

## The complaint

Mr H complains that HSBC UK Bank Plc (HSBC) acted irresponsibly when they gave him a loan. Mr H says the lending was unaffordable.

## What happened

The circumstances surrounding this complaint and my initial findings were set out in my provisional decision which said:

*In June 2019 Mr H applied online for a personal loan with HSBC. The purpose of the loan was mainly to refinance an existing HSBC loan. The loan amount was for £13,630 and £10,627 was used to repay the existing loan. Mr H's monthly repayments on the new loan was £329 per month payable over 60 instalments. HSBC has confirmed this in their file submission to us.*

*The loan repayments started in August 2019, however Mr H stopped making payments after October 2019. This is confirmed on the loan statement provided by HSBC.*

*Mr H says that when he applied for the loan he was experiencing financial difficulties and didn't think the loan would be agreed. Prior to applying for the loan, in March 2019 Mr H contacted HSBC to inform them of his financial difficulties, HSBC required some further information which Mr H was unable to provide at the time. In an email to us in November 2021, HSBC acknowledged that they didn't follow-up on this.*

*Mr H says that in October 2019 he stopped making repayments to the loan because they were unaffordable for him. He says he also contacted HSBC about his situation, and they gave him a break from making any payments for 60 days.*

*HSBC confirmed they applied a 60 day break from charges and interest, however they also explained that they were awaiting further contact from Mr H for around six months.*

*Mr H complained to HSBC about their decision to give him a personal loan. He said the loan was unaffordable from the start and had left him feeling depressed and having to see his doctor for medication to help him. Mr H said he wanted HSBC to write off the loan and pay him compensation for the distress caused to him.*

*In August 2020 HSBC provided their final response to Mr H's complaint. They didn't uphold his complaint. HSBC say they followed their lending processes which were in line with the guidance and rules set-out by the Financial Conduct Authority (FCA).*

*Unhappy with their response Mr H brought his complaint to us. One of our investigators looked into his concerns and upheld his complaint. They felt that HSBC didn't carry out the appropriate checks necessary to determine the affordability of the loan for Mr H. Our investigator recommended that HSBC refund all the charges and interest paid by Mr H on the loan and to remove all adverse information from Mr H's credit file.*

*Following our investigator's view HSBC made an offer of goodwill to Mr H, to refund all the interest and charges that he'd paid to date in relation to the loan. They acknowledged that he*

*had informed them of his financial difficulties prior to taking out the loan. However, HSBC declined to remove all adverse information relating to the loan from Mr H's credit file.*

*Mr H didn't think HSBC's offer was fair, so he declined the offer and asked that his complaint be referred to an ombudsman for a final decision.*

*In February 2022 I issued a provisional decision in which I said:*

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

*In considering what is fair and reasonable, I've thought about all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.*

*The Consumer Credit Sourcebook (CONC), which can be found within the Financial Conduct Authority's (FCA) handbook, say that a business must carry out a creditworthiness assessment before a credit agreement is entered into with a consumer. It goes on to say the assessment must be based on enough information:*

- of which it is aware at the time the creditworthiness assessment is carried out;*
- obtained, where appropriate, from the customer, and where necessary from a credit reference agency*

*So, in consideration of Mr H's complaint I've thought about whether HSBC carried out the appropriate affordability checks and whether on balance they should have given Mr H the loan.*

*In an email to our investigator in August 2021, HSBC confirmed the scope of their creditworthiness assessment included the above information. So, I'm satisfied that HSBC had carried out a creditworthiness assessment. However, I think from the information they had they should have considered that the new loan wouldn't have been affordable for Mr H. HSBC said they reviewed Mr H's bank account turnover. Having reviewed Mr H's account statements ranging from December 2018 to July 2019, although I can see a regular income going through the account, I can also see that Mr H spent the majority of that time within his overdraft.*

*I think this is a key point, because the FCA also says that a firm should also have regard to information of which it is aware at the time the creditworthiness assessment is carried out that may indicate that: 'the customer is in, has recently experienced, or is likely to experience, financial difficulties'.*

