

## **The complaint**

Mr F complains HSBC UK Bank Plc, trading as first direct, irresponsibly lent to him.

## **What happened**

Mr F took out a loan for £15,000 on 26 January 2020. The term was 72 months, the monthly repayment was £247.07 and the total repayable was £17,788.20. No repayments have been made since October 2021 and there remains a balance outstanding.

Mr F says no checks were done. He was, and still is, in a debt management plan and he could not afford this loan.

Our adjudicator upheld Mr F's complaint. She said HSBC had carried out both affordability and creditworthiness checks. But as Mr F had his current account with first direct she didn't think it had taken into account to all the information it had. She said HSBC could see Mr F was spending an increasing amount of his income on gambling transactions in the three months prior to his application. And so HSBC ought to have been concerned this loan would not be sustainably affordable for Mr F.

Unhappy with this assessment, HSBC asked for an ombudsman's review. It said, in summary, whilst Mr F was gambling his account always remained in credit and he wasn't borrowing to fund this spend. The regulations it must follow do not expect it to exclude applicants solely due to high risk transactions if there is no evidence to suggest future financial difficulties. It had no evidence Mr F was in a debt management plan. There was no sign of payday lending or other indicators of financial stress on either of Mr F's current accounts.

## **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 done so I am upholding Mr F's complaint. I'll explain why.

I have taken into account the law, any relevant regulatory rules and good industry practice at the time. When HSBC lent to Mr F the regulator was the Financial Conduct Authority and the relevant regulations and guidance were included its Consumer Credit Sourcebook. HSBC is aware of the relevant regulations and how we consider irresponsible lending complaints, so I won't go into detail on these points here. Our approach is set out on our website.

I've thought about whether HSBC completed reasonable and proportionate checks when assessing Mr F's application, I've thought about the information it knew, and what it ought reasonably to have known. And whether or not it made a fair lending decision.

Section 5 of the Consumer Credit (CONC) sourcebook 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 F was applying for a £15,000 loan over 72 months. 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 has told us it calculated Mr F's net monthly income to be £1,927 and after living costs and existing credit commitments this meant he had disposable income of £666. So the loan was affordable. It also completed a credit check and has now shared the results. These showed no adverse data or signs of over indebtedness and so HSBC felt it was fair to lend. I am not wholly satisfied these checks were proportionate given the value and term of the loan, it may have been better to use Mr F's actual living costs but I won't comment further on this as even based on the information it had I don't think HSBC made a fair lending decision.

HSBC accepts as Mr F held his current account(s) at first direct it had additional information. It says it didn't use this within its assessment but I think it should have so I have reviewed Mr F's bank statements from the three months prior to his application. There are two issues that this information reveals. It shows, as Mr F has said, that he was in a debt management plan making a monthly repayment of around £130 on around the second day of each month. And as the adjudicator said the statements also show that Mr F was spending an increasing amount of his income on gambling. In combination, these factors indicate to me that there was a high risk Mr F might not be able to sustainably repay this loan and should not be offered more debt.

It follows I think HSBC was wrong to give the loan to Mr F.

### **Putting things right**

Mr F must repay the capital as he has had the benefit of that money. But he has paid interest and charges on a loan that he shouldn't have been given. If HSBC has sold the debt it should first try to buy it back, if this is not possible it must work with the new owner to achieve the same outcome as the steps set out below.

So HSBC must:

- 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 F. And HSBC will need to add 8% simple interest\* on any amount it pays Mr F from the date the payments were made, until the date of settlement.
- Remove any adverse data from Mr F's credit file relating to the loan.

\*HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mr F 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 an outstanding balance remain after all adjustments have been made to Mr F's account and it's the case that he is experiencing financial difficulty.

**My final decision**

I am upholding Mr F's complaint. HSBC UK Bank Plc, trading as first direct, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 7 December 2022.

Rebecca Connelley  
**Ombudsman**