

The complaint

Mr J has complained that HSBC UK Bank Plc acted irresponsibly when it provided him with two high value personal loans in 2019. He also believes it has failed in its obligations to adequately support him as a vulnerable consumer.

Background

Mr J is a compulsive gambler. He has explained that over a four- and half-year period he gambled approximately £168,000 through his HSBC bank account. In 2019 he applied for, and was given, two large loans from HSBC which he then used to gamble. The first loan, taken in February 2019 was for £10,000 and the second loan, taken in October 2019, was for £25,000. He says HSBC should have realised he had a severe gambling problem and that the loans would be used to fund his addiction. He says that HSBC not only failed to run reasonable checks to ensure the loans were affordable but also failed to provide him with support as a vulnerable consumer contrary to the rules set out by the regulator.

HSBC has said that at the point of application it ran all of the necessary checks required of it as per the rules set out by the Financial Conduct Authority ("FCA"). It notes that Mr J never disclosed his gambling problem prior to making a complaint with it and that it was unaware he was in a vulnerable position. It believes the onus was on Mr J to disclose he needed help and, that once it was aware of his problems, it added a gambling block to his account to help prevent further harm from happening. So, it didn't think it had done anything wrong and didn't uphold Mr J's complaint.

Unhappy with HSBC's response Mr J brought his complaint to our service. One of our investigators has looked into it already. He found that the checks completed when Mr J applied for the first loan in February 2019 were proportionate and there was nothing in the information HSBC had reviewed that indicated the loan may be unaffordable or unsustainable. So, he didn't think HSBC was wrong to approve the first loan.

However, he did think that by the time Mr J applied for the second loan in October 2019, HSBC should have done more detailed checks. If it had he thought it was likely it would have discovered the full extent of Mr J's gambling and would have refused to provide him with the additional loan. So, he suggested that it refund all interest and charges applied to the second loan to Mr J.

Mr J rejected the investigators findings. He believed that HSBC should refund all of the gambling transactions on the account as well as all interest and charges associated with both loans and write the remaining balance off. In total he thought HSBC should pay him approximately £175,400 in redress. He said the purpose of this service is to put consumers back into the position they would have been in if things hadn't gone wrong, and in his opinion that means putting him in the position he'd been in if he'd never gambled.

As he was unhappy with the investigators findings he requested an ombudsman review his complaint afresh and so it's been passed to me for consideration.

My findings

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 agree with the findings reached by our investigator and won't be asking HSBC to refund more than the interest and charges linked to loan two. I know this will come as an enormous disappointment for Mr J and so I've set out my findings below to clarify why I've come to this outcome.

The first part of Mr J's complaint concerns the lending decision made by HSBC in 2019. He has said that at the time he applied for the loans he had been using a current account with HSBC for a number of years to gamble. Mr J has explained that his personal account with HSBC was opened just to facilitate his gambling, he held a joint account with his wife elsewhere and had opened the account with HSBC in an attempt to hide his gambling from her.

Mr J explained that there was an overdraft facility on his account and that prior to applying for the £10,000 loan in February 2019 his account had been consistently overdrawn as a result of his gambling losses. So, he doesn't think that HSBC should have approved the loan and he doesn't accept that it was unaware of his gambling addiction.

I've looked at the statements for Mr J's account for the three months prior to February 2019 to understand how the account was being maintained. However, it's important to clarify there is no obligation on lenders to review bank statements when considering applications for credit. This is the case even in situations where the lender is a bank the consumer holds an account with. Rather, the lending rules merely require businesses to run 'reasonable and proportionate checks' without defining what those checks need to be. So, while Mr J's bank statements may show his gambling activity, I still need to establish a reason why HSBC ought to have reviewed them.

Having looked at Mr J's statements I agree when he applied for the £10,000 loan, which was repayable over 60 months, in February 2019, he was gambling in an excessive and compulsive way. And I fully accept that the real purpose of the loan was to fund this habit. However, the existence of the gambling on its own isn't enough to uphold his complaint. I need to be able to establish that HSBC knew, or ought to have known from the checks it completed, that Mr J was in a financially vulnerable position and that the lending was likely to cause him harm or prove unsustainable.

As noted above the lending rules set out by the FCA don't specifically require businesses to review bank statements before approving loan applications. I can understand why Mr J may have difficulty accepting that the bank he held an account with, an account where an overdraft facility was in regular use, wouldn't automatically review how he was managing that account before deciding whether or not to give him a loan. But the rules don't require banks to do this. So, I can't say HSBC was at fault for not immediately reviewing his account statements when he applied for the loan. However, depending on what information the basic checks the bank did complete returned, it may have been necessary for it to complete more thorough checks at which point the bank statements may well have been reviewed.

Whether or not additional checks are needed depends on what the basic checks show. In regard to the first loan application the basic checks completed by HSBC showed that Mr J's monthly take home salary was approximately £1,630 and that his credit file was in good order with no recent arrears or missed payments. The monthly repayments were just over £214 and so it felt it was affordable and sustainable. And as there were no indications of stress on Mr J's credit file it didn't think additional checks were necessary. And while he was

using his overdraft facility his account wasn't permanently overdrawn. It did have periods when the account went back into credit. So I can't say the overdraft usage alone should have prompted HSBC to review his account in detail.

I know Mr J will disagree with me on this but given the information HSBC reviewed in February 2019, I agree it did appear the loan was both affordable and sustainable for him. And so I can't say that the bank failed to follow the lending rules properly when it approved his application or that it should have done more thorough checks. As I don't think there was anything in the information it gathered that could have alerted it to the problems Mr J was experiencing, I can't uphold his complaint in relation to the loan taken in February 2019.

