

complaint

Mrs W and the estate of Mr W have complained about Sainsbury's Bank Plc's decision to approve a loan in 2015. Mrs W is also unhappy with the treatment she's received after her husband died.

background

I issued by provisional decision on this case on 12 December 2019, which is attached and forms part of my final decision. In this I explained I why intended to not uphold Mrs W's complaint.

I gave both parties the opportunity to send me any further information or comments they'd like me to consider before I made my final decision.

responses

Sainsbury's said it accepted the findings of my provisional decision.

Mrs W's daughter, acting as her representative, made some further comments. She said she still didn't feel Sainsbury's attempted to help Mrs W's situation by continuing to charge interest until the default was applied. So, she felt Mrs W's only option was to accept the default which she didn't want to do.

She also suggested that Sainsbury's should implement a process where discretion could be placed on an account when a bereavement happens.

Because of this, she suggested that Sainsbury's should refund the interest and any late payment fees that were charged to the account before it defaulted as a gesture of good will before mutually agreeing an affordable repayment plan.

my findings

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 don't find myself changing my previous conclusions.

I understand that Mrs W is unhappy that additional interest was applied when she couldn't pay the originally agreed monthly payment. I've seen no evidence that any late payment fees were charged. So, she doesn't think Sainsbury's attempted to help her situation.

But I think they have. They agreed to a repayment plan to recognise Mrs W's situation and continued to operate the account as normal, allowing her an opportunity to pay off the loan without defaulting the account as she requested. So, with the account operating as normal, I think they were fair to charge additional interest in line with the terms of the loan agreement which states *"We also charge you interest on all other money due to us under this agreement. This includes unpaid interest and expenses."*

Mrs W has also suggested Sainsbury's should look to implement a process where discretion can be applied when there's been a bereavement. But it's not the role of this office to tell Sainsbury's or any other financial institution what policies they should implement. Instead, we ensure they've followed the policies they have in place correctly and fairly.

The terms and conditions of the loan agreement explains *“If this agreement is a joint account these conditions apply to both of you together or either of you on your own. For example, if you owe use money we can claim it back from either of you. If one of you dies, your estate will become responsible for repayment of the loan along with the survivor of you.”* So, I think Sainsbury’s have followed the terms of their policy fairly on this occasion. That isn’t to say I don’t understand the stress Mrs W would have felt needing to maintain a joint loan on her own with a reduce income.

For these reasons, I don’t think it would be fair for me to decide that Sainsbury’s should refund the additional interest that accrued on the account. I understand this has been a difficult situation for Mrs W and this isn’t the answer she wanted. But I don’t think Sainsbury’s have acted either unfairly or unreasonably, so I don’t think they need to take any further action.

my final decision

For the reasons outlined above, I don’t uphold Mrs W’s complaint about Sainsbury’s Bank Plc.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs W to accept or reject my decision before 20 February 2020.

Josh Haskey
ombudsman

Copy of provisional decision

complaint

Mrs W and the estate of Mr W have complained about Sainsbury's Bank Plc's decision to approve a loan in 2015. Mrs W is also unhappy with the treatment she's received after her husband died.

background

Mr W was turned down for a loan with Sainsbury's in 2011. Mr and Mrs W were successful in applying for a joint loan in 2015 and made the agreed payments up until Mr W's passing in early 2018.

Mrs W's daughter was appointed executor of Mr W's estate. She wrote to Sainsbury's to make them aware of Mr W's passing and asked for the account to be closed due to the financial situation Mrs W now found herself in.

Sainsbury's didn't agree to this but agreed to a repayment plan of £50 a month. This was increased twice over the next year, to £150 and then £200 a month due to changes in Mrs W's financial situation. All three amounts were less than the monthly payment agreed when the loan was approved. Because of this, the loan continued to build arrears. In January 2019, Sainsbury's sent a default notice to Mrs W.

