DRN-4906719

The complaint

Mr A complains that Sainsbury's Bank Plc ("Sainsbury's") lent to him in an irresponsible manner.

What happened

Mr A was given a loan by Sainsbury's in January 2023. He borrowed £10,000 that he agreed to repay in 60 monthly instalments of £218.91. Mr A made his first ten repayments as planned. And then he repaid the loan early, in November 2023.

Mr A complained to Sainsbury's that it shouldn't have given the loan to him. He said his finances were under pressure at that time, and that would have been seen if Sainsbury's had done better checks similar to those done by other lenders who had rejected his loan applications. Sainsbury's didn't agree with the complaint. It said Mr A's application met its lending criteria and so his loan was approved. Unhappy with that response Mr A brought his complaint to us.

Mr A's complaint has been assessed by one of our investigators. She didn't think Sainsbury's checks had been sufficient. And she thought that better checks would have shown Sainsbury's that Mr A couldn't sustainably afford the repayments on the loan. So she didn't think the loan should have been approved and she asked Sainsbury's to pay Mr A some compensation.

Sainsbury's didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr A accepts my decision it is legally binding on both parties.

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 approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding Mr A's complaint.

The rules and regulations at the time Sainsbury's gave this loan to Mr A required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This assessment is sometimes 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 credit sustainably would cause difficulties or adverse consequences for Mr A. In practice this meant that Sainsbury's had to ensure that making the repayments wouldn't cause Mr A undue difficulty or adverse consequences. In other words, it wasn't enough for Sainsbury's to simply think about the likelihood of it getting its money back, it had to consider the impact of any repayments on Mr A.

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.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer’s income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);

- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);

- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should’ve been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I’ve kept all of this in mind when thinking about whether Sainsbury’s did what it needed to before agreeing to lend to Mr A.

Sainsbury’s gathered some information from Mr A before it agreed the loan. It asked him for details of his income, and his housing costs. It then used some industry statistical data to estimate the remainder of Mr A’s expenditure. And it checked his credit file to assess how much he was repaying to other creditors and how he had managed credit in the past.

Mr A was entering into a significant commitment with Sainsbury’s. He would need to make monthly repayments for a period of five years. So I would expect that Sainsbury’s would want to gather, and independently check, some detailed information about Mr A’s financial circumstances before it agreed to lend to him. I don’t think that the checks it did were enough. I think it would have been proportionate for Sainsbury’s to independently check the true state of Mr A’s finances before agreeing the loan.

But although I don’t think the checks Sainsbury’s did before agreeing the loan were sufficient, that in itself doesn’t mean that Mr A’s complaint should succeed. I’d also need to be persuaded that what I consider to be proportionate checks would have shown Sainsbury’s that Mr A couldn’t sustainably afford the repayments. So I’ve looked at Mr A’s bank statements, and what he’s told us about his financial situation, to see what better checks would have shown Sainsbury’s.

At this stage I want to be clear that I am not suggesting that this is the exact check that Sainsbury’s should have carried out. I do think Sainsbury’s needed evidence to corroborate what Mr A said was happening with his finances. And looking at his bank statements is one way of achieving that although there are of course many other ways that level of detail could be established. But I think that by looking at Mr A’s bank statements I can get a good idea of what better checks might have shown.

Here I think I should touch on something that Sainsbury's has said in response to our investigator's assessment. In the weeks before taking this loan, Mr A had also borrowed from two other lenders. For obvious reasons those loans didn't appear on the credit checks that Sainsbury's undertook. The credits would however have shown on his bank statements. But Mr A's bank statements were issued to him monthly – so he would have received his bank statement showing the two additional loans after his borrowing from Sainsbury's was approved.

It is possible that, in common with some other lenders, proportionate checks might have involved Sainsbury's seeking online access to Mr A's banking details so those checks would have shown the loans. Or, as Sainsbury's suggests, it might have relied on paper statements meaning the loans wouldn't have been seen. But, as I will now go on to explain, I don't think Sainsbury's should have agreed this loan regardless of whether it was reasonably aware of the additional borrowing that Mr A took in January 2023.

Mr A told Sainsbury's that his housing costs amounted to £200 each month. Sainsbury's would have seen from its credit check that Mr A was actually making repayments on a secured loan of £630 a month. And from his bank statements it is clear that Mr A was responsible for making the whole of that repayment. His bank statements also showed regular monthly expenditure on day to day living costs of over £800.

Mr A's credit file shows that in the last three months of 2022 he'd taken two large loans and appears to have used them to refinance other borrowing on a loan and credit card. So whilst his use of revolving credit, at the time of Sainsbury's credit check, was relatively low, that was only because of his recent refinancing actions. And Sainsbury's own credit check showed that Mr A had unsecured debts at that time in excess of his annual salary.

I think that if Sainsbury's had seen all the information I've set out above it would not have been reasonable to conclude that Mr A could sustainably afford further credit of £10,000 and repayments of more than £200 each month. His other debt repayments, housing costs, and regular expenditure exceeded his normal income. And I think that information would have been seen had Sainsbury's done better checks. So I don't think Sainsbury's lent to Mr A in a responsible manner.

For completeness I've also considered whether Sainsbury's acted unfairly or unreasonably in some other way given what Mr A has complained about, including whether its relationship with him might have been viewed as unfair by a court under s.140A of the Consumer Credit Act 1974. But I'm satisfied the redress I am directing below results in fair compensation for Mr A in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

I don't think Sainsbury's should have agreed to give this loan to Mr A. As I said earlier the loan has now been fully repaid. So to put things right, Sainsbury's should;

- refund all the interest and charges Mr A paid on the loan
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†
- remove any adverse information recorded on Mr A's credit file in relation to the loan.

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

My final decision

My final decision is that I uphold Mr A’s complaint and direct Sainsbury's Bank Plc to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A to accept or reject my decision before 4 September 2024.

Paul Reilly
Ombudsman