This brings me to the second loan Mr J took, in October 2019. That loan was for £25,000 and was repayable over 96 months. It was used to consolidate the first loan, but the remaining funds were credited to Mr J and ultimately gambled. Once interest was added to the second loan Mr J was required to repay approximately £40,000 which is a substantial amount of money.

As this was an even larger loan than the first one, and the repayment term was considerably longer, I think HSBC needed to run additional checks to those that it had completed eight months earlier when Mr J had applied for the first loan. It's also worth noting that before being approved for this loan Mr J had applied for, and was refused, another £10,000 loan with HSBC. The fact that he was returning to the bank so soon after taking a substantial loan with it and asking for access to more credit, should have prompted it to query how he was using the funds and why additional lending was needed.

So, I don't think the checks HSBC completed in relation to the second loan were sufficient. And I think the fact that Mr J had attempted to get another loan in between being approved for the first loan, and applying for the October loan, should have given the bank pause for thought. The term of the loan was considerable, and HSBC should have run more thorough checks to ensure it would be sustainable as well as considering whether or not it appeared to be affordable.

One of the easiest things it could have done to consider this was review Mr J's account with it. This would have given it insight into how he was managing his finances and whether or not there was any activity that may have indicated the loan wasn't genuinely affordable or sustainable. If HSBC had done this it would've seen the volume of gambling transactions on Mr J's account and realised that he was in an extremely financially vulnerable position. This would have stopped it from approving the loan, and also presented it with an opportunity to offer genuine and tailored support to a vulnerable consumer.

So I don't think it was appropriate for HSBC to have approved the loan in October 2019 and I do uphold this part of Mr J's complaint.

Mr J has said that he believes fair compensation for his complaint would be for HSBC to refund all of the money he lost gambling. He says this because he believes the bank could have intervened and stopped him from losing the money he did. He has also said that 'being put back into the position he would have been in if he hadn't been approved for the loan' should mean that he has no debt to repay HSBC and not just that it should refund the interest and charges added to the loan.

I have considered Mr J's points on this matter very carefully, as I know the gambling losses likely have had a devastating impact on him and his family. However, I can't be sure that any refusal to provide him with loan two would have stopped his gambling. And I know he was borrowing from other lenders, not just HSBC, to feed his addiction. So, I can't safely say that if HSBC hadn't provided him with the loan in October 2019 Mr J wouldn't have gambled at

all. And, as I've already explained, I don't think the bank was wrong to give him the first loan, based on the information it reviewed at the time.

When considering cases of irresponsible lending the general approach is to refund interest and charges. This is because it would be inappropriate for a lender to make a profit after providing credit to someone who wasn't able to afford it. But there is still an obligation to repay the capital amount because putting someone back into the position they would have been in, means they wouldn't have received the money. There is still an obligation on consumers to repay the capital amount they received in these circumstances. And I think that's fair.

I know Mr J has seen some case studies on our website where we have made recommendations for capital write offs. And I understand he feels this should happen in regard to his complaint. But we review each case on its own individual merits and in this case I think it's reasonable for Mr J to repay the £25,000 he borrowed. But not the £15,000 of interest and charges that was added onto that amount.

Finally, Mr J has said that HSBC failed to provide him with support as a vulnerable consumer and that this is a failing of the requirements set out by the FCA.

There are two different scenarios where a business might identify someone as vulnerable and be expected to provide support. The first is where the consumer discloses their vulnerabilities directly and asks for help. In Mr J's case, he didn't explicitly tell HSBC that he needed support until he complained about the loans. So I can't say that HSBC failed to act on information Mr J gave it prior to that moment. And it does seem that once Mr J did disclose his addiction to the bank it attempted to help him by applying gambling blocks and sign posting him to external support groups.

The other way a business may discover that a consumer is vulnerable is through the account activity. Mr J has understandably questioned how he could gamble so much money through his account without anyone noticing. Having reviewed Mr J's account activity I can see that while his HSBC account was used almost exclusively to gamble, it didn't show any obvious signs of stress. By which I mean, there weren't regular instances where he exceeded his agreed overdraft limit or had direct debits or standing orders returned unpaid. We no longer live in a world where human beings manually review bank account activity unless prompted to do so by an algorithm that has identified some sort of risk or stress indicator. So even though Mr J did use his overdraft, as already mentioned, there were credits into the account that cleared it. And there was nothing else happening on the account that would've alerted HSBC to a potential risk, so no one looked at the individual transactions in detail.

While I don't agree with HSBC's submissions that it is the sole responsibility of consumers to inform it when they might be vulnerable, I also can't say that in Mr J's case the bank failed to pick up on obvious signs that he was struggling to manage his finances. So, while there are some situations where it may be reasonable to say a bank should have realised that one of its customers needed additional help and support, I can't say that was the case here. That's not to say that Mr J wasn't vulnerable, he absolutely was, I just don't think it was apparent from the way he was running his account. And so I can't say HSBC failed to provide support when it should have known it was needed.

Putting things right

Therefore, in order to put things right HSBC UK Bank Plc should:

- add up the total amount of money Mr J received as a result of having been given the loan in October 2019. The repayments Mr J made should be deducted from this amount.

- a) if this results in Mr J having paid more than he received, then any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement). †
- b) if any capital balance remains outstanding, then HSBC should attempt to arrange an affordable and suitable payment plan with Mr J
- c) remove any negative information recorded on Mr J's credit file once any remaining capital has been repaid.

† If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr J how much it's taken off. It should also give Mr J a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customer if appropriate.

My final decision

For the reasons set out above I partially uphold Mr J's complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 15 February 2024.

Karen Hanlon
Ombudsman