

The complaint

Mrs H complains that Sainsbury's Bank Plc lent irresponsibly when it approved her credit card application.

What happened

The background to this complaint and my initial conclusions were set out in my provisional decision. I said:

Mrs H applied for a credit card with Sainsbury's Bank in April 2004. In her application, Mrs H said she was employed with an income of £27,000 and was a homeowner. Sainsbury's Bank says it would've carried out a credit search and taken Mrs H's living costs into account, applying its lending criteria to the application. Sainsbury's Bank approved a credit limit of £5,800 and Mrs H said she wanted to complete a balance transfer of £5,500. A third party service later agreed a Debt Management Plan (DMP) for Mrs H's credit card and other debts.

Last year, Mrs H complained that Sainsbury's Bank had lent irresponsibly when it approved her credit card application and failed to complete reasonable checks. Sainsbury's Bank issued a final response on 26 September 2023 and said that, due to the passage of time, there was little information available to show what was considered during the application process. But Sainsbury's Bank says it would have completed a credit search and applied its lending criteria. Sainsbury's Bank didn't agree it lent irresponsibly and didn't uphold Mrs H's complaint.

An investigator at this service looked at Mrs H's complaint. Mrs H was able to provide a copy of her credit file from October 2004. The investigator accepted Mrs H had a high level of borrowing at the time but thought the fact she was applying to complete a balance transfer showed her application to Sainsbury's Bank hadn't impacted her unreasonably. The investigator didn't uphold Mrs H's complaint. Mrs H asked to appeal and said the level of unsecured borrowing she had in her name at the time of application should've shown Sainsbury's Bank she was unable to sustainably support further borrowing. As Mrs H asked to appeal, her complaint has been passed to me to make a decision.

What I've provisionally 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.

When considering Mrs H's case, I've taken into account the relevant rules and regulations that applied to borrowing of this sort that were applicable at the time. The relevant legislation the credit card was approved under was the Consumer Credit Act 1974. In addition, the Banking Code was in place at this time which covered lending assessments required to consider the ability of a borrower to repay the sums borrowed. Factors like an applicant's income and outgoings, repayment history and credit file would've been considered when looking at Mrs H's ability to make repayments.

The issue here is that due to the time between the application Mrs H made and her complaint the available information is limited. Sainsbury's Bank has confirmed it doesn't have a record of the credit file information it found or the lending checks it completed. But a copy of Mrs H's original application, showing her income, residential status and request to complete a £5,500 balance transfer has been provided.

Whilst we don't have credit file information from April 2004, Mrs H has been able to provide a copy of on from October 2004 that shows her debts at the time, including the Sainsbury's Bank credit card. I accept that the credit file was issued six months after the credit card application was made. But I've only factored accounts that were open at the time Mrs H's application to Sainsbury's Bank was made. And whilst I accept the balance may be different from April 2004, on balance, I'm satisfied it's broadly in line with what Sainsbury's Bank would've seen when Mrs H applied. In addition, when reaching my conclusions, I've disregarded the Sainsbury's Bank credit card balance from my assessment, despite £5,500 of the outstanding balance of £5,617 coming from a balance transfer from another credit card.

I think it's reasonable to say that Mrs H had a large number of unsecured debts, most notably credit cards. And some of the balances were substantial. In October 2004, Mrs H owed around £51,287 in credit card and mail order debt and £1,898 in loans. Taking a rough 2.5% of the balances to calculate a minimum payment, Mrs H would've been paying around £1,282 each month towards her credit card debt. Mrs H's loan had a monthly repayment of £210 taking total outgoings for payments towards unsecured debt to around £1,492 each month.

Mrs H gave her income at £27,000 a month. Even using a take home figure of £2,000 a month, that would've only left Mrs H with around £500 surplus income to make mortgage payments and cover all her living expenses like utility bills and transport. Like all of us, Mrs H will also have needed income available to cover day to day living expenses like food and phone costs each month as well. I'm not persuaded Mrs H was left with a reasonable disposable income sufficient to meet her living expenses and priority bills.

I think the investigator made a reasonable point when they said Mrs H applied to complete a balance transfer of £5,500 out of the available £5,800 credit limit, which would've improved her outgoings in the short term. But I think it's fair to say that the balance transfer period was only five months so reasonably short. And I think Sainsbury's Bank's assessment needed to focus on Mrs H's ability to repay the outstanding balance once the promotional interest rate ended after five months and the standard interest rate became applicable. So whilst I accept there would've been a temporary five month period where Mrs H's monthly payments may've gone down, I'm satisfied that Mrs H's situation wasn't improved overall by opening a new credit card with Sainsbury's Bank.

Looking at Mrs H's application and credit file from around the time, I think it should've been clear to Sainsbury's Bank that she was borrowing at an unsustainable rate. Given Mrs H already owed around twice her annual income in unsecured debt, I'm satisfied Sainsbury's Bank needed to be sure she was able to repay the balance without placing unreasonable strain on her. I'm not persuaded that it was reasonable for Sainsbury's Bank to have approved Mrs H's application based on the evidence available. Having considered all the information on file and points made by both sides, I haven't been persuaded Sainsbury's Bank lent responsibly. So I intend to uphold Mrs H's complaint and direct Sainsbury's Bank to refund all interest, fees and charges applied to her credit card from inception onwards.

In response to the decision, Sainsbury's Bank explained it didn't agree with the conclusions I reached. Sainsbury's Bank added that due to the length of time since Mrs H's credit card closed, it no longer has the statements available to show how much interest she'd paid.

Sainsbury's Bank was able to provide some systems evidence that showed Mrs H's credit card incurred £2,204.51 of interest and charges during its lifetime.

I contacted both parties and explained I intended to award Mrs H £2,204.51 plus 8% interest from the default date in 2008 to the date of settlement.

Mrs H went on to provide evidence the original debt that was subsequently purchased by a business I'll refer to as C was repaid in full.

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.

I understand Sainsbury's Bank doesn't agree it lent irresponsibly. But no new evidence that wasn't originally supplied by Sainsbury's Bank in its file submissions has been provided. I haven't been persuaded to change my view of how to fairly resolve Mrs H's complaint.

The lack of statement evidence has made settling Mrs H's case harder. But Sainsbury's Bank has provided systems evidence that shows Mrs H was charged £2,204.51 during the lifetime of the credit card. I'm satisfied that's a reasonable figure for Sainsbury's Bank to use when issuing the refund. In line with our approach to settling complaints, I'm also awarding 8% to that figure from the date of default in 2008 to the date of settlement. Mrs H has confirmed she's willing to proceed on that basis.

Mrs H recently forwarded evidence that she'd settled the debt with its new owners, C. But it appears there a partial settlement was reached and I'm satisfied that the fairest approach here is for the refund, including the 8% interest award, to be forwarded by Sainsbury's Bank to C in the first instance. C can then forward any surplus funds to Mrs H.

My final decision

My decision is that I uphold Mrs H's complaint and direct Sainsbury's Bank Plc to settle as follows:

- Pay Mrs H £2,204.51 (the value of the interest and financial charges applied to the credit card)
- Pay Mrs H 8% interest on that sum from the date of default in 2008 to the date of settlement.
- The settlement should be paid to C which can then forward any surplus funds to Mrs H.

*HM Revenue & Customs requires Sainsbury's Bank to deduct tax from any award of interest. It must give Mrs H a certificate showing how much tax has been taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 24 July 2024.

Marco Manente
Ombudsman