

The complaint

Mr F is unhappy Sainsbury's Bank Plc recorded a default on his credit file in relation to a missed payment on his personal loan.

What happened

I issued my provisional findings to both parties on 14 November 2023 setting out why I thought Mr F's complaint should be upheld and invited both parties to provide any further submissions in reply to my provisional decision by 28 November 2023.

The background to this complaint was set out in my provisional decision together with my provisional findings. The background and my provisional findings are copied below and now form part of this final decision.

Background

On 13 April 2018 Mr F took out a fixed-sum loan agreement for £15,000 and agreed to make 60 monthly payments of £298.85. Mr F set up a direct debit to make the monthly payments.

When Mr F's August 2019 payment became due, the direct debit was returned to Sainsbury's unpaid. Sainsbury's attempted to collect the payment again on the 23 August 2019, but again the direct debit was returned unpaid. Mr F's August 2019 payment was therefore 'missed' and the account was put in arrears.

On 3 September 2019 Sainsbury's wrote to Mr F to give him notice of a default sum on his account. The letter explained this as a late payment fee of £25 which had been applied to the account due to missing a payment on the account.

Another letter was issued to Mr F on the same day, which confirmed the account's current balance (£12,399.63) and the arrears (£298.85). It therefore confirmed the account was in arrears due to the August 2019 missed payment, that a fee had been charged and what payment channels were available to bring the account up to date. In an offer of help, the letter also invited Mr F to contact Sainsbury's if his circumstances had changed. But he did not.

On 17 September 2019 Mr F's loan payment was returned unpaid, and this prompted Sainsbury's to write to Mr F on 19 September 2019. This letter was a 'Notice of Sums in Arrears'. It explained the loan balance was £12,469.02 and the amount of the shortfall under the loan prompting the notice was £624.72. It also set out that notices would be sent every six months if Mr F continued to be behind with his payments, and included the Financial Conduct Authority (FCA)'s information sheet. (The FCA is the financial regulator). The letter asked Mr F to get in contact to help get his loan back on track. But he did not.

The September 2019 payment request was represented and paid on 23 September 2019.

On 23 September 2019 Sainsbury's wrote again to Mr F. The letter confirmed the account in arrears of £298.85 and referred to the failed 17 September 2023 payment. It set out that

Mr F needed to make this payment as soon as possible and not doing so could negatively affect his credit file. Different payment options were given and Mr F was invited to contact Sainsbury's. Again, Mr F did not get in contact.

The 17 October 2019 payment request was also returned unpaid, but went through when it was represented on 23 October 2019.

On 1 November 2019 Sainsbury's wrote to Mr F once more. The letter confirmed the account in arrears of £298.85. It said several attempts had been made to contact Mr F, but his account had not been brought up to date. It explained that if Mr F did not contact Sainsbury's within 10 days of the date of this letter a Notice of Default would be issued in line with the Consumer Credit Act 1974, and if the instructions of the Notice of Default were not followed, then a default would be registered on Mr F's credit file, remaining there for six years. The letter invited Mr F to contact Sainsbury's. There was no contact from Mr F.

Mr F's November 2019 payment was requested on 18 November 2019 and returned unpaid. The payment went through when it was represented on 22 November 2019.

However, before the payment was represented, Sainsbury's issued Mr F with a Default Notice on 14 November 2019. The notice set out that Mr F had missed payments under his agreement and was therefore now in breach of it. The notice set out that the arrears were £329.56. It explained that to put things right Mr F needed to pay the arrears before 11 December 2019 and what the consequences would be of not doing so. Sainsbury's set out the options as terminating the agreement so the remaining balance would be due immediately and if full payment was not received by the 11 December 2019 that they would instruct a debt collection agency and/ or take legal proceedings against Mr F for the full amount owed under the agreement (at the time £11,941.98). Sainsbury's explained the amount could change if they chose to continue adding interest, fees and charges. Mr F was invited to contact Sainsbury's. There was no engagement from Mr F.

Sainsbury's defaulted Mr F's account on 11 December 2019.

On 13 December 2019 Sainsbury's wrote to Mr F confirming that a default had been registered and that he needed to pay the full balance of the account to them. They invited Mr F to contact them to arrange payment in an affordable and manageable way and said they would not charge any interest or additional charges. Mr F did not reply.

Due to no response Sainsbury's wrote again to Mr F on 27 December 2019. The letter set out that they had tried to contact Mr F several times about the outstanding balance, and asked that he get in contact with them. It also said if they didn't hear from Mr F in the next 30 days they would have to take things further to recover the money which could mean passing his debt to a third-party debt collector. They invited Mr F to get in contact.

An internal screenshot of Sainsbury's notes relating to this matter shows that Mr F messaged Sainsbury's on 16 January 2020. He said, I've had a letter dated 27 December 2019 saying I've defaulted my loan. However I have checked my bank account and see a payment went out on the 17th December 2019.

