DRN-4779001

The complaint

Mr K complains that Sainsbury's Bank Plc was irresponsible when it offered him credit and later increased his credit limit.

What happened

Sainsbury’s opened a credit card account for Mr K in September 2021 with a credit limit of £8,000. This type of credit was an open-ended or running account facility. Sainsbury’s subsequently increased Mr K’s limit to £9,600 in June 2022 and again to £10,800 in February 2023.

Mr K complained to Sainsbury’s in late 2023 that the credit was unaffordable for him. He said Sainsbury’s didn’t carry out the necessary checks when it opened the account for him or later when it increased his credit limits. Mr K said that he was struggling with his finances and Sainsbury’s didn’t consider whether or not he’d be able to repay the credit. Sainsbury’s said that it checked Mr K’s credit file as part of its affordability assessment before opening the account for him. It also conducted an affordability assessment and considered how he had managed the account and other credit products before increasing his limit. Sainsburys didn’t agree that it had lent irresponsibly and didn’t uphold Mr K’s complaint.

Mr K referred his complaint to us. Our investigator assessed the complaint and found that Sainsbury’s wasn’t irresponsible to have opened the account for Mr K but that it shouldn’t have increased his limit after that. They found that Sainsbury’s should have seen from the information it had that Mr K was having difficulty managing his finances and further credit was likely to be unaffordable for him.

Sainsbury’s disagreed with our investigator’s recommendation and asked for the complaint to come to an ombudsman to decide. I issued a provisional decision on the 3 April 2024 explaining why I thought Mr K’s complaint should be upheld in full. I allowed time for comments or new information from either party. Both parties confirmed they received my provisional decision and had nothing further to add.

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.

Having reviewed everything again and, having no new information to consider, I see no reason to depart from my provisional conclusions. I’ll set out again my reasons for upholding Mr K’s complaint in full in this final decision.

As before, I’ve had regard to the regulator’s rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as Sainsbury’s, need to abide by. Sainsbury’s will be aware of these, and our approach to this type of lending is set out on our website, so I won’t refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement, Sainsbury's needed to check that Mr K could afford to repay the credit out of his usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit, for example the amount offered, and to Mr K's particular circumstances, and Sainsbury's had to pay proper regard to the outcome of the assessment with regard to affordability risk. Ultimately, Sainsbury's needed to treat Mr K fairly and take full account of his interests when making its lending decisions.

With this in mind, my considerations are did Sainsbury's complete reasonable and proportionate checks when it first opened the account for Mr K and on each occasion it increased his credit limit to satisfy itself that he would be able to repay the credit offered within a reasonable period of time? If it didn't do this, what would reasonable and proportionate checks have shown? Did Sainsbury's make fair lending decisions?

Sainsbury's provided the information it relied on which included Mr K's application form, information from the credit reference agencies, account statements and a summary history showing the account balance. Mr K provided bank statements for the account his income was paid into around the time of the account opening and told us about his expenses at the time.

Mr K told Sainsbury's his annual salary was £21,723 when he applied for the account, and Sainsbury's estimated that this gave him a monthly wage of around £1,539. Sainsbury's said that in the time since Mr K made his application it has introduced an income check which reviews applicants' balances in their bank accounts and their outgoings. When Mr K complained, Sainsbury's used this system to verify his income figure and was satisfied he hadn't misrepresented it.

Sainsbury's recorded that Mr K had little existing debt when he applied for credit, apart from his mortgage with a monthly repayment of £892 and a credit card with a balance of less than £1,000. Mr K transferred his existing credit card balance to his new Sainsbury's account shortly after opening it. There was no adverse information recorded on Mr K's credit file, such as court judgements or defaults.

Sainsbury's found that Mr K was jointly liable for his mortgage and assumed he split other household bills with his partner. It concluded that Mr K could afford to make the full monthly mortgage payment himself if needed, and maintain his new credit card because the minimum payment would never exceed £280 per month if he kept within the account's terms and conditions. Sainsbury's estimated that Mr K would be left with sufficient money each month to meet his household expenses even if his partner contributed nothing to these which, it said, wasn't likely to be the case. Sainsbury's concluded that the credit card was affordable for Mr K.