Mrs W has been represented by her daughter when complaining to Sainsbury's. She said Sainsbury's were irresponsible when approving the loan as Mr W's income information was inaccurate. So, Mrs W shouldn't be liable for the remaining amount. She's also said Sainsbury's have pressured Mrs W into paying the outstanding arrears despite knowing this isn't possible. This has caused Mrs W to worry which has impacted her wellbeing during a difficult time.

Sainsbury's said they completed all the necessary checks before approving the loan. They said Mr W provided his income and expenditure information so they were reasonable to assume it was correct. They also said they acted fairly when issuing the default as the account had been in arrears for a period of time and Mrs W was made aware that a default was a possibility. Mrs W was unhappy with this response, so she referred her complaint to us.

An investigator looked into the complaint and upheld it. He said he didn't think Sainsbury's had been irresponsible when approving the loan. But he thought they'd acted unfairly when issuing a default notice without speaking to Mrs W or her daughter first. So, he thought Sainsbury's should pay Mrs W £200 to recognise the worry this caused. Mrs W's daughter accepted this view on Mrs W's behalf.

Sainsbury's disagreed. They said the default process was automatic and that Mrs W and her daughter were aware of the potential default. So, they thought it was unreasonable to expect them to make a manual call to explain the notice was going to be sent. They also said they'd assess the current £200 payment with Mrs W if this was affecting her financial situation. As Sainsbury's disagreed, the complaint has been passed to me for a decision.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Based on what I've seen so far, I don't think the complaint should be held and I'll explain why.

Affordability of the loan

I've first considered whether Sainsbury's were reasonable to approve the loan in 2015. I'm aware Mrs W and her daughter believe Sainsbury's didn't do enough to check the loan was affordable and that the income information was correct.

I've seen that Mr W had an application for credit declined in 2011 and Mrs W thinks this shows the application in 2015 shouldn't have been approved. But Sainsbury's haven't been able to provide the information about this application due to the length of the time since it was made. They've said their lending policy changes frequently. This isn't unusual within the industry and I don't think it would be fair me to decide that Sainsbury's should've considered the rejection from four years previously. So, I've concentrated on the application in 2015 and the information Sainsbury's had access to at that time.

I've seen the application was for a joint consolidation loan of £13,240. In the application, it states Mr and Mrs W's joint monthly income was £2,800, with £2,426.67 of this amount coming from Mr W. Sainsbury's processed the loan application on this basis. I've also seen the terms and conditions that were included alongside the loan agreement. They show total monthly income for the application as £2,800 and say *"The following information was provided by you in support of your application. We have relied on this in agreeing to enter into the loan with you."*

Both Mr and Mrs W signed the loan agreement, agreeing to the terms and conditions. By doing so, they agreed that the income information was correct. Because of this, I think Sainsbury's were entitled to trust that their income was £2,800 and I wouldn't have expected them to question this further. So, even though I've seen that Mr W's monthly income was lower in his 2015 P60, I don't think Sainsbury's were aware of this so acted reasonably when processing the application on that information.

As part of the application, Sainsbury's ran a credit check which showed both Mr and Mrs W were maintaining their existing credit. They were also able to consider the way Mr W handled the separate credit card account he held with them, where I've seen he consistently met his minimum monthly payments. When considering these, I don't think there were any obvious reasons to suggest Sainsbury's should have declined the application. So, I think Sainsbury's have acted fairly when approving the loan as the information they had available suggested it was affordable.

I note Mrs W's daughter has also provided details of Mr W's medical history to show Mr W suffered from the stress of having to maintain the loan. But I've seen no evidence that Sainsbury's were made aware of Mr W's deteriorating health either at the time of the application or during the period of the loan. So as it's likely they were unaware of Mr W's deteriorating health, I don't think Sainsbury's acted unfairly towards him whilst he was involved in maintain the repayments.

Financial difficulties

When a lender becomes aware that a customer is in financial difficulty, I'd expect them to act positively and sympathetically to that customer's individual situation. So, I've looked into whether Sainsbury's did so.