Sainsbury's acknowledged this and asked Mr F to call them so they could help him further.

It's not clear to me what happened after this. But for context - December 2019's payment was made without issue, but January's payment was returned unpaid and represented on 23 January 2020 when it went through.

February 2020's payment was also returned unpaid when the first attempt to collect it was

made, and it was returned unpaid again on 21 February 2020 when it was represented. So this was another missed payment.

Mr F made faster payments into the account on 8 March 2020 for £300 and £329.56 which then brought the account up to date.

In April 2020 – due to the global pandemic – Mr F contacted Sainsbury's to see about a payment holiday or what options may be available to him.

In February 2023 Mr F raised his complaint that a default had been registered against him.

On 22 April 2023 Sainsbury's issued a closing personal loan statement confirming the statement balance as 0.00 as of 21 April 2023. The loan was therefore repaid.

Our Investigator did not uphold Mr F's complaint, and because Mr F did not accept the Investigator's findings the matter has come to me to decide.

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.

While I've not commented on each and every single point raised, I'd like to reassure the parties that I have reviewed all the available submissions from both parties to decide this matter and I have focused on what I believe is relevant to resolving this complaint.

In considering what is a fair and reasonable resolution in all the circumstances of the case, I've taken into account any relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what would be considered good industry practice for the time in question.

And when the evidence is incomplete, inconclusive, or contradictory, I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

What were Sainsbury's responsibilities in this matter?

Sainsbury's had responsibilities under the Consumer Credit Act 1974 – something they referred to in some of the correspondence I've mentioned earlier. They also had regulatory responsibilities as this was a regulated credit agreement – these are set out in the FCA's Handbook of rules and guidance. Sainsbury's also voluntarily subscribed to The Standards of Lending Practice - a voluntary set of lending practices for UK lenders to sign up to. And they had responsibilities in terms of the information they report to Credit Reference Agencies (CRA) – something the Information Commissioner's Office (ICO) (set up as an independent body to uphold information rights) monitors. Sainsbury's had of course also set out terms and conditions in relation to the loan agreement they entered into with Mr F, alongside other loan documentation.

I have set out below what I consider to be relevant to this complaint.

The Consumer Credit Act 1974

Section 86B – titled Notice of sums in arrears under fixed-sum credit agreement etc – sets out that the section applies where at any time the following conditions are satisfied. I think

the following parts are relevant here:

This section applies where at any time the following conditions are satisfied –

- a. That the debtor or hirer under an applicable agreement is required to have made at least two payments under the agreement before that time;*
- b. That the total sum paid under the agreement by him is less than the total sum which he is required to have paid before that time;*
- c. That the amount of the shortfall is no less than the sum of the last two payments which he is required to have made before that time;*

The FCA's Handbook

Relevant to this matter is the Consumer Credit Sourcebook (CONC). I've noted the following sections of CONC as relevant to this matter.

CONC 7.1.3(G) (3)

In this chapter the expression 'arrears' includes any shortfall in one or more payment due from a customer under an agreement to which the chapter applies.

CONC 7.3.2(G)

*When dealing with customers in default or in arrears difficulties a firm should pay due regard to its obligations under *Principle 6 (Customers' interests) to treat its customers fairly.*

CONC 7.3.3(G)

Where a customer under a regulated credit agreement fails to make an occasional payment when it becomes due, a firm should, in accordance with Principle 6, allow for such unmade payments to be made within the original term of the agreement unless:

- (1) The firm reasonably believes that it is appropriate to allow a longer period for repayment and has no reason to believe that doing so will increase the total amount payable to be unsustainable or otherwise cause a customer to be in financial difficulties or*
- (2) The firm reasonably believes that terminating the agreement will mitigate such adverse consequences for the customer and before terminating the agreement it explains this to the customer.*

**Principle 6 in the FCA Handbook (found in PRIN Principles for Business) says: A firm must pay due regard to the interest of its customers and treat them fairly.*

The Lending Standard Board

The Lending Standard Board's 'Standard of Lending Practice: personal customers' code includes the following:

Account maintenance and servicing: customers in financial difficulty, or in the early stages of the collections process, will receive appropriate support and fair treatment, across the different communication channels offered, in order to help them deal with their debts in the most suitable way.

And goes on to note that firms will achieve this with systems and controls that are capable of identifying and, subsequently, supporting customers in financial difficulty. Firms should be able to demonstrate that a sympathetic and positive approach has been applied when considering a customer's financial situation.

Governance and oversight: customers will receive a fair outcome when taking out a consumer credit product and throughout the whole customer lifecycle, wherever the interaction with the customer takes place.

The ICO's 'Credit Explained' document

This says, 'A defaulted account. This may show on your credit reference file for six years from the date of the default. A default normally occurs when you have not met the terms of a credit agreement and your account is three to six months in arrears. When you repay the debt, the entry on your credit reference file should be marked as settled or satisfied.

