

## **The complaint**

Mr S complains that Sainsbury's Bank Plc has unfairly defaulted a personal loan account he held with it. He asks that the adverse information reported to the Credit Reference Agencies is removed.

Mr S has been assisted with his complaint by a third-party company but for ease of reference I shall refer only to Mr S in my decision.

## **What happened**

In June 2018 Mr S entered in to a 60-month personal loan agreement with Sainsbury's Bank. A direct debit was set up to pay the £516.94 that was due each month under the agreement.

In June 2022 Mr S's direct debit was returned unpaid by his bank and he was contacted on the telephone by Sainsbury's Bank. Mr S explained he was facing some financial difficulties and Sainsbury's Bank agreed to provide him with a 30-day breathing space. It informed Mr S that it would cancel his direct debit so that the July direct debit wasn't collected. Sainsbury's Bank asked Mr S to contact it in August 2022 for payments to be discussed.

In August 2022 Mr S paid Sainsbury's Bank the amount of £1,033.88 which covered the months of June and July 2022. However, Mr S didn't make a further payment to cover either August or September 2022.

At the end of September 2022 Mr S contacted Sainsbury's Bank and said he could now resume payments and asked for a direct debit to be set up so payments could be resumed. He also said he would clear, by bank transfer, the two months of accrued arrears. The direct debit was arranged to start collecting payments in October 2022.

Although the direct debit payments were resumed from October 2022, Mr S didn't clear the two months of arrears for August and September 2022.

Sainsbury's Bank wrote to Mr S in September, October and December 2022 informing him that his account was in arrears. In December 2022 Sainsbury's Bank sent Mr S a notice of default advising him of the amount the account was in arrears and that he needed to clear this by a date in January 2023.

In January 2023 Sainsbury's Bank, not having received a reply from Mr S, sent him a Notice of Sums in Arrears. Sainsbury's Bank didn't hear from Mr S and so in January 2023 defaulted the account and placed it in the hands of a third-party company for management. Sainsbury's Bank ceased applying interest to the balance on the account from this point.

However, direct debits for this agreement continued to be taken from Mr S's account for the months of February, March, April and May 2023.

Mr S says he was unaware the account had been defaulted because he didn't receive any notice from Sainsbury's Bank and the direct debits were still being collected. When he discovered what had happened, he complained to Sainsbury's Bank and said it had acted

unfairly. He asked for the default to be removed.

Sainsbury's Bank partly upheld his complaint. It said it had acted reasonably and fairly in defaulting Mr S's account as it had been in arrears, it had sent a number of letters including the default notice to him and he hadn't cleared the outstanding amount. However, Sainsbury's Bank acknowledged the direct debits shouldn't have been collected following the account's default. It said Mr S could either seek the amount taken to be reimbursed to him via his bank and the direct debit guarantee or choose to put that amount towards the outstanding balance on the account. Sainsbury's Bank also offered Mr S £50 compensation for this error.

Mr S was unhappy at Sainsbury's Bank response and complained to this service. He said an IT glitch had caused a problem with the direct debit in June 2022 and that the direct debits were always in place and there were funds in his account to pay them each month. He said that as the direct debits were being collected, he assumed the account was still active and so didn't settle the account in full during the default period.

Our investigator didn't recommend Mr S's complaint should be upheld. She said that during the phone call between Mr S and Sainsbury's Bank following the failed June 2022 direct debit, Sainsbury's Bank had been clear his direct debit had been cancelled and that he was being given a breathing space until August 2022. She said although Mr S had paid a lump sum for June and July 2022, he didn't pay for August or September and his direct debits hadn't been resumed until October 2022.

Our investigator said Sainsbury's Bank had written to Mr S a number of times setting out the arrears and the need to pay. It had then properly followed the default process and when Mr S had failed to clear the arrears by the end of January, Sainsbury's Bank had defaulted the account. She said she was satisfied Sainsbury's Bank hadn't acted unfairly in doing so.

