The complaint

Mrs S says Sainsbury's Bank Plc (SB) irresponsibly lent to her.

What happened

Mrs S took out a £10,000 loan over 60 months from SB on 25 February 2020. The monthly repayments were £211.25 and the total repayable was £12,675. Her loan account defaulted in November 2023.

Mrs S says she could not afford the loan and SB approved the loan without adequate consideration of her financial circumstances. She also says the loan terms and APR were not fully disclosed to her. This has impacted her financial stability and mental wellbeing. She wants all interest and charges to be refunded, the balance to be written-off and negative information to be removed from her credit file.

SB says it completed proportionate checks that showed the loan would be affordable for Mrs S.

Our investigator upheld Mrs S's complaint. He said SB's checks were not proportionate and better checks would have shown it was unlikely the loan would be sustainably affordable for Mrs S.

SB disagreed with this assessment and asked for an ombudsman's review, saying that its checks were reasonable and appropriate in this instance. It said it is not unreasonable for it to accept figures shown in credit searches, or to expect customers to provide accurate information in their application. The level of income stated by Mrs S was appropriate given the occupation she listed so further checks were not needed. It added that Mrs S had no problems with her repayments until she suffered a serious case of Covid 19. It could not have predicted this, and we have not considered this in our assessment.

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.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did SB complete reasonable and proportionate checks to satisfy itself that Mrs S would be able to repay the loan in a sustainable way?
- If not, would those checks have shown that Mrs S would have been able to do so?
- If so, did SB make fair lending decisions?

The rules and regulations in place required SB to carry out a reasonable and proportionate assessment of Mrs S's ability to make the repayments under the agreement. This assessment is sometimes referred to as an affordability assessment or affordability check.

The checks had to be borrower-focused – so SB had to think about whether repaying the loan would be sustainable. In practice this meant that SB had to ensure that making the repayments on the loan wouldn't cause Mrs S undue difficulty or significant adverse consequences. That means she should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payments she had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for SB to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mrs S.

Checks also had to be proportionate to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

I think that such a check ought generally to have been more thorough:

- The lower a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income).
- The higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income).
- The greater the number and frequency of loans, and the longer the period during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

I can see that SB asked for certain information before it approved the loan. It has told us it relied on Mrs S's declared income and rent costs, used national statistics to estimate her living costs and carried out a credit check to understand her existing credit commitments and credit history. It asked about her employment, residential and marital status, and whether she had any dependants. It asked about the purpose of the loan which was further education. From these checks combined SB concluded the loan was affordable for Mrs S as she had monthly disposable income of £888.31.

I don't think these checks were proportionate given the term of the loan – SB needed to be sure Mrs S could make her repayments for 60 months and I find it ought therefore to have caried out a fuller financial review. I would also remind it of the regulatory guidance around checking income in CONC 5.2A.16 (G) (3) which states:

For the purpose of considering the customer's income under CONC 5.2A.15R, it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the customer).

And I think that guidance was particularly relevant here given the term of the loan. SB argues that the level of income stated by Mrs S was appropriate given the occupation she listed so further checks were not needed. But from the evidence it has submitted I cannot see she gave an occupation, rather she said she was self-employed. So I am unclear how SB was able to assess that her income was plausible based on the information it had.

In cases like this where we find the checks were not proportionate, we look at bank statements from the months prior to the application. I am not saying SB had to do exactly this, but it is a reliable way for me to understand what better checks would most likely have shown SB.

They show that Mrs S's income varied by month and was lower than she had declared. But more crucially they show that she was persistently reliant on her overdraft facility. As this loan was not for debt consolidation, I cannot see that this position would change, rather it could worsen. So better checks would most likely have shown SB that there was a high risk Mrs S would not be able to sustainably repay this loan. It was more likely she would be borrowing to repay (via her overdraft facility) and so the loan could be financially harmful.

It follows I find SB was wrong to lend to Mrs S.

In response to the investigator's assessment SB raised that we had not considered that Mrs S managed to repay the loan until she became ill. But that does not change my conclusion – it does not know how she funded her repayments and from what I have seen it seems likely she was relying on her overdraft facility.

Mrs S also complained that the terms of the loan, including the APR and late fees, were not fully disclosed to her. But I disagree. From the evidence SB submitted I can see it sent Mrs S three documents that outlined in detail how her loan would work and the interest, fees and charges she could have to pay, amongst other things. It sent her 'An Explanation of Your Personal Loan Agreement', Pre-Contract Credit Information and a Fixed Sum Loan Agreement prior to transferring the money. So I do not find any failings in the information disclosure made by SB.

I am sorry that Mrs S's financial stability and mental health were impacted. I hope she now has the support she needs. StepChange (tel: 0330 055 2198) and MIND (tel: 0300 123 3393) are organisations that can provide free assistance if not.

Putting things right

I am aware Mrs S asked that the balance of the loan be written-off but this is not typically the approach we adopt. As Mrs S had the benefit of the money I think it's fair that she should repay the capital. But she has paid interest and charges on a loan that should not have been given to her and this is unfair.

So SB must:

- Refund all interest, fees and charges to Mrs S's loan account. Treat all repayments Mrs S made as repayment of the capital.
- If this results in overpayment, any overpayment should be refunded to Mrs S along with 8% simple interest, calculated from the date the overpayments were made until the date of settlement.*
- But if this results in there being an outstanding capital balance SB must work with Mrs S to agree an affordable repayment plan, remembering its obligation to treat her fairly and with forbearance.
- Remove any adverse information from Mrs S's credit file once any capital balance has been repaid.

If SB has sold the debt it should try to buy it back. If this is not possible it must work with the new owner of the debt to achieve the same outcome as the steps set out above.

*HM Revenue & Customs requires SB to deduct tax from this interest. It should give Mrs S a certificate showing how much tax it's deducted if she asks for one. If it intends to apply the refund to reduce any outstanding balance it must do so after deducting the tax.

My final decision

I am upholding Mrs S's complaint. Sainsbury's Bank Plc must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 17 April 2024.

Rebecca Connelley
Ombudsman