



The complaint

Mr J complains that HSBC UK Bank Plc lent to him irresponsibly when it gave him loans and a credit card that he says he couldn't afford.

What happened

Mr J borrowed with HSBC over a period of about 20 years. In this case I am looking at four loans and a credit card Mr J took out between 2007 and 2018.

Mr J says that HSBC failed to conduct sufficient checks on his individual financial position. He thinks HSBC was negligent in allowing him to take the lending. He asks that HSBC pay back all interest he paid.

Our investigator didn't think Mr J's complaint should be upheld. Mr J disagreed.

Our investigator reviewed the further points Mr J made but concluded it didn't make a difference to their view. As Mr J didn't agree with the investigator's view his complaint was passed to me to make a decision.

I reached a different view to that of our investigator and wrote to both parties to explain this. I invited both parties to make further comments. Mr J agreed with my decision and asked a number of other questions which I address in this decision. He also supplied a pay slip, although this does not affect my overall decision. HSBC did not respond.

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 and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website and I've taken that into account when I have considered Mr W's complaint.

Having done so, I came to a different conclusion to that of our investigator. I think Mr J's complaint should be upheld in relation to the last loan he took in 2018. I will explain why I have reached this decision.

HSBC needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr J could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Mr J's income and expenditure.

Certain factors might point to the fact that HSBC should fairly and reasonably have done more to establish that any lending was sustainable for Mr J. These factors include things like

understanding Mr J's income, the total amount Mr J borrowed, and the length of time Mr J had been indebted. There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Mr J first took a loan with HSBC in December 2007. It was for £2,000, repayable at £51.10 a month over five years. At the time Mr J had an overdraft facility of £1,200 with HSBC and an existing loan also with HSBC for £750.

In January 2009 Mr J took out a credit card with HSBC. The initial limit was £5,250 which was increased later to £6,300. Mr J had an overdraft facility of £1,500.

In February 2015 Mr J consolidated his borrowing in a loan for £7,000, repayable at £146.91 a month over five years. His credit card limit was £6,300 and his overdraft limit had been increased to £3,000.

Mr J had an income of £20,450 in 2009, but by 2015 it had increased to £49,500. Mr J supplied a further payslip from 2018 which shows Mr J's income then was just over £50,000.

HSBC says it did credit checks at the time of all this lending but hasn't been able to provide the results of those checks given the time that has passed. I don't think this is unreasonable in the circumstances; businesses are not allowed to retain information indefinitely.

In the absence of the results of those checks I can't be satisfied that HSBC did appropriate and proportionate checks. But that doesn't necessarily mean the lending was unaffordable or unsustainable. I need to think about what HSBC ought to have seen if it had done appropriate and proportionate checks.

To assist with this, we asked Mr J to provide copies of his credit file and bank statements from around the time of each lending decision. Mr J was able to provide his credit file but given the time which had passed since the lending, some of the lending I have mentioned so far didn't appear on it. There is nothing on his credit file to indicate anything of concern before 2013. And Mr J wasn't able to provide any bank statements. So, for the borrowing in 2007 and 2009 I can't be sure that HSBC would have seen anything to suggest it shouldn't have lent to Mr J.

However, I can see from his credit file that he did have one account which was being managed by a debt collection agency from November 2013. I can't tell exactly what the balance was at the time, but it seems likely it was around £5,700 which had been owed on a credit card. So, I think for the 2015 loan it's likely this arrangement would have appeared in HSBC's credit checks, and it would have been reasonable for HSBC to have conducted further checks by verifying Mr J's income and expenditure.

By this time, Mr J's income was almost £50,000. His overdraft with HSBC was £3,000 and his credit card limit with HSBC was £6,300. I don't know what the repayments were each month on the debt which was with the collection agency at that time, but I think sustainable repayments on it would have been in the region of £250 a month. It doesn't look as if Mr J defaulted on these repayments by the time of the 2015 loan and without sight of Mr J's bank statements from the time which might help me understand his income and expenditure better, I can't be sure that HSBC would have seen anything to make it consider Mr J's repayments would have been unaffordable for him.

In May 2016 Mr J took out a loan for £37,389 including interest, repayable at a rate of around £400 a month over 94 months. The capital amount borrowed was £24,000. This was intended to consolidate his other borrowing, and I can see from the offer letter from HSBC that the loan was agreed on this basis. HSBC said the loan was dependant on Mr J repaying

his earlier loan from 2015, repaying and closing his credit card and repaying his overdraft balance. The overdraft was then to be limited to £2,000. According to HSBC's records Mr J had about £15,000 of outstanding debt with HSBC on which he was making monthly repayments of £295 a month. Mr J also declared other lending elsewhere and said he was making repayments costing around £540 a month on those. Mr J also provided details of his essential outgoings each month which were around £1,425 including mortgage and childcare costs.

Mr J's monthly net income was said to be £3,273. Once his essential expenses and the cost of his new borrowing (minus the repayments which would be settled as part of the new borrowing) HSBC calculated Mr J had a disposable income each month of about £840 a month.

I think this shows that HSBC was considering Mr J's whole borrowing to decide whether the loan was affordable for him. However, it's not clear to me whether the data was obtained from Mr J or from credit file sources, or that Mr J's existing borrowing was accurately reflected in the assessment of Mr J's existing credit facilities. For example, although information from that time is limited on Mr J's credit file I can see that there was a loan taken with another provider in July 2014 - seven months before the loan I am looking at - which had an opening balance of almost £27,000. I don't think it's likely that loan had been reduced to the £9,000 which appears on HSBC's assessment of his existing credit, not least because the loan account was closed in April 2018 with a balance of just over £20,000.

