DRN-5102512

The complaint

Mr S says that Sainsbury's Bank Plc lent to him irresponsibly when he was granted a personal loan.

What happened

Mr S applied for a £25,000 loan from Sainsbury's Bank on 2 March 2016. It had a term of 62 months, and it was repayable at £518.52 a month. The APR was 8.7% and the total amount repayable after interest and costs was £31,111.20. The purpose for the loan was recorded as 'Car/Bike'.

In December 2022 Mr S made a complaint to Sainsbury's Bank about its decision to lend to him. The reasons for the complaint are familiar to both sides so I don't intend to repeat them in detail here. But, in summary, Mr S said the loan was unaffordable and the decision to lend to him was irresponsible as a result.

In January 2023 Sainsbury's Bank responded to the complaint. In short, it said that it didn't think it had lent irresponsibly and, therefore, it did not uphold the complaint. Unhappy with this, Mr S referred his complaint to the Financial Ombudsman Service in October 2023.

The complaint was looked at by an investigator who identified the complaint had been referred to us more than six months after the final response letter was issued and therefore, he needed to think about whether our service had jurisdiction to consider the complaint. He issued a view in late October 2023 explaining why he thought the complaint had been brought in time and it was, therefore, a complaint our service could consider. Sainsbury's Bank responded accepting our investigators findings, so he went on to consider the merits of the complaint.

In December 2023 the investigator issued his findings in which he concluded it was not wrong of Sainsbury's Bank to lend.

Mr S disagreed with our investigator. And, as it wasn't possible to resolve the complaint informally, it was referred to me to decide.

In the meantime, Sainsbury's Bank said that it does not believe the complaint is within our service's jurisdiction as it had been made too late under the six- and three-year time limit.

I issued a decision on 6 August 2024 in which I said that this complaint is one our service can consider. Therefore, I went on to consider the merits of the complaint.

On 8 October 2024, I issued a provisional decision on the merits of the complaint, in which I said:

The Financial Ombudsman Service has set out its general approach to complaints about irresponsible and unaffordable lending on its website. And having taken this into account along with everything else I need to consider, I've decided that this complaint should not be upheld.

Under the relevant legal and regulatory framework, Sainsbury's Bank was obliged to lend responsibly. This meant that it had to reasonably assess whether Mr S could afford to meet the loan repayments in a sustainable way over the term of the loan in question.

The relevant regulator didn't specify what level of detail such an assessment might require - nor did it set out how such an assessment needed to be carried out in practice. Instead, it said that the necessary level of detail when carrying out a requisite assessment would depend on the risk to the borrower relative to the borrower's financial situation – though it wouldn't necessarily be limited to that.

However, the regulator did define the notion of sustainably repaying debt as being able to meet the repayments of a credit agreement without undue difficulty. And that includes being able to make repayments on time and without taking on additional borrowing to do so while also meeting other reasonable commitments.

So, in keeping with the information on the Financial Ombudsman Service's website, I think there are a number of overarching questions I need to consider when deciding a fair and reasonable outcome given the circumstances of this complaint:

1. Did Sainsbury's Bank carry out reasonable and proportionate checks to satisfy itself that Mr S was likely to have been able to repay the borrowing in a sustainable way?

> *i. If Sainsbury's Bank carried out such checks, did it lend to Mr S responsibly using the information it had?*
>
> *Or*
>
> *ii. If Sainsbury's Bank didn't carry out such checks, would the requisite checks have demonstrated that Mr S was unlikely to have been able to repay the borrowing in a sustainable way?*

2. If relevant, did Mr S lose out as a result of Sainsbury's Bank's decision to lend to him?

What constituted proportionate checks will depend on several factors. And for that reason, determining what these checks looked like in practice when Sainsbury's Bank lent to Mr S wasn't an exact science – and I'd say that's still the case now.

There are, of course, many factors that could be relevant when determining how detailed proportionate checks should have been. And while much will depend on the circumstances in question, the more obvious factors include – though aren't necessarily limited to:

- *the type of credit Mr S was applying for along with the size, length and cost of the borrowing; and*
- *Mr S's financial circumstances – which included his financial history and outlook along with his situation as it was, including signs of vulnerability and/or financial difficulty.*

And generally speaking, the circumstances in which it was reasonable to conclude that a less detailed affordability assessment was proportionate strike me as being more likely to be limited to applicants whose financial situation was stable and whose borrowing was relatively insignificant and short-lived – especially in the early stages of a lending relationship.

<u>Did Sainsbury's Bank carry out reasonable and proportionate checks?</u>

Prior to agreeing to lend Sainsbury's Bank asked Mr S to provide details about his income as well as his monthly expenditure - but only in relation to his rent or mortgage commitments. A credit check was also carried out to identify any other borrowing Mr S may have had at the time.

On his loan application, Mr S declared he was a business owner with a gross annual income of £55,000. This was calculated by Sainsburys Bank to equate to a net monthly income of £3,294. This figure was not verified.

Mr S also declared his mortgage repayment was £750 per month. To this Sainsbury's Bank added £800 for living costs including essential expenses (such as food, travel, electricity/gas etc.) which it estimated based on a statistical model. Sainsbury's Bank also added his existing monthly debt repayments of £674 which was calculated based on his total unsecured debt balance of £18,800 obtained through a credit check.

