DRN-4778347

The complaint

Mr P Mr P complains that Sainsbury's Bank PLC lent to him irresponsibly.

What happened

Mr P applied for two loans. A brief loan table gives some details.

Loan	Approved	Amount	Interest	Repayments and term	Repaid
1	28 November 2016	£24,000	£5,448.72	74 months at £409.01	31 January 2017
2	5 May 2017	£22,000	£1,866.20	60 months at £397.77	May 2022

The rates for these loans were low as these were bank loans. Loan 1 had a rate of 6.8% APR and loan 2 was 3.3% APR. After Mr P had complained to Sainsbury's and had received its final response letter (FRL) in January 2024 he was not content with its outcome and referred it to the Financial Ombudsman Service. One of our investigators considered the complaint and wrote two assessments about a month apart.

The view from our investigator in March 2024 was a totally different outcome (non-uphold) to the one written in April 2024 (full uphold). Our investigator revised her view as Mr P had sent to her fresh information surrounding debts and gambling issues. Sainsbury's has questioned the rationale for these totally different outcomes and has asked for an ombudsman to review the complaint.

I noted that Sainsbury's had given consent for these loans to be investigated despite one being lent more than six years before Mr P complained in December 2023.

The complaint was passed to me to decide. I reviewed it afresh and issued a detailed provisional decision in which I gave reasons why I did not plan to uphold the complaint.

Having looked at everything, I provisionally decided the affordability checks were proportionate for loan 1 and the loan was not approved irresponsibly. For loan 2 my provisional decision was that additional checks ought to have been carried out to see if Mr P could afford the loan. But I explained that even if they had been, I did not think that it would have made a difference to the lending decision made by Sainsburys.

Both parties were given time to consider it and Mr P has responded in some detail.

How did the parties respond to the provisional decision?

Sainsbury's has not responded. The 'reply deadline' has passed. In the interests of achieving a resolution on the complaint it is fair and reasonable to proceed even though Sainsbury's has not replied.

Mr P replied with two emails and he agreed with my findings on loan 1 about which he said *‘sounds reasonable’*. So, I need say no more about loan 1.

Mr P disagreed with me in relation to loan 2 and his points are summarised here with my response to those points are set out later in this final decision. I’ve labelled them so that my corresponding responses can be matched up with each.

A Mr P says that his credit file would have shown that he took a loan in November 2016, repaid it in January 2017, and a loan he had taken in September 2016 was repaid in January 2017. He says he had taken another loan in March 2017. Mr P says that these added up to £46,000 of debt and it ought to have raised some questions with Sainsburys.

B Mr P suggested that Sainsbury’s ought to have checked his bank account statements for more than 2 months leading up to May 2017. Mr P thinks it ought to have been 6 months.

C Mr P has said that the gambling transactions showing on his bank statements in April 2017 were enough to have alerted Sainsbury’s to there being a gambling problem and the amounts were excessive.

D Mr P thinks that Sainsbury’s ought to have obtained payslips. The £1,300 payments from Bank A have been explained to me more fully – Mr P was receiving part of his salary as a tax-free bond. Mr P says that the payslips and the tax-free bond arrangement meant that his salary was reduced effectively and Sainsburys would have seen that.

E Mr P said: “I have to fundamentally disagree with this statement - "*when it came to Mr P applying for loan 2, a £22,000 loan when the credit bureau registered debt was only £7,100 and his current account was in credit, then this research may have satisfied Sainsbury’s concerns"* – Sainsburys should be asking me why I need a £22,000 consolidation loan when I only have debts of £7,100.”

F Mr P said that other complaints brought by him have been upheld.

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.

The main parts of my provisional decision dated 16 May 2024 is set out below and forms part of this decision. It’s in smaller type to differentiate it.