I've seen that after being made aware of Mr W's passing, Sainsbury's passed the loan account to their customer priorities team. They then requested an income and expenditure form to help them understand the financial situation Mrs W was in and what she'd reasonably be able to repay.

I've listened to the call that Sainsbury's had with Mrs W's daughter on 10 April 2018, after the income and expenditure form had been received. On this call, they explained that they were unable to write off the debt as it was a joint loan held in both names. But, they acknowledged Mrs W's circumstances and a £50 a month payment plan was agreed for the period of 12 months. I think this shows Sainsbury's acting positively and sympathetically as this amount was less than the actual monthly payment of £245.83 they were owed.

On this call they also explained that, as the amount didn't cover the actual monthly payment, arrears would build. They explained that due to this, it was likely the account would be defaulted and passed to their recovery team within three to six months. Mrs W's daughter asked what this meant and she accepted the impact on Mrs W's credit file wouldn't matter as she wouldn't need to apply for any further credit.

Crucially, Sainsbury's also explained that when the account was passed to the recovery team, Mrs W would receive two letters that were legally required to be sent. They did this to try and prevent any worry these letters would cause.

I've seen that Mrs W continued to pay the agreed reduced amount of £50 before offering to pay a higher amount in November 2018, where a new figure of £150 was agreed. Throughout this time, the arrears on the account continued to build as the full monthly amount wasn't being paid. The terms and conditions of the loan agreement Mrs W agreed to says *"We may terminate your loan agreement and you must pay us the total amount owing straight away if you do not pay the monthly payment by the payment day each month"*. So, I think Sainsbury's were fair to default the account even though a plan had been put in place.

On 31 January 2019, Sainsbury's sent a default notice as they explained they would do in the call held in April 2018. This explained they'd begun the process of defaulting the account. I'm aware Mrs W was worried by this letter which requested full payment of the arrears. The wording of this letter is what I'd usually expect to see in a notice of default so while I understand it may seem threatening, I don't think it means Sainsbury's did anything wrong.

In order to prevent any further action, Mrs W increased the monthly payment she was making to £200. She did this without speaking to Sainsbury's and agreeing this with them. In the call Mrs W's daughter had with Sainsbury's the previous April, she was told to call Sainsbury's if there were any concerns. I can't see Mrs W or her daughter did this before increasing the monthly amount. But I can appreciate it's likely they acted due to the anxiety the letter caused.

Our investigator felt Sainsbury's had acted unfairly by sending this letter to Mrs W without warning her first and suggested a payment of £200 to recognise the worry it caused. Whilst I don't dispute this letter worried Mrs W, shown by her deciding to increase the monthly payment, unfortunately I don't think Sainsbury's acted unfairly by sending this letter. I think they made it reasonably clear to Mrs W's daughter, acting as Mrs W's representative, that letters would be sent when the account was passed to recoveries if the full amount couldn't be paid. I think this was a reasonable warning of what to expect. At this time, Mrs W and her daughter were aware Mrs W wouldn't be able to meet the agreement's monthly payments so this process would be followed.

I've noted that they didn't do this within the time frame they suggested of three to six months. But, I think it was clear Mrs W wanted to continue with a payment plan to pay the remainder of the loan so I don't think the additional length of time Sainsbury's took was unfair.

Because of this, I don't think they've done anything wrong by sending the default notice without giving Mrs W or her daughter a verbal warning. I think the verbal warning was provided in April 2018 and it isn't common industry practice to deliver the same message verbally on two occasions. That isn't to say I don't recognise the worry Mrs W felt when receiving the letter during what must have been a very difficult time.

I also think that by defaulting the account, it's stopped any further interest accruing it which leaves Mrs W in a better position financially. So, I don't think they need to do anything further.

my provisional decision

For the reasons outlined about, my provisional decision is that I don't uphold Mrs W's complaint about Sainsbury's Bank Plc.