay the loan with no detriment to Mr E or negative impact to his credit file.

Sainsbury's Bank Plc should pay Mr E £50 compensation (if they haven't already done so) for the distress and inconvenience caused by the service received when raising his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 16 May 2023.

Helen Giles
Ombudsman