> We have set out our general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.
>
> The relevant regulations were formulated in the Consumer Credit Sourcebook (CONC) created by the Financial Conduct Authority (FCA). It altered the wording, but not the import, of CONC in November 2018. I have reviewed the wording in CONC applicable in 2016 and 2017 as these loans were approved then.
>
> The rules and regulations in place required Sainsbury’s to carry out a reasonable and proportionate assessment of Mr P’s ability to make the repayments under the loan agreement. This is referred to as an “affordability assessment” or “affordability check”.
>
> The checks had to be “borrower-focused”, so Sainsbury’s had to think about whether

repaying the loan would be sustainable. In practice this meant that the Sainsbury's had to ensure that making the repayments on the loan wouldn't cause Mr P 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 Sainsbury's to approach the loan application from the perspective of the likelihood of getting its money back. Sainsbury's had to consider the impact of the loan repayments on Mr P. 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 several factors including – but not limited to – the circumstances of the Mr P (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 a reasonable and proportionate check ought generally to have been more thorough:

- the lower a Mr P'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've carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr P's complaint. Having looked at everything I have provisionally decided the affordability checks were proportionate for loan 1 and the loan was not approved irresponsibly. For loan 2 I think that additional checks ought to have been carried out but if they had been I have provisionally decided it would not have made a difference to the lending decision made.

I have the advantage of financial information, records, copy bank statements and two sets of credit histories about Mr P. One set is the credit search results Sainsbury's obtained in November 2016 and May 2017 before approving the loans. The other set is a more recent personal credit file report sent to us by Mr P which covers the lending period. And Mr P has sent to us his bank statements for two of his accounts. As I am being asked to assess the situation as seen by Sainsbury's at the time of lending, I have not reviewed the personal credit file sent into us by Mr P.

Loan 1

Mr P declared he was a homeowner with no dependants. He declared gross annual income of £43,000.00, which Sainsbury's calculated as the equivalent to £2,714.00 after tax (net) each month. Mr P declared the loan was for repayment of another debt.

I realise that Mr P thinks that Sainsbury's ought to have had all the information he may have had before approving the loan. But the regulations covering responsible lending for regulated firms do not require that.

Part of what I have considered when reviewing this complaint overall and from both parties' perspectives to reach a fair and reasonable outcome is that:

- Mr P wanted the loans and applied for them and
- he approached a bank not a sub-prime lender and
- the lender was expected to conduct checks proportionate to the loan being applied

for and not necessarily carry out a forensic accounting exercise.

I've seen from the notes provided by Sainsbury's as part of the investigation into the complaint that these types of loans were applied for and approved after a telephone conversation as well as conducting a credit check. I've not asked for the recorded calls as I think it's very unlikely that Sainsbury's would have, or would have been expected to have, kept a call from November 2016. (I consider the same for loan 2 as well). So, Mr P would have spoken to someone in the bank to provide the information it needed or he considered relevant. This is more personal than simply applying by way of a form through a website and so it does give a different complexion to the process in November 2016. The same for the May 2017 (loan 2).

Mr P has told us that he did not realise he had a gambling problem until recently (April 2023) and so I doubt this would have been mentioned on the telephone call. Therefore, I consider this to be an element about which Sainsbury's would not have known and would not have been expected to have known, as if Mr P was not even aware of it being an issue then I fail to see how Sainsbury's could either. And keeping these elements in mind has assisted me in placing the loan applications into context.

When Mr P applied for loan 1, I do consider that Sainsburys ought to have verified his income in some way as it was a large loan. And that may have been fulfilled by asking for a payslip. And I know from information supplied by Mr P that his salary was more than the amount used by Sainsbury's having calculated his monthly net pay down from the gross pay figure Mr P had given to it.

Sainsbury's used £2,714 a month whereas Mr P's evidence is that he earned more than that regularly in the months leading up to applying for loan 1 – more like £3,300. And so even if Sainsbury's had asked for a payslip, for example, it would have been able to use a higher net monthly income figure than the one it did use. This leads me to think that the loan repayments would have sat more comfortably in the income and expenditure (I&E) assessment carried out.

Sainsbury's carried out the I&E assessment and overall, it seems to have got that to a reasonably accurate level - £578 a month on existing debt, £640 a month on his mortgage and around £300 a month on his other household expenses. It used Office of National Statistics (ONS) for that £300 figure. Although not ideal, I consider it was warranted and within the parameters of the regulations when there was nothing else about Mr P's financial situation which was causing Sainsbury's to have been alerted to a financial issue in Mr P's life.

I say this as I know that it had done a credit search as well which had not revealed any adverse information, late payments or insolvency issues. The credit search had revealed he had about £22,000 worth of debt but that would have fitted with Mr P's assertion he wanted to consolidate some debt hence the loan request for £24,000.

