

The complaint

Mr M is complaining about HSBC UK Bank Plc because he says it lent irresponsibly by providing a loan he couldn't afford.

What happened

In June 2023, HSBC provided Mr M with a loan of £15,000, repayable over five years with a monthly repayment of £342. The loan agreement states this was based on an annual interest rate of 13.9% with a total amount of £20,525 to be repaid.

HSBC says Mr M took the loan to buy a car and his bank statements appear to show he spent £10,390 on a vehicle a few days later.

Our investigator concluded the complaint should be upheld. He felt HSBC should have carried out a more detailed affordability assessment and declined to lend. He recommended redress based primarily on a refund of interest and charges with additional compensation of £200 for Mr M's distress and inconvenience.

HSBC didn't accept the investigator's assessment. It said that its affordability assessment was in line with regulatory requirements and that no further checks were required. It said it was entitled to rely on the information provided by Mr M and that this showed the loan was affordable.

Mr M also didn't accept the investigator's assessment. He believes HSBC should write off the loan and has referred to information on our website that he believes supports this view. He also believes the proposed distress and inconvenience payment should be increased.

The complaint has now been referred to me for review.

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've reached the same overall conclusions as the investigator, and for broadly the same reasons. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Both parties have made extensive submissions in connection with this complaint. I haven't commented on every point raised in this decision. Instead, I've addressed the key issues that I believe are central to the outcome. In particular, there is some dispute about the circumstances in which the loan was taken. But the fact is that Mr M did apply for a loan and it was approved. The key issue I need to decide is whether HSBC lent responsibly.

Before lending to Mr M, HSBC was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider are:

- Did HSBC complete reasonable and proportionate checks to establish Mr M would be able to repay the loan in a sustainable way?
- If so, was the decision to lend fair and reasonable?
- If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

The rules, regulations and good industry practice in place at the time the loan was approved required HSBC to carry out a proportionate and borrower-focused assessment of whether Mr M could afford the repayments. This assessment also had to consider whether the loan could be repaid sustainably. In practice this meant HSBC had to satisfy itself that making payments to the loan wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of him making payments, it had to consider the impact of the repayments on Mr M.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

HSBC has described the information it gathered to assess whether Mr M's loan was affordable before it was approved. This included:

- information contained in his application, including residential status, employment status and his income;
- information obtained from a credit reference agency (CRA), giving details of his existing credit arrangements and any past issues with credit, including missed payments and defaults; and
- an expenditure assessment using a combination of modelled data for key expenses, along with actual data from the CRA about the cost of his existing credit arrangements.

HSBC maintains its affordability assessment was proportionate to the loan being given and demonstrated it was affordable.

HSBC says Mr M declared in his application that his annual income was £65,000. It says it was unable to verify this amount so instead based its affordability assessment on an income of £30,000 obtained from statistical data.

At the time of the application, Mr M was only 21 and I think HSBC was right not to accept a figure of £65,000 without trying to verify this. He banked with HSBC and it told us it couldn't verify his income because there was no indication of salary credits into either of his accounts in the year prior to the application.

In my view, the absence of any evidence of earnings should have been a significant concern. I've considered HSBC's comments, including its references to the rules set out in

the Consumer Credit Sourcebook (CONC). But in view of the amount being borrowed and the extent of the monthly repayment over a long period of time, I believe it should have carried out further checks to establish what Mr M's income actually was rather than relying on an assumed figure that may or may not have been accurate.

HSBC's application data records Mr M said he was self-employed and I can't see any reason why it couldn't have asked for evidence of earnings. As part of our investigation, Mr M has provided a copy of his self-assessment tax calculation for the 2022-23 tax year (the loan was issued only a few weeks after the end of the tax year) and this records his profit from self-employment as £5,934.

Mr M has also provided statement information for a current account with another bank, from which he made payments into his HSBC account. This also doesn't appear to show any salary credits or other earnings, but does show he was receiving universal credit of between £293 and £354 in each of the three months before the loan was approved and a DWP cost of living payment of £301 in May 2023. It's also clear that this is the source of the money he was transferring to his HSBC account over the same period.

I think the evidence shows Mr M's income was low and certainly nowhere near the £30,000 HSBC assumed in its affordability calculation. I've no reason to think HSBC couldn't have established the correct figure with appropriate enquiries and I think it should have done so given the circumstances of this case.

HSBC also carried out a credit check and this reported Mr M had existing debt of £7,900. I think it should have been clear that he wouldn't realistically be able to sustain a new monthly loan repayment of £342 in addition to servicing his existing debt and meeting his essential expenditure from the income he was receiving.

If HSBC had adequately assessed whether the loan repayments were affordable and sustainable, it's my view it shouldn't have lent to Mr M. It's for this reason that I'm upholding his complaint.

Putting things right

The principal aim of any award I make must be to return Mr M to the position he'd now be in but for the errors or inappropriate actions of HSBC. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think HSBC should have lent to Mr M, I don't think it's fair for him to pay interest or charges on the amount borrowed. But he has had use of the money that was lent, so in principal I think it's fair he repays the amount borrowed (without the addition of interest or charges).

To put things right, HSBC now needs to take the following steps:

- Calculate the total of all Mr M's payments towards the loan, including all interest, fees, charges and insurances (not already refunded).
- If this exceeds the £15,000 borrowed, any excess above £15,000 should be paid to him with simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires HSBC to deduct tax from any interest. It must provide Mr M with a certificate showing how much tax has been deducted if he

asks for one. If HSBC intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- If, as seems more likely, the total of all Mr M's payments doesn't exceed the £15,000 borrowed, HSBC should arrange an affordable payment plan with him for the shortfall. HSBC will be aware of its responsibility to treat Mr M positively and sympathetically when dealing with this issue.
- Remove any adverse information recorded on Mr M's credit file relating to this loan, once any outstanding balance has been repaid.

If HSBC no longer owns the debt, it should liaise with whoever does to ensure any payments Mr M has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

In deciding what constitutes fair redress, I've given careful consideration to Mr M's view that the entire loan should be written off but I don't think that's an appropriate outcome at this stage. First, I'm conscious much of the loan appears to have been used to purchase an asset that presumably still has value. And second, while I can see the full monthly repayment of £342 may be unaffordable, I haven't seen sufficient evidence of Mr M's current circumstances to demonstrate that he can't afford to pay anything at all.

Part of the remedy I've proposed is that HSBC should try to agree an affordable repayment plan with Mr M. I anticipate that would involve the bank reviewing his income and expenditure in detail with a view to assessing what he may be able to afford to pay. If it turns out that he really can't afford to make any contribution towards the amount he borrowed, writing off some of the capital could be an option at that stage. But I don't think I'm currently in a position to say that's what should happen.

Finally, I agree with the investigator that the issues described in this case have caused Mr M some distress and inconvenience and he should be compensated for that. The amount to award for distress and inconvenience can be difficult to assess as the same issue can impact different consumers in different ways. But given the circumstances of this case and the amounts we typically award, I'm satisfied the £200 proposed by the investigator is fair and reasonable.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mr M in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

My final decision

For the reasons I've explained, I'm upholding Mr M's complaint. Subject to his acceptance, HSBC UK Bank Plc should now put things right as I've set out above and pay compensation of £200 for his distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 July 2024.

James Biles
Ombudsman