Sainsbury's personal loan terms and conditions

What you need to do

You agree you will make each monthly payment in the amounts set out in this loan agreement...

Finding out how much you owe

During this loan agreement you can request...a statement of your loan account which shows the due date and amount of all future monthly payments you owe us under this agreement...

Calculating and charging interest

...If you do not make a monthly payment in full by the payment due date you will be charged additional arrears interest on any unpaid amounts, which will be calculated at the rate shown in this agreement, and will be applied to your loan account daily until all unpaid amounts have been paid.

Our right to terminate

If any of the following happen we no longer have to pay you the loan or any part of it and, depending on any notice we are required to give to you by law, we may terminate this loan agreement and you must pay us the total amount you owe us, straight away:

*You do not pay the agreed monthly payment amount by the payment due date.
You breach any conditions of this loan agreement...*

Using our rights

We can delay in using, or fail to use, our rights under this loan agreement without losing them...

Keeping each other informed

Any notice we give you will be sent to you at the last address you have given us...

Our lending commitments and what we ask of you

As a lender we have a responsibility to act fairly...

We will treat you fairly and reasonably at all times and make sure that you are provided with a high level of service...

We will always aim to help you if we see, or you tell us, that you are having trouble financially...

What we ask of you

...Carefully check your account statements to make sure they are accurate...

Explanation of the loan agreement document (this accompanied the terms and conditions)

How much you will have to pay

...Assuming you pay all your agreed monthly payments as they fall due the total amount you will have to pay (the loan plus interest and other costs) is £17,931...

A few things we'd like to draw your attention to

...you must continue to make your monthly payments as they fall due...

Failure to pay

If you don't make your monthly payment in full by the payment due date you will be charged additional arrears interest on any unpaid amounts, and will also incur the charges set out in the loan agreement...

Missing payment could have severe consequences for you, including having a negative effect on your credit score...

If you miss a number of payments, or do not make your monthly payments in full, we may end the loan agreement and you will have to repay the total amount you owe us early. We may take legal action against you if your payments are not made...If that action is successful, we may apply to enforce any judgment in a number of ways including getting a charging order against your home...

Pre-contract credit information

We will use your payment to repay the amount you owe us under the agreement in this order; first, towards any amount in arrears you owe because you did not make monthly payments in full when they were due, then towards any monthly payments which are currently due, next towards any additional arrears interest and late payment fees and lastly towards reducing the remaining loan amount you owe us.

So taking the above into account, was it fair and reasonable for Sainsbury's to register a default on Mr F's account when they did?

It's not in doubt that Mr F's account was in arrears after he missed the August 2019 payment or that he had not met the terms of his loan agreement.

I also think it's fair to say that the industry generally accepts that moving an account to a default typically follows three to six months in arrears.

From the submissions I can see that Mr F's view of the matter is he only missed one payment as the payments following August 2019 were made. However, Sainsbury's have explained the arrears continued over the following months therefore permitting them to eventually issue the Default Notice.

At this point I think it important to refer back to the pre-contract credit information noted above which explains how payments to the loan agreement will be applied. In effect, this meant that as September 2019's payment was used to pay the arrears from August 2019, this created a missed payment for September 2019. This is supported by the letter Sainsbury's issued to Mr F on 23 September 2019 in which they now reference the arrears in relation to the 17 September 2023 payment. As the account was not brought up to date until March 2020, this meant each subsequent payment in late 2019 was being used to first clear the arrears of the previous month. It therefore created a trickle of missed payments.

Sainsbury's issued the Default Notice on 14 November 2019. By this time, August, September and October's payments had all been 'missed'.

Taking all of the above into account, in the circumstances, I think Sainsbury's followed the appropriate process to issue the Default Notice and they were within their rights to register the default when they did - particularly as they had not received any contact from Mr F during this time. (I will refer to the receipt of letters in more detail later on).

However, I've also considered whether it was fair and reasonable, in the circumstances of this case, for Sainsbury's to register the default when they did. I've considered what – given the lack of contact from Mr F – did Sainsbury's reasonably know in relation to Mr F's account at the time they issued the Default Notice in November 2019?

Sainsbury's had access to Mr F's account payment history. Through this it's possible to see that in 2018 Mr F had two returned payments which were then paid when represented. The account was then paid regularly until August 2019 when the payment was missed. The monthly payment amount was made in both September and October.

In the circumstances, I think it would have been reasonable for Sainsbury's to consider that the missed payment in August 2019 may simply have been overlooked as Mr F continued to make monthly payments to the loan, and all previous payments to the loan had in fact been made.

