DRN-4795134

The complaint

Mr S is complaining about Sainsbury's Bank Plc because he says it lent irresponsibly by giving him a credit card he couldn't afford. In particular, he says he was gambling heavily and this meant he had debts with various lenders that he was using to pay off each other.

What happened

In October 2010, Mr S took out a credit card with Sainsbury's Bank. The initial limit was set at £3,000 and this was never increased.

Our investigator concluded the complaint should be upheld. She felt Sainsbury's Bank should have carried out a more thorough affordability assessment and concluded it wasn't appropriate to lend to Mr S.

Sainsbury's Bank didn't accept the investigator's assessment and made the following key points:

- Mr S had a fairly low level of debt.
- While he was making significant payments to credit cards, Mr S was paying much more than the minimum payments and that's what it takes into account in making lending decisions.
- Mr S's outgoings only exceeded his income in one of the three months before the card was issued and this was because of high payments to other lenders.
- Gambling is a legitimate activity and it can't discriminate against applicants on these grounds.

The complaint has now been referred to me for review.

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 done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Before lending to Mr S, Sainsbury's Bank was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider are:

- Did Sainsbury's Bank complete reasonable and proportionate checks to establish Mr

S would be able to repay the credit in a sustainable way?

- If so, was the decision to lend fair and reasonable?

- If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

The rules, regulations and good industry practice in place at the time the credit was approved required Sainsbury's Bank to carry out a proportionate and borrower-focused assessment of whether Mr S could afford the repayments. This assessment also had to consider whether the credit could be repaid sustainably. In practice this meant Sainsbury's Bank had to satisfy itself that making payments to the credit wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of him making payments, it had to consider the impact of the repayments on Mr S.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

In general, I think a reasonable and proportionate assessment should be more thorough:

- the lower the customer's income, reflecting that it could be more difficult to make repayments 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 longer the term of the credit, reflecting the fact that the total cost is likely to be greater and the customer is required to make payments for an extended period; and
- the greater the instances and frequency of credit, and the longer the period of time during which a customer has been given credit, reflecting the risk that repeated refinancing may signal borrowing has become unsustainable.

There may also be other factors that could influence how detailed a proportionate check should have been for a given application, including any indications of borrower vulnerability or foreseeable changes in future circumstances.

Sainsbury's Bank has described the information it gathered to assess whether Mr S's credit was affordable before it was approved. This included:

- information contained in his application, including his employment status and income;
- information obtained from a credit reference agency (CRA), giving details of his existing credit arrangements and any past issues with credit; and
- an expenditure assessment using modelled data to calculate key expenses.

Sainsbury's Bank maintains its affordability assessment was proportionate to the credit being given and demonstrated it was affordable.

After carefully reviewing the information Sainsbury's Bank obtained, I think there were factors that should have prompted it to carry out further checks before approving Mr S's credit and I don't agree the affordability assessment was reasonable and proportionate in this case.

The information Sainsbury's Bank has provided covering what it obtained from the CRA is very limited and difficult to interpret clearly. But Mr S has provided a copy of his credit report and I think this is representative of what Sainsbury's Bank would have discovered when carrying out its credit check. This showed he already had credit cards with five other lenders and I think that should have prompted further checks to establish how Mr S was managing his finances, particularly as the credit limit being offered was significant.

I can't know exactly what further checks Sainsbury's Bank might have carried out at the time, but I think a consideration of Mr S's actual income and expenditure would have been reasonable. So we've obtained copies of his bank statements for the three months prior to the lending to establish what information could reasonably have been discovered.

A review of the statements shows Mr S was making large payments to some of his credit card providers, but it also shows these payments were funded by making large withdrawals from other cards. He also made a payment of £1,800 to Everday Lending in August 2020, presumably to pay off a loan but this was also funded by a withdrawal from one of his credit cards. While Mr S may have been keeping up to date with payments towards his existing debt, the bank statements indicate he was in a debt cycle and was essentially 'robbing Peter to pay Paul' rather than actually making any meaningful reduction to the amount he owed.

In making his complaint, Mr S said he had issues with gambling at the time. I think this is also evident from the statements and may well explain why he appears to have been in a cycle of debt. In the three-month period before the Sainsbury's Bank card was issued, I counted 25 separate online gambling transactions totalling over £1,000.

If Sainsbury's Bank had seen all of this information, it's my view that it shouldn't have lent to Mr S. In saying this, I do accept gambling is a legitimate activity but that doesn't alter my view that it's irresponsible to lend if there are signs this might be out of control. Also, the gambling isn't the only issue here and, whether or not the two things were connected, Mr S's recycling of debt is also evidence he wasn't managing his finances well.

In summary, if Sainsbury's Bank had adequately assessed whether the credit repayments were affordable and sustainable, it's my view it shouldn't have lent to Mr S. It's for this reason that that I'm upholding his complaint.

Putting things right

The principal aim of any award I make must be to return Mr S to the position he'd now be in but for the errors or inappropriate actions of Sainsbury's Bank. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think Sainsbury's Bank should have lent to Mr S, I don't think it's fair for him to pay interest or charges on the amount borrowed. But he has had use of the money that was lent, so I think it's fair he repays the amount borrowed (without the addition of interest or charges).

To put things right, Sainsbury's Bank now needs to take the following steps:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since it was opened.

- If the reworking results in a credit balance, this should be paid to Mr S with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires Sainsbury's Bank to deduct tax from any interest. It must provide Mr S with a certificate showing how much tax has been deducted if he asks for one. If Sainsbury's Bank intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance, Sainsbury's Bank should arrange an affordable payment plan with Mr S for the shortfall.

- Remove any adverse information recorded on Mr S's credit file relating to this credit, once any outstanding balance has been repaid.

If Sainsbury's Bank no longer owns the debt, it should liaise with whoever does to ensure any payments Mr S has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

I'm satisfied this represents a fair and reasonable settlement to this complaint.

My final decision

For the reasons I've explained, I'm upholding Mr S's complaint. Subject to his acceptance, Sainsbury's Bank Plc should now put things right as I've 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 27 June 2024.

James Biles
Ombudsman