However, it does seem that the monthly repayments were relatively accurately declared at £200 a month. So, while I think it's likely Mr J was more indebted than HSBC understood, I think HSBC's assessment of his outgoings for outstanding debt was still likely reasonably accurate.

At the time HSBC did check Mr J's income and expenditure which showed that he had a monthly disposable income of about £840 a month. I don't know what other information HSBC had from its credit checks, but I think given the outcome of the income and expenditure assessment that the loan was likely to be affordable and could be repaid in a sustainable way, especially when taking into account Mr J was consolidating debts at a lower rate than that he was currently paying.

In July 2018 Mr J applied for a further loan of £20,000. HSBC records show that there was no intention to close his existing loan, so this was additional debt. Prior to this application in December 2017 Mr J had asked for an increase in his overdraft facility which was declined. In November 2017 HSBC had tried to contact Mr J, seemingly to discuss his '*potential lending needs*' which indicates to me that HSBC was keeping a check on how Mr J was managing his finances. So I think there were some concerns about Mr J's financial situation shortly before he applied for the loan.

Again, there are no records of the credit checks completed. I am less sympathetic about the absence of this information, given it was only about three years later than Mr J first complained. I think given the information HSBC had readily available about Mr J's finances (the rejected overdraft request and the contact to discuss his circumstances) that there was enough to indicate that HSBC needed to do more checks. I think at this stage HSBC needed to not only ask Mr J about his income and expenditure but to verify that information.

I can't tell exactly what Mr J's expenditure was at that time. He declared his income as about £3,500 net a month, which is commensurate with a salary of about £60,000 – although Mr J declared an income of £55,000 a year. His recently provided payslip shows he was earning closer to £50,000. I think it was reasonable for HSBC to assume Mr J had declared his income correctly.

Mr J declared mortgage expenses of £600. His credit file indicates he was paying around £760 to two lenders. His monthly outgoings were declared as around £1,450 a month, leaving a disposable income of around £2,000. The declared essential spending appears far too low and it is inconsistent with the declared outgoings in 2016 – for example, spending on utilities had increased eight-fold, whereas ‘shopping’ was declared at £200 when food spending alone had been over £500 in 2016. No other borrowing was declared, when it is clear from Mr J’s credit file that he had significant other borrowing at that time, including accounts with debt collectors, an HP arrangement for a car and a credit card with a balance of at least £5,600. One account – I think likely to be for the personal loan with another lender I have mentioned earlier – had been passed to a debt collection agency in April 2018.

I think if HSBC had completed standard credit file checks it would have seen this information and I think it’s likely it would have considered that Mr J was unlikely to have been able to sustainably repay the proposed new lending. The income and expenditure assessment HSBC completed was inconsistent with information previously provided by Mr J. And while in some circumstances I think it’s reasonable for a business to be able to rely on information provided by the customer, in this case I think HSBC needed to *verify* the information he provided. And I think it’s likely if HSBC had verified Mr J’s circumstances that it would have concluded that Mr J could not afford to borrow any more money and it wouldn’t have lent to him. So I think Mr J lost out as a result of what HSBC did wrong in relation to the 2018 loan.

While I have not been able to view Mr J’s bank statements, these ought to be readily available from HSBC. I invited both parties to supply these to assist me in reaching my final decision, but neither party was able to. So I see no reason to change my provisional decision.

Putting things right.

As Mr J has had benefit of the capital sum he borrowed I do not think it would be fair to make HSBC pay that money back to him. However, I think HSBC should:

- Identify the total amount of money Mr J received as a result of having been given the loan on 6 July 2018.
- Subtract the repayments Mr J has made from this amount.
- If this results in Mr J having paid more than he received, any overpayments must be refunded along with 8% simple interest* calculated from the date the overpayments were made to the date of settlement.
- Remove any negative information recorded on Mr J’s credit file relating to this loan.

*HM Revenue & Customs requires HSBC to deduct tax from any award of interest. It must give Mr B a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

I understand that Mr J is currently in an Individual Voluntary Arrangement (IVA). Any compensation paid as a result of this decision is likely to need to be paid towards this arrangement. Mr J should check with his IVA supervisor. While I do not know the details of his IVA I think it is unlikely Mr J has paid off the capital he borrowed and so it is unlikely there will be any payment made towards Mr J’s IVA.

Mr J has asked if this loan is effectively ‘written off’. This is not the case. Only the interest and charges will be refunded - or applied to the outstanding debt if one remains.

Mr J has asked me to consider awarding a payment for distress and inconvenience. Such an

award is relatively rare in such cases, and I do not consider that a case for significant distress or inconvenience over and above that involved in pursuing the complaints process has been made out. While Mr J says that the issue caused him physical ill-health I am unable to be satisfied that there is a direct link between what HSBC did wrong and his health conditions.

Mr J has also asked what this decision means in relation to loan that was running at the same time as his loan with HSBC. I have considered only the products that I have detailed in this decision. Any other loan being considered by this service will be reviewed on its individual merits. However, as compensation has already been directed in this case partly on the basis of Mr J's indebtedness, it is possible that any compensation in another case will take into consideration that Mr J has been compensated for this loan.

My final decision

I uphold Mr J's complaint only in relation to the loan taken on 6 July 2018. I do not uphold his complaint about the earlier lending. I direct HSBC UK Bank Plc to pay compensation as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 4 April 2023.

Sally Allbeury
Ombudsman