Taking this into account together with the relevant regulations, code of practice and Sainsbury's own loan documentation (as I've described above) I think it's fair to say that the intention behind these is to ensure fair, reasonable, positive and sympathetic treatment of the customer and ensure due regard is given to the interests of the customer.

It was for Sainsbury's to decide when to apply a default. However, I think to move to a Default Notice in November 2019 when Sainsbury's were still receiving the monthly payment amount seems to me unfair given the significant impact a default can have in relation to someone's credit file. As noted in CONC 7.3.3(G) above, guidance is given to the application of Principle 6 that where there is failure to make an occasional payment when due, allowance can be given to make any unmade payments within the original term of the loan agreement.

Overall, while I maintain Sainsbury's had the right to apply the default in this case and they followed the process to do so, I don't think – based on what I've seen - that in the circumstances of this particular case it was fair and reasonable of Sainsbury's to apply the default when they did.

I am therefore minded to ask Sainsbury's to remove Mr F's default in relation to this account.

Sainsbury's letters to Mr F

Mr F says he did not receive several of the letters I described earlier and he noted in particular that the address on some of the letters in question was spaced differently. Mr F said this made the address unclear and believes this shows the letters could therefore not have reached him.

I disagree with Mr F.

It's not possible for me to know if Mr F did receive each and every letter from Sainsbury's – the letters were not sent by recorded delivery for example. However, I think on balance he more likely than not did receive them.

These were important letters. They did have Mr F's correct address (albeit some letters as Mr F has said were set out so that there was less distinction between the individual lines of the address). And I have no reason to believe Sainsbury's did not issue these letters.

Mr F himself contacted Sainsbury's on 16 January 2020 to say that he had received Sainsbury's letter of 27 December 2019. This letter of 27 December 2019 – it is worth noting – had the address set out in the way Mr F describes as unclear. So I think this further supports that these letters were addressed correctly and able to reach Mr F. I would also add it would be unfair of me to hold Sainsbury's at fault for any issue with the postal service.

I realise Sainsbury's may feel these letters discharge their responsibilities here so the default should remain. And I am very mindful that the Default Notice of 14 November 2019 was addressed clearly – each part of the address on separate lines. So I think Mr F more likely than not received this.

That said, for reasons as I've already set out above, I think it would have been fair of Sainsbury's to not have registered the default when they did. So, I am giving Mr F the benefit of the doubt here.

Interest

Mr F raised the issue of interest that was applied to his account suggesting that the outstanding balance of his account should be less because Sainsbury's had 'frozen' interest, but he continued to make his full monthly payments.

I don't think Mr F is owed any money back here.

Mr F entered into an agreement to borrow money, pay interest for borrowing that money and to pay any additional interest or charges if and when they fell due. Based on what I've seen, this is what I think he has paid in terms of what was applied to the account.

I've therefore not seen anything to suggest Sainsbury's have acted unfairly in how they've applied any interest and charges.

As noted above, Sainsbury's loan terms and conditions set out that if a monthly payment is not made in full by the payment due date, additional arrears interest will be charged on any unpaid amounts. I believe this is the interest Sainsbury's stopped applying after the account was defaulted which I would generally find fair and reasonable in such circumstances.

Putting things right

In the circumstances of this particular case, I think it was unfair of Sainsbury's to apply Mr F's default when they did, so I am minded to ask them to remove it. However, all late or missed payments should still be reflected on the account history.

For the reasons above, I am minded not to award the return of any interest to Mr F.

And while I've considered the impact this matter may have had on Mr F personally, I am not minded to make any financial award for this given I think Mr F has some responsibility here as well for what happened.

Responses to my provisional decision

Mr F replied to my provisional decision to say that he had nothing further to add, and believed the provisional decision to be fair.

Sainsburys also responded to my provisional decision. They said that Mr F's constant late payments represented financial hardship, so they disagreed with the proposal to remove the default. Sainsburys gave no further comments than this and did not provide me with any new evidence to consider.

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 carefully weighed up what Sainsbury's have said about the constant late payments on Mr F's account and that the default should remain, this is not enough to persuade me to depart from my provisional findings.

Sainsbury's issued the default notice at a time when they were still receiving Mr F's monthly payments, and for the reasons above in the spirit of treating their customer fairly, I think Sainsbury's could have given Mr F's situation further consideration. I therefore do not think it was fair for Sainsbury's to register the default when they did.

In the circumstances I see no reason to depart from the findings I set out in my provisional decision dated 14 November 2023 and for the reasons set out above, I think it was unfair of Sainsbury's to apply Mr F's default when they did.

Putting things right

Sainsbury's Bank Plc should remove Mr F's default in relation to this loan agreement.

Mr F should note that any late or missed payments should still be reflected on the account history.

I make no further award.

My final decision

For the reasons above, my final decision is that Mr F's complaint is upheld and Sainsbury's Bank Plc should put things right in the way I have described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 January 2024.

Kristina Mathews
Ombudsman