Mr P has raised a fact surrounding him paying off a loan at £1,300 a month. He has said that Sainsbury's missed this and/or if it had known of it then that would have made a difference. He sent us copy statements for an account ending *2102 I will call Bank A.
He said:

> *'these statements illustrate the significant portion of my income that was allocated towards repaying a loan with [Bank A], which was secured against a property (though not in my name). This repayment amounted to approximately £1,100-£1,300 per month,'*

So, it's not likely that this loan or debt or commitment to pay would ever have been registered with a credit reference agency associated with him, as Mr P has said that there was not a connection between him and/or the property and/or the loan. And so, being fair and reasonable, I do not consider that Sainsbury's would have known of this unless Mr P had told Sainsbury's about it and I've not seen that evidence. And if this loan was not in Mr P's name then I do not really consider that Sainsbury's needed to have considered that a liability to which Mr P was tied. So, I do not think it unfair to discount this £1,300 repayment.

I have provisionally decided on all the evidence, the checks carried out by Sainsbury's were proportionate for loan 1. I would not have expected it to have done more than it did before lending £24,000 where Mr P had informed it he was consolidating his debts and Sainsbury's had researched and knew his overall debt at the time was around £22,000. Even accounting for the length of term, which I have done, still I think it did enough.

Applying the regulations surrounding responsible lending I do consider that Sainsbury's carried out proportionate checks. And I do think that Mr P looked able to afford £409 a month. It would not have been expected, and it would have been disproportionate, for Sainsbury's to have asked for and reviewed several sets of personal bank statements before lending Mr P this amount for this loan. I do comment that this was finely balanced as the loan is not small and the term was long at 74 months. But there was nothing to alert Sainsbury's that it ought to have delved deeper.

I plan not to uphold Mr P's complaint about loan 1.

Loan 2

Mr P paid off loan 1 very quickly and Sainsbury's would have noted that. He would have been viewed as a strong customer having repaid the loan early.

In May 2017, Mr P approached Sainsbury's for another loan. Mr P declared he was a single homeowner with no dependants and his annual income was declared at £40,510, equivalent to £2,578.00 net each month. The reason for needing the loan was again declared to be for debt consolidation.

On this occasion when Sainsbury's carried out the credit check, the credit reference agency reported that Mr P had £7,100 total unsecured debt of which £50.00 was revolving credit (meaning credit cards or similar) with existing debt payments of £149.00 each month. Mr P informed Sainsbury's on his application he had mortgage contributions of £650.00. His monthly expenditure was calculated at £300.00 which appears to have been by using ONS statistics again. There were no adverse markers on his credit record. So, Mr P's income looked to have been enough to cover the loan 2 repayments of around £397 a month. The term was long at 60 months.

One perspective was that Mr P was a returning customer with a good repayment record and what seemed to have been enough to repay a similar sized loan for a smaller term.

However, another perspective is the fact was that Mr P had needed £46,000 of credit from Sainsbury's in a very short period – six months. And I think probably it ought to have acted as an alert. And this loan application was for £22,000 despite Mr P's credit search demonstrating to Sainsbury's that his debt was not that high at only £7,100. Yet Mr P had told it that he wanted the money for debt consolidation.

I do take Mr P's point that he'd also applied for and obtained one other loan since paying off loan 1. This was a Peer 2 Peer platform loan taken in March 2017.

So, I've thought about this and reviewed the information Sainsbury's obtained from the credit search it did for loan 2. It knew of one loan being repaid at about £149 a month. But the March 2017 loan (which I know to have been about £289 a month from Mr P's evidence) from April 2017, was not picked up in that search.

There may be a few reasons for this and one very likely one is that Mr P had obtained it within a short space of time of applying for loan 2. Credit reference agency records can take many weeks to be altered. So, I do not consider it unreasonable that Sainsbury's was not aware at the time. Another reason is that not all searches by lenders show all details an individual may expect it to see.

But – would it have made a difference if Sainsbury's had added in that additional £289 each month for the other loan repayment and I think not. As Mr P's I&E indicated he could have afforded that as well.

Having said all that, I do consider that for a second loan for such a large sum and so close to the first loan further checks ought to have been carried out. I think a full financial review of Mr P's situation ought to have been carried out. And I think that may well have included obtaining payslips, checking his debt situation, checking his outgoings for all the usual items such as bills, travel, food, and other items in a more detailed way than simply using ONS statistics and averages.