The direct debits, said our investigator, should have stopped following the defaulting of the account and she thought Sainsbury's Bank's offer of £50 compensation for this was fair and reasonable. She said she wouldn't ask it to do more.

Mr S disagreed with our investigator's view.

As the parties were unable to reach an agreement the complaint has been passed to me.

### **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 S has said in his complaint that it was an IT glitch that caused the bank to decline the direct debit in June 2022. But, having listened to the call between Mr S and Sainsbury's Bank during that month, I heard that the payment failed due to a lack of funds in Mr S's bank account as he was experiencing some financial difficulties. I think Sainsbury's Bank acted fairly by providing him with a breathing space which involved cancelling the direct debit that was due for the July payment. I also think the agent who spoke with Mr S was clear about the direct debit being cancelled and of the impact of missing payments. The agent said Mr S would need to make contact in August 2023 to discuss his payments.

So, I think it's reasonable to say Mr S should have been aware his direct debits weren't in place, and I also think this is supported by his later call in September 2022 to Sainsbury's Bank when he arranged for the direct debits to be resumed.

I've seen that Mr S cleared the two months of arrears in August 2022, that is he paid the outstanding amounts for June and July 2022. However, no payment was made for August nor for the following month in September.

Looking at the notes from the call in September 2022, it appears there may have been a problem with the card Mr S was trying to use via the phone and so he offered to pay via bank transfer. I've seen that Sainsbury's Bank sent Mr S a letter following this call setting out the amount he needed to pay and the date the payment was due by. Sainsbury's Bank says this payment wasn't made by Mr S, and I haven't seen any evidence that this is incorrect and these arrears were actually cleared.

On the evidence I've seen, I think it's reasonable to conclude that in October 2022 Mr S would have been aware there were arrears on his account for August and September 2022. He knew he had no direct debit in place for those months and that he hadn't made any payments by another method to clear them.

Mr S says he didn't get the default notice, the sums in arrears notice nor the letter setting out the default had been applied. But I've seen Sainsbury's Bank wrote to Mr S at the end of September when his payments clearing the arrears hadn't been received, twice in October 2022 stating the account was in arrears and a further letter was sent in December 2022. All these letters were addressed correctly so I don't know why they wouldn't have been delivered if Mr S is saying they never arrived. As Sainsbury's Bank had written to him four times in this period to inform him his account was in arrears, I can't reasonably say Sainsbury's hadn't acted fairly in trying to keep him informed. Sainsbury's Bank would neither have known nor been responsible for these letters not arriving.

I've seen Mr S says that Sainsbury's Bank didn't properly follow the process in defaulting his account. But I've seen the correct notifications were sent to him though again I don't why he wouldn't have received them. I can't say Sainsbury's Bank acted unfairly in taking the action that it did. The account had been two months in arrears since September 2022. I think it was entitled to default the account when it did as Mr S hadn't been in touch and hadn't cleared the arrears.

In respect of reporting the default to the credit reference agencies, Sainsbury's Bank is obliged to report accurate and fair information as to how a consumer has managed a credit agreement. I haven't seen any evidence that shows Sainsbury's Bank reported anything that wasn't accurate, and I think that information, although adverse to Mr S, was fair. So, I'm not asking it to remove anything that it has reported.

I appreciate the continuing direct debit payments after the date of the default would have been confusing for Mr S. But I still think he should have been aware that the account was in arrears and that Sainsbury's Bank intended to default it if he didn't clear that outstanding amount in January 2022. I think that compensation was fair for the impact caused to Mr S of having the direct debits taken for those months and I think Sainsbury's Bank's offer of £50 was fair in the circumstances. So, again, I wouldn't ask it to do more.

I'm aware that my decision will be of disappointment to Mr S but for the reasons given above I'm not upholding his complaint. I don't think Sainsbury's Banks has acted unfairly in defaulting the account and reporting that to the credit reference agencies.

### **My final decision**

As set out above, I'm not upholding Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or

reject my decision before 4 March 2024.

Jocelyn Griffith  
**Ombudsman**