*I find that the conduct of Mr H's bank account was an indicator that he would have struggled to repay the new loan and would likely experience financial difficulties as a result. I say this because prior to the new loan being taken out he was consistently in excess of £4,000 of his overdraft while he had a commitment of £274 on his existing loan. The new loan would increase his monthly repayments by around £55 whilst providing Mr H with an additional £3000 after repaying his existing loan. HSBC confirmed that they reviewed Mr H's account as part of their creditworthiness assessment, So I think it would have been reasonable for them to consider that increasing Mr H's monthly outgoings and increasing his overall indebtedness would likely have a negative impact on his financial situation.*

*In addition, HSBC advised that they considered that Mr H had on many occasions refinanced previous loans since 2006. I think the pattern of refinancing should have been an indicator to HSBC that the new loan may have been unaffordable for Mr H. I think it should have prompted HSBC to have made contact with Mr H to discuss this with him so they could better understand his situation.*

*HSBC confirmed that Mr H had been in contact with them in March 2019 to inform them of his financial difficulties. This was prior to the new loan being approved and evidence that Mr H was experiencing financial difficulties. So, from the information provided I think HSBC had enough opportunities to identify that the loan would have been unaffordable and so I don't think HSBC acted responsibly here by approving the loan for Mr H.*

*In their response to us HSBC said that they saw Mr H had received a larger than usual payment from his employer, which they took as being part of his income. As this was an unusual payment, and significantly higher than his normal salary I think it would have been reasonable for HSBC to contact Mr H to understand the nature of the payment into his account. Mr H has confirmed to us that the payment was a loan from his employer to assist him in repaying his overdraft. Mr H provided evidence of this. I think had HSBC made contact with Mr H in regard to this it's likely they would have understood the nature of the payment which would have given them further cause to consider that the new loan would have been unaffordable for him.*

*Having considered all the information, for the reasons explained above I'm persuaded that HSBC didn't act reasonably in the circumstances. I think they should have explored Mr H's finances further which would have highlighted his financial position. By not taking the opportunities to explore Mr H's financial situation further, I think HSBC acted irresponsibly by providing Mr H with a loan that was unaffordable for him.*

### **Putting things right**

*As I've found that HSBC haven't acted fairly, I think they need to put things right for Mr H. Mr H has had the benefit of the money he borrowed and it's fair that he should pay the principal amount back. However, I don't think Mr H should have to repay the interest and charges that had been applied on the new loan. I also think HSBC should arrange an affordable monthly repayment plan for Mr H to repay the debt. HSBC should also remove any adverse credit information from Mr H's credit file in relation to this loan.*

*Mr H has said that the loan has left him feeling stressed and unwell. Mr H has explained the mental impact it's had on him which has led to him receiving medication to help him with the worry. In consideration of this, I think it's fair that Mr H should receive some compensation and I think £300 fairly recognises the distress and inconvenience caused to him.*

I invited both parties to make any further comments. Mr H and HSBC both responded with further comments which I'll address below.

Now both sides have had an opportunity to comment, I can go ahead with my final decision.

### **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.

The comments below are not exhaustive, but a summary of what I considered to be the main points raised by Mr H and HSBC in their respective responses to my provisional decision. To

be clear, I've considered all the information provided by both parties in relation to this complaint. However, to maintain the informal approach of this service I've focussed on what I've considered to be the main issues here.

Mr H made the following points in his response to my provisional decision:

- 1. The loan should be written off completely or the principal balance reduced because the lending shouldn't have been given and would take years to repay*
- 2. The compensation should be increased because of the stress and strain that the situation has caused him*

Having considered the comments made by Mr H, I don't think it would be fair or reasonable to instruct HSBC to write off the loan's principal balance or to reduce it. Although I don't think HSBC should have given Mr H the new loan, given that Mr H has had the benefit of the money he borrowed, I'm satisfied that it's fair he should pay the principal amount back.

Mr H described in some detail the stress and strain he's experienced as a result of the loan. I don't doubt what Mr H has said to us, and I'm sorry to learn of the impact this has had on Mr H's wellbeing. I can appreciate his strength of feeling about the whole situation.

