

Complaint

Mr D has complained about a personal loan HSBC UK Bank Plc ("HSBC") provided to him. He says the loan was unaffordable and was therefore irresponsibly lent to him particularly as he was already exceeding the existing limit on his overdraft.

Background

HSBC provided Mr D with a loan for £8,000.00 in December 2019. This loan had an APR of 16.9% and a term of 60 months. This meant that the total amount to be repaid of £11,605.01, including interest, fees and charges of £3,605.01, was due to be repaid in 60 monthly instalments of just under £194.

One of our investigators reviewed Mr D's complaint and he thought that it didn't do anything wrong when providing Mr D with his loan. So he didn't recommend that Mr D's complaint be upheld.

Mr D disagreed with our investigator's assessment. So the case was passed to an ombudsman as per the next step of our dispute resolution process.

My provisional decision of 1 October 2024

I issued a provisional decision – on 1 October 2024 - setting out why I was intending to partially uphold Mr D's complaint.

In summary, I was intending to uphold Mr D's complaint because I was satisfied that proportionate checks would more likely than not have shown HSBC that it shouldn't have provided a loan to Mr D.

HSBC's response to my provisional decision

HSBC responded to say that Mr D's loan was system accepted and wasn't manually underwritten. It also provided some further information on what it knew about Mr D's circumstances when it agreed to lend.

Mr D's response to my provisional decision

Mr D responded to confirm his acceptance of my provisional decision and that he had nothing further to add.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr D's complaint.

Having carefully considered everything, including the responses to my provisional decision, I'm still upholding Mr D's complaint. I'll explain why in a little more detail.

HSBC needed to make sure it didn't lend irresponsibly. In practice, what this means is HSBC needed to carry out proportionate checks to be able to understand whether Mr D 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 a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more 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 lender to be able to show that it didn't continue to lend to a customer irresponsibly.

HSBC says it agreed to Mr D's application after it took into consideration information it may have already held, information provided during the assessment and information provided by credit reference agencies. In its view, this information was enough to demonstrate that the loan payments were affordable. On the other hand, Mr D has said that he shouldn't have been lent to as he was already exceeding the limit on his overdraft.

I've considered what the parties have said.

Since my provisional decision HSBC has confirmed that Mr D's loan was system assessed and was not manually underwritten. Nonetheless, I don't think that this is anything new, as in my provisional decision I did say that HSBC appeared to be suggesting that the online nature of the application meant that a lighter touch assessment of affordability might have been proportionate. However, while I thank HSBC for the further information and clarity, it still remains that case that there isn't anything within the rules and guidance which suggests that a lesser standard of checks applies to online or system approved applications.

I accept that HSBC provided evidence to show that Mr D had no adverse credit information recorded against him. Nonetheless, HSBC still hasn't addressed the fact that it provided Mr D with this loan a mere matter of days after he complained about overdraft charges applied to his account. In particular Mr D complained that a charge of £80 would have a detrimental impact on his finances. HSBC accepted this complaint – albeit it says that this was done on a gesture of goodwill basis - and refunded Mr D the charges.

Given the proximity of the overdraft complaint to the loan application, I can't reasonably argue that HSBC didn't need to take this into account, when deciding whether to provide Mr D with a loan a mere few days later. Indeed the information provided has reinforced my view that this wasn't taken into account.

Furthermore, Mr D wasn't simply being provided with an amount of funds in order to clear his overdraft, which might have been a fair and reasonable forbearance measure to mitigate against further charges, he was being provided with an amount well in excess of this.

As the monthly payments, for this loan, were well over £100 more than the £80 Mr D said would cause him difficulty, I think that there is an argument for saying that HSBC ought to have declined Mr D's application outright. In any event, at the very least HSBC probably needed to take a closer look at Mr D's finances and whether he could afford to make the

monthly payments for this loan before it provided it. And if HSBC had done this here, I think it is unlikely that it would have provided this loan to Mr D.

I say this because as part of its file submission HSBC has provided a detailed income and expenditure assessment which took place a few months after this application in November 2020. I appreciate that this is a few months after this loan application. But from what I can see the amount of Mr D's income is broadly similar to what he was receiving in December 2019 and I've not been provided with anything which suggests the expenditure side of the assessment had drastically altered in the intervening period either.

As this assessment suggests that Mr D only had a disposable income of around £115 a month, which corroborates what Mr D said in December 2019 and HSBC accepted was the case, that the unauthorised overdraft charges of £80 would cause him difficulty, I'm minded to conclude that the monthly payments to this loan, of around £194, were unaffordable for Mr D.

In reaching my conclusion, I accept that HSBC may argue that this was a consolidation loan. As I've explained, if Mr D was advanced funds just to clear his overdraft, I might have agreed that this was a fair and reasonable forbearance measure. However, HSBC advanced these funds shortly after it ought to have been aware that Mr D may have been experiencing difficulty and without knowing what debts Mr D was going to consolidate or obtaining any sort of undertaking from him on this.

Since my provisional decision HSBC has pointed out that Mr D did go on to clear a loan balance elsewhere. But even though this may be the case, this loan wasn't included on the November 2020 income and expenditure anyway. So I don't think that this changes the fact that even when allowing for what was consolidated, it doesn't look like the available evidence supports the payments to this loan being affordable.

Furthermore, while I accept that HSBC may legitimately question the wisdom of Mr D's decision to take out this loan a few days after he said he was experiencing difficulty, my role here is to determine whether HSBC acted fairly and reasonably to Mr D. And whether HSBC acted in accordance with its regulatory obligations in relation to responsible lending plays a significant role in my determination of this.

As this is the case, and while acknowledging all of the facts here, HSBC hasn't persuaded me that it carried out reasonable and proportionate checks before agreeing to Mr D's application. It hasn't showed me that it took account of the fact that Mr D had got in touch a few days before the loan was provided to say that he was having difficulty.

I also remained satisfied that reasonable and proportionate checks would more like than not have shown HSBC that Mr D's existing financial position meant that he was unlikely to be able to afford the repayments to this loan, without undue difficulty or borrowing further. This was irrespective of any debt consolidation taking place.

As HSBC provided Mr D with this loan, notwithstanding this, I remain satisfied that it failed to act fairly and reasonably towards him and I'm therefore upholding this complaint.

Mr D ended up paying interest, fees and charges on a loan he shouldn't have been provided with. So think that Mr D lost out because of what HSBC did wrong and it should now put things right for Mr D.

In reaching my conclusions, I've also considered whether the lending relationship between HSBC and Mr D might have been unfair to Mr D under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I'm directing HSBC to do results in fair compensation for Mr D given the overall circumstances of his complaint. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Fair compensation – what HSBC needs to do to put things right for Mr D

Having thought about everything, I'm satisfied that HSBC should put things right for Mr D by:

- refunding all interest, fees and charges Mr D paid on his loan;
- adding interest at 8% per year simple on any refunded payments from the date they were made by Mr D to the date of settlement†
- removing any and all adverse information it may have recorded about this loan from Mr D's credit file.

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

My final decision

For the reasons I've explained above and in my provisional decision of 1 October 2024, I'm upholding Mr D's complaint. HSBC UK Bank Plc should put things right in the way I've directed it to do so in the section above.

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

Jeshen Narayanan
Ombudsman