DRN-5049571

## The complaint

Mr W complains that HSBC UK Bank Plc ("HSBC") irresponsibly agreed a loan for him.

## What happened

HSBC agreed a loan of £30,000 for Mr W in February 2023. The total amount owed was £51,420.48 to be repaid at £535.63 a month over 96 months.

Mr W met his repayments for the loan until September 2023 when his direct debit was returned. The account was recorded as defaulted in November and the outstanding balance was passed to a debt collector in December 2023.

Mr W complained to HSBC in early 2024 that the loan was unaffordable for him. He said that he'd never been able to keep on top of his repayments with his level of income and, although he relied on savings for a time, there came a point where he could no longer afford the loan at all. Mr W said he used the loan to pay off some of his existing debts.

HSBC didn't uphold Mr W's complaint. It said it conducted a detailed affordability assessment before entering into the agreement, which included verifying what Mr W said about his income and reviewing his credit file. HSBC said it estimated that, after meeting his loan repayment, Mr W would have a monthly disposable income that was well within its credit policy.

Mr W referred his complaint to us. One of our investigators looked into the complaint and recommended that it be upheld. They concluded that the checks HSBC carried out before lending to Mr W weren't proportionate, and that further checks would have shown the loan to be unaffordable for him.

HSBC didn't agree with this recommendation and asked for his complaint to come to an ombudsman to decide. I reviewed the complaint and decided that it should be upheld, but for different reasons to those of our investigator. I sent a provisional decision to both parties on 22 August to explain why I thought Mr W's complaint should succeed and what should happen now to put things right for him.

HSBC said that, while it didn't agree with everything I'd said, it was willing to settle the complaint as I'd proposed as a gesture of goodwill. Mr W agreed with my decision to uphold his complaint but didn't agree with my proposals for putting things right for him.

## 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 considered the matter again, including what Mr W said in his response to my provisional decision, I remain of the view that what I've proposed HSBC does to put things right for him is fair and reasonable in the circumstances of this complaint. I'll set out my reasons again in this final decision and refer to Mr W's response where appropriate.

As before, when making my decision, I've had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as HSBC, need to abide by. HSBC will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement, HSBC needed to check that Mr W could afford to meet his repayments out of his usual means for the term of the loan, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit (the amount borrowed, for example) and take into consideration Mr W's circumstances. HSBC needed to pay proper regard to the outcome of its checks in respect of affordability risk. The overarching requirement was that HSBC needed to pay due regard to Mr W's interests and treat him fairly.

With this in mind, my main considerations are did HSBC complete reasonable and proportionate checks when it agreed to lend to Mr W to satisfy itself that he would be able to repay the credit offered without difficult? If it didn't do this, what would reasonable and proportionate checks have shown? Was there anything of concern in the checks HSBC carried out and did it make a fair lending decision? Did HSBC treat Mr W unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974?

HSBC provided the information it relied on when assessing Mr W's application which included its income and expenditure records, information from his credit file, payslips and a benefit letter and customer notes.

I started by reviewing the assessment HSBC carried out to understand what figures it relied on. HSBC explained that Mr W had actually made three applications giving slightly different figures each time. He gave his monthly income as around £3,500 and his total expenses as around £1,342, which included a mortgage payment of £300. HSBC relied on a figure of £3,267 for Mr W's income and a figure of £1,382 for his expenses. It verified Mr W's income figure using his payslips and a benefit letter, but didn't take steps to verify what he'd said about his expenses.

HSBC said in response to our investigator's view that it was Mr W's responsibility to advise it of his outgoings on his application form, and it shouldn't be held to account for information that he failed to disclose at the time.

In considering this point, I've borne in mind what the regulations said about the affordability assessment. The regulations were not prescriptive about how lenders should carry out affordability assessments – they said that the steps taken by a lender to verify information depended on the level of affordability risk arising out of the agreement. The factors affecting the level of affordability risk included the cost of the credit and the total amount payable in absolute terms and relative to the customer's circumstances. The regulations also said that lenders needed to consider whether a more, or less, rigorous assessment was required and bear in mind that certain factors might point towards a more rigorous assessment.

In this case, Mr W was taking on a significant debt which he was to repay over eight years. This was to be used clear some of his existing debt. Mr W had borrowed £22,500 from a high street bank in June 2022, about seven months prior to this application, and he'd paid off a previous HSBC loan with a lump sum payment in July 2022. Furthermore, the information HSBC had about Mr W's expenses was inconsistent. It relied on a total expense figure of

£1,382 which included a mortgage payment, and the benefit letter from Mr W showed a monthly rental figure of £1,400.

Altogether, I've found that on this occasion HSBC didn't carry out a proportionate check before lending to Mr W. I think it ought to have verified what Mr W said about his expenses, given his recent history of borrowing to repay existing debt, the size and term of the loan he was about to take on and that it seemed likely it didn't have the whole picture of his circumstances. I've considered what such a check would likely have shown.

The payslips HSBC relied on show that Mr W's income in each of the previous two months was £2,030. His benefit payment for the month before was £1,384. This was a joint Universal Credit claim with his partner for housing benefit, child benefit, disabled child benefit and carer's allowance. HSBC didn't include the carer's element of this (as it was attributed to Mr W's partner) but did consider that the rest of the benefit award was available to Mr W and so relied on a total income figure of £3,267. As mentioned, the benefit payment letter confirms an income figure of £2,030 and a rental cost of £1,400.

Mr W provided his bank statements for two current accounts, one of which was with HSBC, and his tenancy agreements. The tenancy agreement confirms his rent as £1,400 from February 2023 and this payment is shown on the bank statements. My conservative estimate of Mr W's living costs based on his bank statements is around £1,000 not including any child-specific or one-off costs, for example. I've noted that HSBC carried out an income and expenditure assessment with Mr W in September 2023 when he didn't meet his loan repayment which supports this level of monthly expenditure. Mr W held a mortgage at the time with monthly repayments of £300.

