

Complaint

Mr B has complained that HSBC UK Bank Plc (“HSBC”) irresponsibly provided increased his overdraft and credit card limits as well as irresponsibly provided him with a personal loan.

Background

HSBC increased Mr B’s overdraft limit from £1,500.00 to £3,000.00 in September 2018. It then increased the limit to £5,000.00 in the following month. In October 2018, HSBC provided Mr B with a loan for £14,300.00 and finally in March 2019, HSBC decided to increase Mr B’s credit card limit from £2,750.00 to £3,800.00. In January 2020, Mr B complained that HSBC irresponsibly lent to him. HSBC didn’t think that it had done anything wrong and so didn’t uphold Mr B’s complaint. Mr B remained dissatisfied and referred his complaint to our service.

One of our investigators looked at this complaint and thought that HSBC shouldn’t have provided the overdraft and credit card limit increases or the personal loan. HSBC didn’t agree with our investigator and so the complaint was passed to an ombudsman for review.

My findings

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 the key rules, guidance and good industry practice - on our website. And I’ve referred to this when deciding Mr B’s complaint.

HSBC needed to make sure that it didn’t lend irresponsibly. In practice, what this means is HSBC needed to carry out proportionate checks to be able to understand whether Mr B would be able to repay what he was being lent before providing any credit to him. Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we’d expect a lender to be able to show that it didn’t continue to lend to a customer irresponsibly. I’ve kept this all in mind when having looked at Mr B’s complaint and having done so I’m upholding it.

HSBC says that Mr B passed its affordability checks which were based on his income (and credits going into his account), information about his existing credit commitments obtained from a credit reference agency and an assessment of his essential spend. Each time there was enough disposable income left over for the proposed limit to be deemed affordable and

as the credit checks didn't suggest Mr B had missed or late payments on his other credit, the limit increases in question were agreed.

Mr B's overdraft was an open-end (running account) agreement (in other words, while HSBC committed to reviewing the facility each year, there was no fixed end date) where there was an expectation that he'd repay what he borrowed plus the interest due within a reasonable period of time. CONC didn't set out what a reasonable period of time was. So I think it's important to note that a reasonable period of time will always be dependent on the circumstances of the individual case.

HSBC's response to our investigator suggests that it used Mr B's account data for some parts of its assessment and relied on estimates and third-party data for others. HSBC also appears to confirm that it treated each of Mr B's applications in isolation with little regard to what had happened previously or how his circumstances were evolving.

In my view, this approach failed to take into account Mr B was a repeat borrower and assess the plausibility of the monthly disposable income amount arrived at against what was happening on Mr B's account. I think it's fair to say that there was a pattern of Mr B relying on his overdraft developing in the lead up to the limit increase in September 2018 being provided. Mr B was seeing a credit balance for a few days after he was paid. And the only reason for this was because his monthly salary exceeded the amount of his overdraft limit.

A further look at Mr B's account usage, which HSBC says played a part in its decision to lend, also shows that Mr B was gambling excessive amounts that he simply couldn't afford. I've seen that our investigator said that HSBC ought to have realised that Mr B was a vulnerable consumer. I'm not sure I'd go as far as this. But, in my view, there were clear warning signs that Mr B's existing overdraft limit might have been becoming unsustainable for him. And, in these circumstances, HSBC ought to have been concerned that Mr B might not have been in a position to repay what he already owed, let alone take repay any further borrowing without borrowing further or suffering significant adverse consequences.

Bearing this in mind, I'm satisfied that HSBC shouldn't have provided Mr B with the overdraft limit increases it provided him with, in September 2018 and October 2018, as it ought reasonably to have realised that he was in a position where he was unlikely to be able repay what he owed in a sustainable manner. The amount he was gambling suggested it was unlikely he'd be able to repay without borrowing further or experiencing significant adverse consequences. Given Mr B's position didn't materially improve by the time his loan was provided in October 2018 and his credit card limit was increased in March 2019, it follows that I'm satisfied that this additional credit shouldn't have been provided either.

In reaching my conclusions, I've taken into account what HSBC has said about not wanting to exclude Mr B from accessing mainstream credit simply because of his gambling and that providing the loan didn't increase his indebtedness as he was consolidating his existing loan and his overdraft debt. But I think that HSBC had enough to see that Mr B was in no position to repay any further credit. And I'm not persuaded that the provision of Mr B's loan didn't (or at the very least have the potential to) increase Mr B's indebtedness as his overdraft wasn't removed. In any event, this argument shows that HSBC expected Mr B to repay existing debts with further credit, which the regulator's rules indicate is unsustainable.

So I'm satisfied that HSBC's decision to provide Mr B with a substantial amount of additional credit in the circumstances it did meant that it increased Mr B's indebtedness in a way that it ought to have realised was unsustainable or otherwise harmful.

As this is the case, I think that HSBC treated Mr B unfairly. Mr B is being expected to pay additional interest and charges on credit he shouldn't have been provided with in the first

place. So I'm satisfied that he lost out because of what HSBC did wrong and that it needs to put things right.

Fair compensation – what HSBC needs to do to put things right for Mr B

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr B's complaint for HSBC to put things right by:

Mr B's overdraft and credit card

- Reworking Mr B's overdraft and credit card balances to ensure that all interest, fees and charges added to the overdraft from September 2018 and the credit card from March 2019 are removed, to reflect the fact that Mr B was already in a position where he was unlikely to repay what he owed in a sustainable manner;

AND

- If an outstanding balance remains on the overdraft or credit card once these adjustments have been made HSBC should contact Mr B to arrange suitable repayment plans, Mr B is encouraged to get in contact with and cooperate with HSBC to reach a suitable agreement for this. If it considers it appropriate to record negative information on Mr B's credit file, it should backdate this to September 2018 for the overdraft and March 2019 for the credit card.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance on Mr B's overdraft or credit card, then any extra should be treated as overpayments and returned to Mr B along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balances remain after all adjustments have been made, then HSBC should remove any adverse information from Mr B's credit file.

Mr B's October 2018 loan

- removing all interest, fees and charges applied to Mr B's loan from the outset. The payments Mr B has made, plus a further £450 to reflect the distress and inconvenience HSBC's actions caused, should be deducted from the £14,300.00 he was originally lent. HSBC should treat any payments made if and when the £14,300.00 has been cleared as overpayments. And any overpayments should be refunded to Mr B along with 8% simple interest †;
- removing any adverse information recorded on Mr B's credit file as a result of this loan should no outstanding balance remain.

† HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mr B a certificate showing how much tax it has taken off if he asks for one.

I'd also remind HSBC of its obligation to exercise forbearance should outstanding balances remain after all adjustments have been made to Mr B's accounts and it's the case that he is experiencing financial difficulty.

My final decision

For the reasons I've explained, I'm upholding Mr B's complaint. HSBC UK Bank Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 March 2022.

Jeshen Narayanan
Ombudsman