As Sainsbury's will know, it needed to check that Mr K could afford to repay the credit offered within a reasonable period of time without it impacting adversely on his finances, not simply that he could maintain the minimum payments. As our investigator explained, repaying the credit offered within a reasonable time would mean Mr K's repayments were likely to be closer to £400 a month. This would leave Mr K around £250 to cover other monthly costs should he need to meet his full mortgage payment in any month, assuming his wages amounted to £1,539.

The regulations state that a high risk that one repayment will be missed or will be late may be indicative that the level of affordability risk arising out of the agreement is high. I think Sainsbury's should have seen that the level of affordability risk arising out of its assessment was high and declined to offer this amount of credit to Mr K, even without conducting a more rigorous affordability assessment.

The regulations also state that when considering a customer's income in an affordability assessment it isn't generally sufficient to rely solely on a statement of current income made by the customer without independent evidence, which is what Sainsbury's seems to have done here. Sainsbury's was offering Mr K a relatively high credit limit which could potentially use a sizeable amount of his estimated wages to repay each month, so I'd have expected Sainsburys to have independently checked his income.

Mr K provided his bank statements for the three months prior to the account opening which show that his income was less than the figure Sainsbury's relied on at around £1,450 on average, leaving him even less to meet his expenses than it had estimated. Mr K told us about his sole and shared living costs, some of which are identifiable on his bank statements. Shared living costs for council tax, utilities, media, insurances, transport and food came to about £900 and his sole living costs came to about £150. On balance, I don't think a more rigorous check would have reassured Sainsbury's that Mr K would be able to repay the amount of credit it offered him within a reasonable period of time without difficulty. I've concluded that Sainsbury's didn't pay due regard to Mr K's interests or treat him fairly when it opened the account for him with an £8,000 credit limit.

Sainsbury's increased Mr K's limit in June 2022 and again in February 2023 and for the same reasons as I've explained above, I don't think it made fair lending decisions when it did so. I haven't seen anything which suggests to me that Mr K's disposable income increased over the time he held the account. The account information shows that within a year of the account opening Mr K had taken 28 cash advances amounting to £1,765, most of which were cash withdrawals, and his total unsecured debts had increased to £13,850. And, while Mr K was using his card for entertainment purchases, he was also using it in a large part for essential spending such as food and travel.

In response to our investigator's findings Sainsbury's said "While cash withdrawals may not be the most effective method of borrowing due to the interest applied, this is a valid use of the card and in and of itself does not necessarily mean there is financial difficulty." Sainsbury's said that there was no escalation in terms of the frequency or amount of cash withdrawals which suggested that Mr K was choosing to use the card in this way as a matter of personal preference and he should not be penalised for this. Sainsbury's noted that Mr K cleared the balance on his card twice, in November 2022 and December 2023.

I can agree with Sainsbury's that, of itself, cash withdrawals are not always an indication of financial difficulty. In this case, however, the frequency of the withdrawals is concerning in the context of Mr K's ever increasing amount of debt – Sainsbury's recorded Mr K's total unsecured debts as £31,350 by October 2023. I think it's more likely than not that Mr K didn't manage to meet his repayments for the credit out of his usual means without borrowing from elsewhere.

In summary, I've concluded that Sainsbury's didn't lend responsibly here when it provided Mr K with a credit card account with an £8,000 limit and when it later increased this limit on two occasions. Mr K's paid interest and charges for this credit and Sainsbury's needs to take the below steps to put things right for him.

Putting things right

I think it's fair that Mr K repays the credit he borrowed as he's had the use of the money but I don't think it's fair that he pays any interest, fees or premiums associated with the account. Therefore, Sainsbury's should:

- Rework the account removing all interest, charges or insurance premiums that have been applied from the beginning;
- If the rework results in a credit balance, this should be refunded to Mr K along with 8% simple interest per year** calculated from the date of each overpayment to the date of settlement. Sainsbury's should also remove all adverse information regarding the account from Mr K's credit file; or
- If there is still an outstanding capital balance after the rework then Sainsbury's should arrange an affordable repayment plan with Mr K for the remaining amount. Once Mr K has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

** HM Revenue & Customs requires Sainsbury's to take off tax from this interest. Sainsbury's must give Mr K a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons I've set out above, I am upholding Mr K's complaint about Sainsbury's Bank Plc and it now needs to put things right for him as I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 30 May 2024.

Michelle Boundy
Ombudsman