

## **complaint**

Mr J complains that Sainsbury's Bank Plc has not treated him fairly, in that it sold the balance of a debt which he understood to have been written off to a third party collections agency. Mr J does not believe he should have to pay the debt, and would like Sainsbury's Bank to ensure his credit file shows it as having been settled in 2014.

## **background**

Mr J took out a loan with Sainsbury's Bank in February 2010. He then experienced financial difficulties, and the loan was defaulted in November 2012. With the help of a third party agency, Mr J agreed settlements with his creditors, including Sainsbury's Bank. He says that in 2014, Sainsbury's Bank confirmed it would not pursue him for the outstanding balance and that his credit file was updated to reflect the debt as satisfied in August 2014.

Mr J was therefore dismayed to receive a Notice of Assignment in late October 2016 telling him that a third party collections agency had bought the outstanding balance of just over £9,000 and would now enforce it. He says he was led to believe he had no further liability in relation to the loan, so does not believe the agency should have been able to buy or enforce the balance of the debt.

Mr J is also unhappy that his credit file has been altered to show that the debt is in default to the collections agency, not as satisfied in 2012. He would like Sainsbury's Bank to write off the outstanding balance, as he says it told him it had done in 2012, and to amend his credit file to again show the debt as satisfied.

Our adjudicator recommended that this complaint should be upheld in part. He considered that Sainsbury's Bank had not properly calculated the arrears on the account, and recommended that it should buy back the debt, recalculate the arrears, amend Mr J's credit file and pay him £250 compensation for trouble and upset caused by its error.

Sainsbury's Bank does not agree.

## **my findings**

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

A lender is able to sell or recover an outstanding balance of a debt which has been settled by partial payment or agreement with the borrower. But the lender should make this clear to the borrower, so they are aware that they may be liable for the full debt at some time in the future.

In its Final Response Letter dated 9 January 2017, Sainsbury's Bank confirmed that:

"We notified you in 2014 we weren't pursuing you for your outstanding debt and updated your credit file to reflect this".

Mr J has provided an extract of his credit file from before the debt was assigned to the collections agency which shows that debt as "satisfied" on 29 August 2014. He says that the third parties who were negotiating with Sainsbury's Bank on his behalf to agree repayment arrangements were also both told by the bank that Mr J had nothing further to pay. He says

that if there was continuing liability for the debt, he would have made repayments – as he did towards his other debts – and would not now be in the situation of facing a large bill for the outstanding balance and a new default listing on his credit file.

In light of the communications with Mr J and his representatives in 2014, I consider it was reasonable for Mr J to believe that Sainsbury's Bank had written off the outstanding balance, and that he was no longer liable for it. Sainsbury's Bank has not been able to show that it warned Mr J that the debt could be revived and enforced in the future, as it would reasonably be expected to have done.

Sainsbury's Bank has referred to the terms and conditions of the account, saying that these tell borrowers that the balance of a settled debt may be sold and recovered at some point in the future. I have reviewed the wording of the relevant term:

“10. We can delay in enforcing, or fail to enforce, our rights under your loan agreement without losing them. We can still enforce our rights under your loan agreement even if we have given you a concession or we have waived any breach of your loan agreement. We may also accept part-payments made by you or a third party marked as ‘payment in full’ or with similar wording whether or not such part-payment is made ahead of time without losing our right claim in full the total amount owing (less any statutory rebate) unless we confirm to you in writing that we have accepted such part-payment in full and final settlement”

I consider that this term is drafted in a confusing and unclear manner, and does not meet the expectation that such warnings will be drafted in “clear terms” so that consumers appreciate the implications of agreeing a settlement for an outstanding debt. I also consider that even if Mr J had appreciated the meaning of this term, it would have been reasonable for him to consider that as Sainsbury's Bank had written to confirm the debt as “satisfied”, that this meant full and final settlement for the purposes of that clause.

Because of this, I'm minded to uphold this complaint and order Sainsbury's Bank to give effect to the representations it made to Mr J and his representatives in 2014 that he did not need to make further payments towards the debt. This would mean that Sainsbury's Bank should buy back the debt from the third party collections agency, refund to Mr J any payments he has made towards it after the debt was marked as settled in August 2014, and amend his credit file to reflect this.

### **my final decision**

My provisional decision is that I uphold this complaint. In full and final settlement of it, I'm minded to order Sainsbury's Bank Plc to:

- Buy back the debt from the third party collections agency;
- Refund to Mr J any payments made towards the debt after August 2014;
- Write off the outstanding balance; and
- Amend Mr J's credit file to show the debt as satisfied in August 2014.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 28 August 2017.

Catherine Wolthuisen  
**ombudsman**