DRN-4661651

The complaint

Mr S says Sainsbury's Bank Plc (SB) irresponsibly lent to him.

What happened

Mr S took out four loans in just under three years from SB. A summary of his borrowing follows.

loan	taken out	value, £	term in months	monthly repayment, £	comments
1	06/03/2015	12,000	60	248.13	
2	23/01/2017	13,577.74	48	353.83	used in part to settle loan 1
3	27/06/2017	1,000	36	38.42	top up loan running alongside loan 2
4	30/01/2018	3,912	36	142.49	settled loan 3 and provided additional funds, ran alongside loan 2

Mr S says he had to borrow from elsewhere to make his repayments and it has impacted his mental health.

SB says it completed proportionate checks that showed the loans would be affordable for Mr S.

Our investigator upheld Mr S's complaint in part. He found loan 1 was lent responsibly. But for loans 2-4 he said SB ought to have carried out more checks, and had it done so it would have learnt Mr S could not afford to repay the loans sustainably.

Mr S accepted this assessment. SB did not. It asked for an ombudsman's review, saying that whilst Mr S's indebtedness had increased during the borrowing relationship so had his income. It said its checks were appropriate and they showed no adverse credit data and ample disposable income. As the lending relationship progressed Mr S established a good repayment history and loan 4 was paid off early - this does not indicate any financial difficulties.

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.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website. Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did SB complete reasonable and proportionate checks to satisfy itself that Mr S would be able to repay the loans in a sustainable way?

- If not, would those checks have shown that Mr S would have been able to do so?
- If so, did SB make fair lending decisions?

The rules and regulations in place required SB to carry out a reasonable and proportionate assessment of Mr S's ability to make the repayments under the agreement. This assessment is sometimes referred to as an affordability assessment or affordability check.

The checks had to be borrower-focused – so SB had to think about whether repaying the loans would be sustainable. In practice this meant that SB had to ensure that making the repayments on the loans wouldn't cause Mr S undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payments he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for SB to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mr S.

Checks also had to be proportionate to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

I think that such a check ought generally to have been more thorough:

- The lower a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income).
- The higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income).
- The greater the number and frequency of loans, and the longer the period during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

I can see that SB asked for certain information before it approved the loans. It has told us it relied on Mr S's declared income, national statistics to estimate his living expenses and a credit check to understand his existing credit commitments and credit history. It asked about his residential and marital status, and whether he had any dependants. It reviewed the payment history for his prior loans. It asked about the purpose of the loans. From these checks combined SB concluded the loans were affordable for Mr S.

As the parties are now in agreement that SB was not wrong to give loan 1 to Mr S, I will focus on loans 2 to 4.

I am not persuaded the checks outlined above were proportionate for these loans. I'll explain why.

At the time of loan 2, Mr S's declared monthly net income was relatively low (£1,371) and he was asking to refinance a loan that was less than two years into a five-year term. So I think SB needed more certain assurances that Mr S could afford to sustainably repay loan 2. And it was unfair to base its assessment on Mr S's declared income and estimates of his outgoings without some kind of verification.

SB's defence of the complaint is that its checks showed Mr S had enough disposable income and that he passed its application score cut-off. But as I've said, its checks were not based on verified actuals – either for his income or his expenses. And whilst Mr S's score may have met its internal lending criteria, SB was required to not just consider the likelihood of getting its money back, but also the impact on Mr S of making the repayments and I cannot see it did this.

In cases like this we look at bank statements from the three months prior to application. I am not saying SB had to do exactly this but it is a reliable way for me to understand what better checks would most likely have shown SB.

Mr S's bank statements show that he was persistently reliant on his overdraft facility. He was not using it as a short-term borrowing solution as intended. And from the evidence provided I cannot see that SB knew the purpose of the additional funds given at the time of loan 2 was debt consolidation – aside from those used to settle loan 1. So I think SB ought to have realised it would be most likely Mr S would be in effect borrowing (via his overdraft facility) to repay this loan. It follows I think SB, as a responsible lender, it would have made a different lending decision had it completed proportionate checks.

Logically, had SB declined Mr S's application for loan 2 (and given what it would have learnt at that time) I would not expect it to have approved loans 3 or 4 unless it had completed checks that showed Mr S was no longer reliant on credit to make ends meet. And I can see from his bank statements from the relevant dates that was not the case. Mr S remained reliant on his overdraft, even after his salary credited his account, and by loan 4 SB would have known this had been the case for at least 12 months.

SB also raised that Mr S's payment history was good, and he settled loan 4 early which doesn't indicate he was having financial difficulties. But this does not change my conclusion as the lender does not know that Mr S made his repayments sustainably – and what we know about his overdraft use would suggest this was most likely not the case.

It follows I find SB was wrong to give loans 2 to 4 to Mr S.

Putting things right

Mr S had the benefit of loans 2 to 4 so it's fair that he should have repaid the capital. But he paid interest and charges on loan that should not have been given to him and this is unfair. So SB must:

- Add up the total amount of money Mr S received as a result of being given all three loans. The repayments Mr S made should be deducted from this amount.

- Any overpayment should be refunded to Mr S along with 8% simple interest, calculated from the date the overpayments were made until the date of settlement.*

- Remove any adverse information from Mr S's credit file relating to loans 2 to 4.

*HM Revenue & Customs requires SB to deduct tax from this interest. It should give Mr S a certificate showing how much tax it's deducted if he asks for one.

My final decision

I am upholding Mr S's complaint in part in relation to loans 2 to 4. Sainsbury's Bank Plc must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 12 April 2024.

Rebecca Connelley
Ombudsman