

The complaint

Mr J has complained that HSBC Bank UK plc (“HSBC”) gave him a loan he couldn’t afford to repay.

What happened

HSBC advanced Mr J a 60-month loan for £4,480 on 5 September 2013. The monthly repayments were £115.68.

Mr J had had some difficulties repaying the loan and it seems from the notes provided from HSBC that the account was closed in October 2016. The account was then passed to a third-party collection agency in May 2017 and Mr J says he repaid what was owed in 2020. Following Mr J’s complaint HSBC wrote to him to say:

“As this application was received more than six year ago, I regret that I’m unable to respond to this point in more details this is now subject to time bar.”

Unhappy with this response, Mr J referred the complaint to the Financial Ombudsman.

An investigator initially considered the time bar that HSBC had raised, in summary it said that Mr J had raised his complaint more than six years after the event and more than three years since he ought to have realised, he had cause for complaint. HSBC didn’t agree with the investigator’s assessment that we could consider the complaint.

An ombudsman colleague then issued a decision determining the complaint was within jurisdiction and so the merits could be investigated. For the sake of completeness, I’d add that I’m satisfied that I can consider this complaint.

The complaint was then upheld by an investigator. He concluded the checks weren’t proportionate given the information HSBC appears to have received from the credit reference agency and so further checks were needed before the loan was granted. He could see, from the bank statements that Mr J provided showed he had a positive balance on his account for only 1 day in the preceding 3 months and the investigator could also see that Mr J had used payday loans.

HSBC didn’t agree saying at the time the loan was approved, the Office of Fair trading (OFT) was the industry regulator, and it is this guidance the ILG that HSBC should be assessed against. HSBC confirmed it considered relevant information given to it by the credit reference agency and internal information but due to the passage of time the details of the credit checks are no longer available. It also asked to see the bank statements the investigator had access too.

In response to reviewing the bank statements HSBC said the payday loans were taken in April 2013 and in the months leading up to the loan the bank statements “...were all in order...” and the statements showed no commitments beyond £350. Finally, Mr J had managed his payments well until August 2015.

The investigator considered these points, and he was still of the view the loan was unaffordable because HSBC hadn't carried out proportionate checks, Mr J was dependent on his overdraft and in the days before the loan was approved Mr J spent a significant sum on gambling transactions.

As no agreement could be reached the complaint has been passed to me to decide.

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/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. And I've used this approach to help me decide Mr J's complaint. Having carefully considered everything I've decided to uphold Mr J's complaint. I'll explain why in a little more detail.

HSBC is quite correct in saying at the time the loan was advanced the rules and regulations were laid out by the OFT within the ILG and of course, that is the approach and standard it should be held against.

However, many of the rules and guidance were transposed into the new CONC guidance from April 2014. Having looked at everything, the obligations on the part of HSBC are broadly similar in September 2013 as they would've been had it advanced the loan say a year later when CONC would've been relevant.

HSBC needed to make sure it didn't lend irresponsibly. In practice, what this means it needed to carry out proportionate checks to be able to understand whether Mr J could afford to repay any credit it provided.

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 checks to be less thorough – in terms of how much information is gathered and what is done to verify it – in the early stages of a lending relationship.

But we might think more needed to be done 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 firm to be able to show that it didn't continue to facilitate a customer's loans irresponsibly.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr J's complaint.

HSBC has said that due to the passage of time it has provided all the information that it can about the loan application and repayment of it. This is limited in scope but also completely understandable given firstly the loan was approved more than 10 years ago and it's been a number of years since HSBC has been Mr J as a creditor. I've kept this in mind while reviewing the case, but I am still of the view the complaint should be upheld.

Mr J, as part of application declared he received income of £1,000 per month after tax. It isn't clear what if any further checks were conducted into Mr J's income, but I think it's fair to say that HSBC was on notice that he received a modest salary.

HSBC's screen shot shows that it did enquire with Mr J about his monthly outgoings and at the time he had a phone bill of £45 per month, £200 per month for maintenance, £30 for car costs, £40 for food and clothing and £30 travel costs – overall Mr J's living costs came to £345 per month.

I'm satisfied that HSBC, as part of its affordability assessment, likely carried out a credit search. However, due to the passage of time, I don't know exactly what information it viewed. It's possible that the only information it received was that Mr J's credit commitments came to £95 per month across a credit card and what I believe to be two catalogue shopping accounts.

It is of course possible, that HSBC received further information such as recent loan applications and a detailed breakdown of the payment history on his active and / or closed accounts. But I can't say this for sure and HSBC understandably can't evidence this given the passage of time. Overall, HSBC seems to have calculated that Mr J had monthly outgoings of just over £550 and so the loan would've appeared affordable.

However, like the investigator I do think further checks ought to have been carried out when thinking about the sum that was being borrowed, the rate of interest applied to the loan, the term it was lent over, and the fact Mr J received a modest income. In the circumstances of the complaint, I think it would've been prudent to review Mr J's bank statements to understand his actual financial position.

I've therefore considered what further checks are likely to have shown. Mr J has provided us with copies of his bank statements as evidence of his financial circumstances at the time he applied for this loan – and which has been seen by HSBC. Of course, I accept different checks might show different things. And just because something shows up in the information Mr J has provided, it doesn't mean it would've shown up in any checks HSBC might've carried out at the time. However, as the bank statements are from Mr J's HSBC current account, I'm satisfied that I'm not considering information that wouldn't have been available to HSBC at the time.

In the absence of anything else from HSBC relating to what its checks indicated, I think it's perfectly fair, reasonable and proportionate to place considerable weight on what other information it clearly had access to as an indication of what Mr J's financial circumstances were more likely than not to have been at the time.

I also think it's important for me to set out that HSBC was required to establish whether Mr J could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. The information provided in the bank statements show that Mr J spent a considerable period of time overdrawn each month. This does not in itself mean that Mr J shouldn't have been lent to.

However, in the days before the loan was approved, Mr J had spent more than his monthly income on gambling sites and so the loan was only likely to be affordable if Mr J had been successful and of course that wasn't guaranteed. And when this is combined with Mr J's overdrawn position and him having a fixed income, with no obvious prospect of this increasing in the immediate future or during the course of the term of the loan, I don't think the loan repayments were sustainable.

As this is the case, I think that proportionate checks are likely to have shown HSBC that Mr J was unlikely to be able to afford the payments to this loan, without undue difficulty or borrowing further. So, I'm satisfied that reasonable and proportionate checks would more likely than not have shown HSBC that it shouldn't have advanced this loan.

It therefore follows that Mr J has paid interest, fees and charges on a loan that he shouldn't have had. So, I'm satisfied that Mr J has lost out and HSBC should put things right for him as set out below.

Putting things right

If HSBC has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps – if an outstanding balance still remains. If HSBC can't buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below.

Having thought about everything, HSBC should put things right for Mr J by:

- removing all interest, fees and charges applied to Mr J's loan from the outset. The payments Mr J made, whether to HSBC or any third-party debt purchaser, should be deducted from the new starting balance – the £4,800 originally lent. If Mr J has already paid HSBC more than £4,800 then it should treat any extra as overpayments. The overpayments should be refunded to Mr J;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr J to the date of settlement†
- if no outstanding balance remains after all adjustments have been made, all adverse information HSBC recorded about this loan should be removed from Mr J's credit file.

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

My final decision

For the reasons given above, I uphold Mr J's complaint.

HSBC Bank UK Plc should put things right for Mr J as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 14 June 2024.

Robert Walker
Ombudsman