

The complaint

Mr S complains HSBC UK Bank Plc acted irresponsibly when it lent him £25,000 for a personal unsecured loan.

What happened

In late 2015, Mr S took out a personal loan with HSBC for £25,000, with a five-year term and a monthly repayment of around £600. In 2021, Mr S complained to HSBC. Whilst making a separate complaint, he'd done a subject access request, and in the information provided, he felt HSBC hadn't done a proper review of his financial situation before agreeing to lend to him in 2015.

He said HSBC had used an incorrect figure for his net monthly income, which would have been obvious from his bank statements, and it should have been clear to HSBC that in 2015 his account was being used frequently for gambling transactions. He said he was experiencing severe gambling problems in 2015 so HSBC was irresponsible in lending to him.

HSBC didn't agree it had acted unfairly in lending to Mr S. So he brought his complaint to this service.

Our investigator recommended the complaint be upheld. She didn't think HSBC had carried out proportionate checks before approving the loan. She said Mr S already had a credit card and current account with HSBC, so it should have seen Mr S wasn't managing his finances well when he applied for the loan. She felt proportionate checks would have shown it was irresponsible to lend to Mr S. So she said HSBC should refund all interest and charges paid on the loan.

Mr S accepted the outcome but HSBC didn't. It provided a detailed response saying in summary:

- Mr S' current account was running in a satisfactory manner at the time the loan was taken out.
- Mr S' income was verified against his account.
- Because this was a consolidation loan, HSBC didn't increase Mr S' overall levels of debt.
- There were only three gambling transactions totaling £520 in the three months prior to the lending, which wouldn't have raised a cause for concern.

Our investigator disagreed with the points made by HSBC, so HSBC asked for an ombudsman to consider the matter.

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.

There are several questions that I've thought about when deciding if HSBC treated Mr S fairly and reasonably when it provided him with the loan.

These include:

- 1) Did HSBC complete reasonable and proportionate checks to satisfy itself that Mr S would be able to repay the loan?
- 2) If not, what would reasonable and proportionate checks have shown at the time?
- 3) Ultimately, did HSBC make a fair lending decision?

Section 5 of the Consumer Credit (CONC) sourcebook, in place at the time, outlines that the assessment that HSBC needed to complete and should've been dependent on, and proportionate to, a number of factors – including the amount and cost of the credit and the consumer's borrowing history. CONC also provides guidance on the sources of information HSBC may have wanted to consider as part of making a proportionate assessment. HSBC is free to decide how to set its lending criteria, but it should complete proportionate checks to ensure borrowing is responsible.

Mr S was applying for a £25,000 loan, with a monthly repayment of nearly £600 over an extended period of time. This is a considerable amount, so based on CONC, I'd expect to see more detailed checks than for repayments of a much smaller amount, to ensure it could be repaid in a sustainable manner. HSBC said the loan was taken out in branch, and a budget planner was completed with Mr S. It said based on his monthly income of £4,800, he had disposable income of around £2,900 per month. As the loan repayment would be around £600 and the loan was to consolidate other debts, HSBC said the loan was auto-approved in branch.

HSBC said it did also review Mr S' credit file, and it showed no adverse data, so it considers its checks to be proportionate. And it said it used model figures on family spending to decide Mr S would be able to meet the repayments.

HSBC hasn't been able to provide the credit reference agency information it says it checked. However, it says the data it obtained at the time showed Mr S held £52,700 of unsecured debt. Which it acknowledges is around 65% of his gross annual income. I consider this to be a high level of debt. And it doesn't appear HSBC took steps to verify any of the payment amounts in the budget planner, even though Mr S was an existing customer of HSBC. Given the amount of the debt and his existing debt profile, I'm not satisfied these checks were proportionate for a loan of that size, with repayments of nearly £600 per month over five years.

So I've considered what proportionate checks would have shown. Mr S had declared a high monthly income, the current account into which his wages are paid is also a HSBC one. I consider HSBC should have taken steps to verify his income. A review of his HSBC bank statements, which would most likely have been easily accessible to a branch staff member, would have shown his net monthly income was actually around £3,200, considerably lower than in the budget planner, which significantly reduced his monthly disposable income.

And as an existing customer of HSBC, I'd also expect it to review the information it had on Mr S relating to how he'd managed his finances. It's clear Mr S didn't have disposable income of nearly £3,000 per month as HSBC acknowledges he had debts totalling 65% of his gross annual income. And he went over his overdraft limit on several occasions in the months leading up to the loan being approved. HSBC has said this wouldn't be a reason not to lend to Mr S. However, a review of how he handled his account would have also shown a number of payments regularly leaving relating to his other debts, and several gambling transactions.

HSBC has said there were only three gambling transactions amounting to £520 in the three months prior to the application. But that isn't the case. From August 2015 there were in fact

six gambling payments totalling £1,800, as well as cash withdrawals from casinos amounting to £2,100. I think a review of this would have at the very least caused HSBC to question whether the lending would be responsible as the evidence shows that Mr S didn't have the ability to take on further borrowing.

HSBC has said it can't forensically review a customer's bank statements before making a lending decision. But I find it should have been clear from even a quick review that the figures provided in the budget planner were not an accurate representation of Mr S' income or expenditure, and further checks were needed to ensure he could sustainably repay the loan.

HSBC has also argued it wasn't exposing Mr S to more debt, as this was a consolidation loan. But as I've set out above, it didn't ensure he could sustainably repay the loan. And HSBC still allowed Mr S to have a credit card limit of £2,000 following the loan, and a reduced overdraft limit of £500. So even with the consolidation loan of £25,000, he still had access to a further £2,500 credit with HSBC. So overall, I'm not satisfied that the evidence shows HSBC made a responsible lending decision.

To put things right, HSBC needs to refund all interest and charges Mr S has paid in relation to the loan. It's unclear from this file whether the loan is still in place. If it is, HSBC will need to reduce the outstanding capital balance with the refund of interest and charges. If, having done so, there remains an outstanding capital balance, HSBC should ensure it isn't subject to any historic or future interest and/or charges. But if refunding interest and charges pays off the capital balance, then any other amount should be given to Mr S. And HSBC will need to add 8% on this amount, from the date the payments were made, till the date of settlement. HSBC will also need to remove any adverse information from Mr S' credit file.

My final decision

My final decision is that I uphold this complaint. HSBC UK Bank Plc needs to:

- Refund all interest and charges applied in relation to the loan;
- If the loan is still running, the refund from the above should be used to reduce the outstanding capital balance on the loan;
- If, having done the above, there is still a capital balance, HSBC should remove any future interest and/or charges;
- But if refunding interest and charges clears the capital balance, any surplus amount should be paid to Mr S. And HSBC will need to add 8% simple interest¹ on any amount it pays Mr S from the date the payments were made, until the date of settlement.
- Remove any adverse data from Mr S' credit file relating to the loan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 March 2022.

Michelle Henderson
Ombudsman

¹ HM Revenue & Customs may require the business to take off tax from this interest. If it does, the business must give the consumer a certificate showing how much tax it's taken off if they ask for one.