Having carefully considered the details of Mr H's complaint, I don't think it would be reasonable to say HSBC were exclusively responsible for Mr H's mental health by giving him the loan, Mr H has also referenced this in his response to us. I've considered this in my provisional decision and my conclusion remains unchanged that in the circumstances I think £300 is a fair amount of compensation.

HSBC made the following points within their response to my provisional decision:

- 1. The existing loan presented no problems for Mr H, his overdraft was in a credit balance prior to the loan and payments to previous loans were also maintained along with a good credit history*
- 2. Mr H would have been liable for the existing debt prior to the new loan*
- 3. Mr H would benefit from the interest rebate on the refinanced loan*
- 4. As the interest on the loan was front loaded, Mr H shouldn't benefit from any refund of interest or added interest on a refund*
- 5. Removing adverse credit information wouldn't be a true reflection of Mr H's account conduct*

*I don't think that maintaining regular payments alone is an indicator that further lending would be affordable. In the circumstances of Mr H's complaint I think it's evident that the new loan was unaffordable, for example the pattern of refinancing previous loans was likely to be an indicator of affordability concerns, the dependence Mr H had on his overdraft, which suggested he had a degree of reliance on the credit facility and the employers loan that was used to repay it. As explained in my decision I think these were all indicators that should have prompted HSBC to review Mr H's financial situation to ensure that any further lending would be affordable for him.*

*HSBC explained that the interest on Mr H's loans were front loaded, so when it was settled a rebate amount had been deducted from the total balance.*

*The interest rebate applied to the refinanced loan isn't something that I think is central to any settlement. What I consider to be within scope of this decision is the refinancing loan of*

*£13,630 and the interest and charges that had been added to that loan, because I've already considered that HSBC shouldn't have given Mr H this loan.*

*I think it's fair that Mr H shouldn't have to pay any interest or charges applied on the new loan. I'm persuaded that HSBC didn't act fairly when it gave Mr H the loan because it was unaffordable for him. So, any interest already paid by Mr H on the new loan should be refunded with 8% simple interest added from payment to the date of settlement. I also don't see how Mr H has unfairly benefited. That Mr H used the new loan to refinance an existing loan which had an amount of interest rebated, I think is consequential in the circumstances, and not something that should be considered an unfair benefit for Mr H.*

*Under the Consumer Credit (early settlement) Regulations 2004, it's likely Mr H would have been entitled to an interest rebate on the refinanced loan.*

*The missed payments on the new loan started around three months after it was given to Mr H. HSBC said in their response to my decision that Mr H would have missed payments on the refinanced loan and so removing the adverse information wouldn't be a true reflection of Mr H's account. However, I don't think it's reasonable in the circumstances to suggest what may have happened on a loan that had been repaid. My decision is centred around whether HSBC acted responsibly by giving Mr H the new loan; and in the circumstances I think that removing the adverse credit information in relation to that loan is fair and reasonable in the circumstances.*

Having considered all the information provided, I still consider my provisional decision to be fair and reasonable in the circumstances. Neither party has added anything which gives me cause to change this. Therefore, for the reasons as set out above and in my provisional decision, I'm satisfied that HSBC irresponsibly gave Mr H a loan that was not affordable for him. So, my final decision is the same.

I recognise that this decision is likely to be disappointing for HSBC, however I can assure them that I've considered all the evidence provided and believe on balance that my provisional findings are fair in the circumstances.

### **My final decision**

Having thought about everything above, along with what is fair and reasonable, in the circumstances I uphold this complaint and instruct HSBC UK Bank Plc to:

- refund all the interest and charges that Mr H has paid to date in relation to the new loan
- ensure that the loan is not subject to any future interest or charges
- remove any adverse information that may have been recorded with the credit reference agencies in respect of this loan
- pay Mr H £300 in compensation for the distress and inconvenience caused

HSBC UK Bank Plc should pay 8% yearly simple interest on all refunds calculated from the date of payment to the date of settlement.

If HSBC UK Bank Plc considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 April 2022.

Benjamin John  
**Ombudsman**