Mr W told us that he was in the process of moving from a shared ownership property to a rental property when he applied for the loan. Alongside his mortgage payment of £300 he was paying rent and service charges amounting to £590 and for several months he paid rent on both properties. I understand that the first loan payment was taken in April 2023 and I don't know if Mr W was paying one or two lots of rent in that month. In any case, as I've shown above, he had ongoing monthly costs of at least £2,700.

The credit file information provided by HSBC shows that Mr W's existing debt consisted of his high street bank loan balance of over £31,000 with repayments of £398 and a building society loan taken out a few months previously in October 2022 with a balance of £4,860 and repayments of £137. As the loan wouldn't clear all of this debt, Mr W would need to cover some payments going forward, and he continued to repay his building society loan. This was paid from his HSBC bank account. The statements for this account show that Mr W had other debts to pay – he'd borrowed £2,000 from a credit card the month before for example.

Even considering that all of Mr W's joint housing and child benefit payments were available to him, I think there was a clear risk that he would not be able to meet his loan repayments of £536 each month without difficulty. I think HSBC would likely have learned this through a proportionate check and would not have agreed to lend to Mr W under these circumstances.

As mentioned above, Mr W met his repayments until September 2023. He told HSBC then that he'd lost his job and couldn't repay the loan. This event was unforeseeable and HSBC could not have considered these new circumstances in its decision. However, for the reasons I've set out, I think the loan was unaffordable from the beginning and, but for HSBC's errors in its assessment, Mr W would not have entered into the agreement. I've concluded that HSBC was irresponsible to lend to Mr W on this occasion.

I also considered whether HSBC treated Mr W unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. And I'm satisfied the redress I have directed below results in fair compensation for Mr W in the circumstances of his complaint and that no additional award would be appropriate in this case.

**Putting things right**

Mr W told us that would like to have the outstanding balance on the loan written off in order to resolve his complaint. He said that he is not in a position to repay the balance and it is causing him considerable stress.

I explained in my provisional decision that I didn't think waiving the debt was an appropriate resolution in this case. Relevant regulations I've borne in mind when considering this matter include CONC 7.10.1R and CONC 7.3.5G. The former states that a lender must suspend the pursuit of recovery of a debt from a customer when it's been notified (or understands or ought reasonably to be aware) that a customer might not have the mental capacity to make relevant financial decisions about the management of their debt and/or to engage in the debt recovery process at the time. The latter states that an example of forbearance when a customer is in arrears might be accepting token payments for a reasonable period of time from a customer who would not be otherwise able to meet their priority debts or other essential living expenses.

I said that I hadn't seen anything to suggest that Mr W lacked capacity when he took out the loan, for example, or that his current circumstances were such that it would be fair and reasonable that HSBC ceased to pursue him for this debt. I proposed in my provisional decision that in order to put things right for Mr W, HSBC should cap the amount he needs to repay at the capital amount he borrowed and any adverse information recorded on his credit file should be removed, once this capital debt had been repaid.

In response to this, Mr W said that having to repay the capital balance didn't penalise HSBC for the irresponsible lending it provided and the effects it has had on his life both financially and mentally. He also said that HSBC should have seen that the loan would be clearly unsustainable for him and he is now in a position that repaying the capital will cause him significant financial hardship. Mr W mentioned that he was being supported by a national debt charity and was considering applying for a debt relief order for the capital amount.

It is not our role to penalise businesses for errors but rather to try to put customers back into the position they would have been in had the error, or omission, not happened. As Mr W has used the money he's borrowed it's not possible to unwind this action, but it is possible to limit the harm this borrowing has caused by waiving any additional interest, fees or charges associated with the loan and by removing any negative markers relating to the loan from his credit file.

I've found that a proportionate check would likely have shown that the repayments of £536 Mr W was required to make under the agreement would be unaffordable for him. I haven't found that such checks would likely have shown that repaying any amount of additional credit would be unaffordable for Mr W or that his use of the money was likely to cause him harm, as it might have if it had been spent compulsively, for example, and not on repaying existing debt. And I can't say that HSBC was solely responsible for Mr W's current financial circumstances, given his job loss and his other debts.

As I've set out below, HSBC should treat Mr W fairly and with forbearance regarding the outstanding capital balance, which would likely include agreeing an affordable repayment plan with him. It would be for Mr W to decide if he wishes to pursue other remedies.

Let me say again that I appreciate that this matter has been stressful for Mr W and that it continues to be. I am sorry that things are difficult for him, and that I cannot provide the resolution he is hoping for. I've hope I've clearly explained how I've reached my conclusion that this is a fair and reasonable resolution in the circumstances of this case.

In conclusion, to put things right for Mr W, HSBC should now:

- Cap the amount he needs to repay at the capital amount he borrowed, this being £30,000;
- Consider all payments he's made as payments towards this capital amount; and
    - If Mr W has repaid more than the capital he borrowed, which I don't think is the case here, then HSBC should refund these overpayments to him along with 8% simple interest per annum**; or
    - If he hasn't yet repaid the capital then HSBC needs to treat Mr W fairly and with forbearance which would likely mean agreeing an affordable repayment plan with him.
- Remove any adverse information about this loan from Mr W's credit file once settled.

I understand that the debt has been passed to a debt collector. HSBC may need to buy or take back the debt in order to bring about the above steps, or work with the current owner or holder of the debt.

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

**My final decision**

For the reasons I've explained above I'm upholding Mr W's complaint about HSBC UK Bank Plc and it now needs to put things right for him as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 November 2024.

Michelle Boundy
**Ombudsman**