So, I have thought very carefully as to what it is that Sainsbury's may have used and asked for had it looked into Mr P's financial situation in more depth. It could have asked for payslips. It could also have asked for a copy bank statement showing his salary crediting the account. If it did it would have received a copy of the account held with Bank A.

That set of statements does show Mr P's salary and I think reviewing March 2017 and April 2017 for a May 2017 loan application would have been a fair and reasonable period – no further back than that. This would have shown salary credits from his employer of around £2,780 for those months.

This copy statement would also have shown that he had no other outgoings other than two regular transfers out of £1,300 and around £1,480 to other accounts both of which appear to bear Mr P's name. It would then leave that account at £0 until the next salary credit at the end of the month. So, this would not have been recognised as a true picture surrounding Mr P's daily financial situation. And I think that any fair and reasonable lender would have wanted to know more.

One transfer relates to the £1,300 loan about which Mr P has given us an explanation. And I maintain that I'd consider it fair and reasonable for Sainsbury's to discount this as it does not appear to be a debt commitment in Mr P's name.

On 3 April 2017 it's clear that one of these transfers (around £1,480) was from Bank A was to another bank account – one ending *3115. I'll call it Bank N. So, if Sainsbury's had followed that money trail and asked to see copies of Bank N statements, it may have seen some more details.

On the same day, from Bank N, Sainsbury's may have seen that a payment of £1,000 was made to what appears to be a betting or gambling site. But I do note that the account with Bank N from which this transaction was made was £5,361 in credit at the time. And this would have been the first time Sainsbury's may well have seen anything that remotely resembled a gambling transaction. So, it would not be regarded as a 'problem' and nor should it be when only one transaction may have been observed at that point.

Even the two following on 7 April 2017 would not lead me to expect Sainsburys to think that its applicant, Mr P, had a gambling issue. And as Mr P has told us that he did not think or appreciate he may have had a gambling issue at that time then I doubt that this would have raised its head.

These sets of statements demonstrate that Mr P was also making regular and relatively ordinary payments in relation to food purchases, household maintenance and what may have been other investments. But not many bills and so overall the ONS figure of £300 seems to have been a reasonable figure to use.

If it had obtained the Bank N statements, Sainsbury's would have seen that Mr P applied for and received funds for £9,800 from another lender on 17 March 2017 which credited Bank N. Payments for that started to be taken around 18 April 2017 and can be seen debiting the Bank N account – around £289. And I've dealt with that earlier in the decision.

I've noted that Mr P was receiving regular credits into the Bank N account from an individual and it's not been explained what those were for. An example was 27 April 2017 when £890 credited Bank N.

It also appears that additional credits were being transferred from a third account (not Bank A) relatively regularly – an example is £1,000 on 18 April 2017 and £1,500 on 2 May 2017. These seem to come from Mr P's third account. Plus, the credit from Bank A (by transfer) on the same day meant that in early May 2017 Bank N's account was almost £4,000 in credit and there'd been two possible sets of gambling transactions.

So, overall, when it came to Mr P applying for loan 2, a £22,000 loan when the credit bureau registered debt was only £7,100 and his current account was in credit, then this research may have satisfied Sainsbury's concerns.

And I say that because the gambling transactions for the two months or so leading up to his loan 2 application (which I consider all it needed to have reviewed) were sparse and done when he was in credit. And Mr P had said he was needing the loan for debt consolidation which may have led to him reducing the debt he already had.

I do need to factor into this review that Mr P had said he was going to consolidate any debt he had which would have led to a rationalisation of any debt repayments he already had before applying for loan 2, and may well have led to a reduction in the expenditure element of his I&E.

Overall, I do not find it persuasive that Mr P was overindebted and was involved in extensive gambling transactions such that a legitimate, low interest loan from a bank after successfully repaying the earlier loan was an application Sainsbury's would have felt compelled to turn down. In the circumstances and having gone into a lot of detail I plan not to uphold Mr P's complaint.

My further findings since the provisional decision was issued.

I address Mr P's submissions made since the provisional decision was issued. Each paragraph is labelled to dovetail with those in the *'what happened'* section of this final decision.