In doing so, Sainsbury's Bank calculated Mr S had a disposable income of £1,070 each month.

Given these checks and calculations, Sainsbury's Bank believed it was safe to lend to Mr S and that he had enough disposable income to afford the monthly repayments. On face value, I agree it would've looked like the loan was affordable. But it was the responsibility of Sainsbury's Bank to ensure that the loan repayments would not only be affordable at present, but also going forward in a sustainable manner – especially given the length of time Mr S was being expected to maintain these repayments.

Here though, I'm not persuaded the level of checks Sainsbury's Bank carried out were proportionate.

I say this because the loan was for £25,000 – which is a significant amount for any customer. It represented roughly 45% of Mr S's declared gross annual income and he was set to commit around a fifth of his net monthly income to repay that sum over 62 months (five years and two months), which meant he would pay £31,111.20 when the interest on the loan was factored in. And according to the checks Sainsbury's Bank carried out Mr S already had just over £18,800 in existing unsecured debt which, as a proportion of his declared gross annual income, was reasonably significant.

Keeping in mind the loan term and amount, I think Sainsbury's Bank needed to do more to ensure it had a proper understanding of Mr S's overall financial situation to be satisfied he could afford the loan sustainably for the next five years. I think such checks were not only proportionate but also necessary to determining whether the loan in question was likely to prove repayable on a sustainable basis.

I appreciate Sainsbury's Bank asked Mr S to confirm certain information, including his income at the time, and I also acknowledge lenders like Sainsbury's Bank are entitled to expect prospective borrowers to answer questions about their financial circumstances in good faith. However, the regulatory expectations at the time imposed on Sainsbury's Bank a responsibility to verify the income and expenditure declared by Mr S should the circumstances warrant it. And CONC, as I read it, anticipated that applicants may not always provide entirely accurate information. After all, that's why the rules and guidance at the time in question asked lenders to ensure that they had clear and effective processes and procedures in place to assess affordability (CONC 5.3.2R) – which included taking adequate steps to ensure that the information provided by an applicant was complete and correct (CONC 5.3.3G).

I've thought about the overall circumstances in which the application was made and, having done so, I don't think the checks Sainsbury's Bank carried out were reasonable and proportionate.

<u>Would reasonable and proportionate checks have demonstrated that Mr S was likely to have been able to repay the borrowing in a sustainable way?</u>

It isn't possible to determine with certainty what reasonable and proportionate checks would have shown Sainsbury's Bank in practice as I don't know what checks it would have decided to carry out if it had its time again.

As a result, what I'm considering here is the likelihood of reasonable and proportionate checks showing Sainsbury's Bank that Mr S would have been able to sustainably repay the borrowing in question. And for that reason, it is necessary to now consider information that Sainsbury's Bank hadn't considered in March 2016.

Sainsbury's Bank could have obtained a deeper understanding of Mr S's financial circumstances by asking for his bank statements. However, due to the passage of time, Mr S has been unable to provide us with his bank statements for the months around the time of the lending despite his best efforts with his bank. I'd like to thank Mr S for trying his best to obtain this information.

However, without this information I'm unable to reasonably understand what Mr S's actual financial circumstances – including his income and expenditure - looked like at the point of sale. As a result, I'm unable to conclude that proportionate checks would have shown the agreement was unaffordable. I simply don't have enough evidence to suggest this.

Mr S has been able to provide us with his tax return for the full financial year prior to the lending in question (2014/2015)[1]. The lending in question took place in early March 2016, so the tax return provides a picture of Mr S's income around 11 months prior to the lending in question. However, particularly bearing in mind self-employed persons often experience fluctuations in their income, I don't think I can safely rely on the tax returns for the previous financial year as providing an accurate picture of his income at the point of sale. It is simply too far removed. And, importantly, I don't think it is representative of the information Sainsbury's Bank would have seen if it had asked more questions about Mr S's financial situation prior to agreeing the loan.

In summary, in the absence of further evidence suggesting otherwise, my conclusion at this stage is that I think Sainsbury's Bank made a fair lending decision.

In reaching my conclusions, I've also considered whether the lending relationship between Sainsbury's Bank and Mr S might have been unfair to Mr S under section 140A of the Consumer Credit Act 1974.

However, for the reasons I've already given, I don't think Sainsbury's Bank lent irresponsibly to Mr S or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

I gave both parties an opportunity to respond to my provisional decision.

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[1] For completeness, Mr S's tax returns show his gross annual income for 2014/2015 was £22,666 which, once relevant income tax and national insurance deductions have been applied, equates to approximately £1,500 net per month

Sainsbury’s Bank accepted my provisional decision. Mr S did not respond.

The deadline to provide further submissions was 22 October 2024. As that deadline has now lapsed, I’ve reviewed the complaint again.

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 reconsidered the available evidence in this complaint – and in the absence of any further submissions or evidence from either party - I see no reason to depart from the findings set out in my provisional decision.

This being that, in the absence of evidence to suggest otherwise, I think Sainsbury’s Bank made a fair lending decision. It follows that I don’t uphold this complaint.

My final decision

For the reasons I’ve explained, my final decision is that I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 21 November 2024.

Ross Phillips
Ombudsman