

complaint

Mr A complains that Sainsbury's Bank Plc has unfairly refused to remove a default registered on his credit file.

background

Mr A has a personal loan with Sainsbury's Bank. Towards the end of 2014 Mr A had some unexpected financial setbacks and could not keep up his repayments. Mr A says that, even though he told Sainsbury's Bank about these problems and was given time to make up the repayments, it still registered the default on his credit file.

A few months later Mr A was told by Sainsbury's Bank, during a phone call, that the default would be removed. When it was not, Mr A contacted Sainsbury's Bank again and it agreed to remove the registration and pay Mr A £50.

As Mr A did not make the necessary repayments and the default was registered again. Mr A says that the default should not have been registered in the circumstances, and that this prevented him from re-mortgaging onto much better terms which, in turn, would have enabled him to improve his overall financial position.

Sainsbury's Bank said it had made a mistake in telling Mr A that the default registration would be removed. But it said Mr A had, in any event, not made the necessary repayments and so it believed it was entitled to register the default.

As things were not settled, Mr A brought the complaint to this service where an adjudicator investigated it. From the evidence, the adjudicator considered that Mr A had been misled by Sainsbury's Bank about the default.

But the adjudicator was not persuaded that, if Mr A had been given the correct information about the default, he would have been in a position to make the necessary payments to avoid the default being registered.

The adjudicator felt that the £50 Sainsbury's Bank had already paid Mr A in respect of its accepted error was not sufficient in the circumstances – and recommended that it should increase the compensation to £100 and also refund the £10 that Mr A paid for his data access. The adjudicator also said that, if the account remained in default, charges and interest should not be applied.

Sainsbury's Bank agreed to the adjudicator's recommendations. Mr A did not agree and provided his response, including that he would have done anything necessary to maintain the repayments if he had been told that the default was going to be replaced. He said this could have been paid from his wife's account and he provided copy statements for the relevant period.

In the light of this new evidence, the adjudicator considered that Sainsbury's Bank should remove the default and adverse marking information in relation to the loan from Mr A's credit file, in addition to paying the increased compensation and refunding the £10 charge.

Sainsbury's Bank said that it would need Mr A to repay the existing arrears and confirm that he could resume the contractual repayments before it would be willing to remove the default. It also asked why Mr A had made no repayments at all since August 2015.

Mr A confirmed he was in a position to repay the arrears and maintain repayments going forward, but Sainsbury's Bank said it wanted better evidence of his ability to do that. It then said that it would prefer to have an ombudsman's decision in the matter.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's not in dispute that Mr A was given incorrect information by Sainsbury's Bank about the default. The adjudicator looked into what Mr A would probably have done differently, if he had been given the correct information.

Once Mr A provided credible evidence that the repayments would have been made from his wife's account, the adjudicator recommended that the default registration and adverse information should be removed in respect of the loan – together with a payment to bring the compensation up to £100 and a refund of the £10 fee for data access.

Sainsbury's Bank has raised some objections to that, on the basis that it cannot be certain the payments would have been maintained – or that they will be maintained going forward.

In considering what would be a fair outcome for this complaint, I have taken account of the acts and omissions of both parties to the dispute. I find, on balance, that Mr A would have managed to make the loan repayments if he had realised the true position.

He accepts that he will repay the arrears now outstanding and has confirmed that he will meet the contractual repayments going forward. He has provided his bank statements to show his current financial position and salary.

On that basis, I find that it is fair for Sainsbury's Bank to instruct the credit reference agencies to remove the default and adverse credit information about the loan, as soon as it receives Mr A's payment for the outstanding arrears.

I would add that Sainsbury's Bank does not control the credit reference companies' databases. So it will be dependent on those companies to apply the alterations to the data as soon as is practicable.

Mr A is also aware that, should he not maintain repayments going forward, Sainsbury's Bank will be entitled to register default in the usual way. It will be for Mr A to ensure that he repays the current outstanding arrears figure in full, and to put in place arrangements to maintain the full repayments going forward.

my final decision

My final decision is that I uphold this complaint in part and I direct Sainsbury's Bank Plc to:

- pay Mr A a further £50 and refund his data access fee of £10; *and*
- on receipt of payment from Mr A of the full arrears on the loan, immediately instruct the relevant credit reference agencies to remove the default and adverse credit information it has registered about the loan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 10 March 2016.

Jane Hingston
ombudsman