A I did address a similar point in my provisional decision. And I think the November 2016 loan Mr P is referring to here was the Sainsbury's loan 1. In my provisional decision I recognised that Sainsbury's would have known Mr P had asked for a loan from it in November 2017 for £24,000 and was returning in May 2017 for a £22,000 loan within six months. I said:

> *'However, another perspective is the fact was that Mr P had needed £46,000 of credit from Sainsbury's in a very short period – six months. And I think probably it ought to have acted as an alert. And this loan application was for £22,000 despite Mr P's credit search demonstrating to Sainsbury's that his debt was not that high at only £7,100. Yet Mr P had told it that he wanted the money for debt consolidation.'*

So, I have already recognised that Sainsbury's own knowledge ought to have precipitated it to look into Mr P's financial situation more deeply when he returned for loan 2.

In relation to the September 2016 loan, which Mr P has told us he took and paid off in January 2017, Mr P applied for the Sainsburys' loan 2 in May 2017 which was several months after that September 2016 had been paid off. It's not expected when carrying out a creditworthiness assessment about affordability of a loan which imposes a future payment liability for a lender to check all closed loans. That's not necessarily logical or proportionate. Closed loans no longer add to a person's cost liability going forward.

And Mr P's additional submissions on this point appear to be suggesting that Sainsburys ought to have been wondering how it was he had managed to pay off the earlier two loans in January 2017. But I don't think it would. It's not incumbent on a professional lender to wonder how a person has successfully repaid a previous and closed loan.

I add, that a successful and early repayment of loans often enhance a person's credit report status – it's not usually a detrimental addition to a credit report.

I dealt with the March 2017 loan for £9,800 in detail as part of what I said about loan 2 in my provisional decision. I repeat what I said in the provisional decision here.

B I disagree. Two months before a loan application is sufficient and reasonable. Six months is disproportionate.

C I don't consider that Sainsbury's can be expected to have considered that a couple of gambling transactions when the account was around £4,000 in credit would likely point to a problem.

And as Mr P had not realised that he had a gambling issue then I repeat what I've said before that I do not consider it reasonable for Sainsbury's to have recognised Mr P had a gambling problem.

Plus, even if Sainsbury's had obtained copy bank statements and had noticed something and had asked him about these transactions, I doubt that Mr P would have said to Sainsbury's that he had a gambling problem as Mr P has been clear when he has told us that he had not recognised it himself at that point.

D There's no requirement for a lender to ask for payslips. The £1,300 payments out of Bank A were going to another account which appeared to bear Mr P's name. So, there would be no reason to have known that this was not going to an account to which Mr P had access and so would have been another source of funds. I don't consider that would necessarily have been seen as a concern to Sainsbury's.

E The credit search Sainsbury's did in May 2017 showed that Mr P's debt level had reduced and to an amount that could reasonably be described as a relatively modest total debt figure of around £7,100. So that would have led Sainsburys to consider Mr P was a good contender for a loan, and not necessarily have led it to question why Mr P wanted the money. Every individual may have reasons as to why loans are required.

And as Mr P had said to Sainsburys that he wanted the £22,000 for debt consolidation, then the refinancing or consolidating of some debt and having money left over to spend would not, in my view, have necessarily led to Sainsburys considering that an unusual action.

F Mr P said that other complaints brought by him have been upheld. But my response is that all complaints which come to the Financial Ombudsman are considered individually and on their own merits within the context of those circumstances.

I appreciate Mr P has made many submissions, but Mr P has not addressed some of the points I specifically raised in the provisional decision. For instance – the credits from an individual into Bank N regularly in 2017 and transfers into his account from what may be a third bank account in his name around the same time. I've received no further explanation for those which inevitably augmented Mr P's income and improved his financial situation.

Having looked at everything again, and having considered all of Mr P’s recent submissions, I have decided the affordability checks were proportionate for loan 1 and the loan was not approved irresponsibly.

For loan 2 I think that additional checks probably ought to have been carried out, but if they had been I have decided it would not have made a difference to the lending decision made by Sainsburys in May 2017. My reasoning has been set out in the provisional decision, which has been duplicated in this decision, together with the additional findings I’ve made to respond to Mr P’s submissions.

For the same reasons set out in my provisional decision which are repeated here, and for the reasons given in this decision, I do not uphold the complaint.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 1 July 2024.

Rachael Williams
Ombudsman