

The complaint

Mr M complains that HSBC UK Bank Plc ('HSBC') irresponsibly agreed to lend to him by way of a personal loan when he couldn't afford to repay and caused him to get into financial difficulties as a result.

What happened

In September 2017, Mr M took out a personal loan in the form of a fixed sum loan agreement with HSBC. The loan was for £15,000 and was payable over 48 months. Under the terms of the loan agreement, Mr M was required to pay monthly repayments of £422.91. A total of £20,299.65 was repayable.

Mr M says HSBC didn't complete adequate affordability checks and is also unhappy with the interest and charges that were added to the loan.

HSBC said the complaint had been made too late. This was because the loan had been opened more than six years earlier.

Unhappy with HSBC's response, Mr M therefore brought his complaint to this service.

Our investigator didn't recommend the complaint be upheld. She thought HSBC didn't act unfairly or unreasonably by approving the loan. This was because HSBC had carried out reasonable and proportionate checks before agreeing to lend to Mr M and went on to make a fair lending decision.

As Mr M doesn't agree with our investigator's finding, his complaint has been passed to me for a final decision.

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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and HSBC thinks this complaint was referred to us too late because the loan was agreed more than six years ago. Our investigator explained why she didn't think we could look at the complaint, given that the decision to lend happened more than six years before. But she also explained that she was considering the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974. That means that Mr M's complaint about having an allegedly unfair lending relationship between him and HSBC has been referred to us in time.

Seeing as I've decided not to uphold Mr M's complaint, and given the reasons for this (which I'll go on to explain), whether Mr M has referred his complaint to us about a lending decision that happened more than six years ago in time or not has no impact on that outcome. I think Mr M's complaint should be considered more broadly than just the lending decision, seeing

as he complained not just about the decision to lend but also the impact this had on him over the course of his relationship with HSBC. Mr M's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of his relationship with HSBC.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr M's complaint can be reasonably interpreted as being about the fairness of his relationship with HSBC, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974 ('CCA').

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (HSBC) and the debtor (Mr M), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship.

S.140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given what Mr M has complained about, I therefore need to think about whether HSBC's decision to lend to Mr M or its later actions created unfairness in the relationship between him and HSBC, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr M's relationship with HSBC is therefore likely to be unfair if it didn't carry out proportionate affordability checks, where doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

The rules don't say exactly what a lender should look at before agreeing to lend, but reasonable and proportionate checks should be carried out. Lenders must work out if a borrower can sustainably afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look to be affordable. A proportionate check might also require the lender to find out the borrower's credit history and also take further steps to verify the borrower's overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if the loan would have been approved if the checks had been done. If proportionate checks were done and a loan looks affordable, a lender still needs to think about whether there's any other reason why it would be irresponsible or unfair to lend. For example, if the lender should have realised that the loan was likely to lead to significant adverse consequences or more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

When Mr M applied for his loan, HSBC asked him for information about his finances and carried out a credit check to find out more about any other credit he was using. In his

application Mr M he said he was working full time and was receiving a gross annual income of around £43,000.

HSBC then went on to assess Mr M's financial situation by checking bank some of his statements. This enabled HSBC to both check his actual income and obtain a breakdown of his typical spending and expenses across various categories. It was also able to see how he was repaying the credit he owed at that time. As a result, HSBC calculated that Mr M was receiving a net monthly income of around £2,700, out of which he had to pay monthly household costs and expenses of around £975. That left Mr M with a monthly disposable income of somewhere in the region of £1,725.

Taking all this into account, the figures HSBC recorded didn't suggest that Mr M would have any difficulty meeting the monthly repayments for this loan. It looked like he should have had ample disposable income available to cover the monthly repayments he had signed up to pay.

Turning to the credit checks HSBC carried out, these showed that Mr M wasn't involved in any sort of arrangement with creditors or anything else that might have led to an adverse marking on his credit file. For example, he had no active county court judgments registered and no record of any recent defaults.

I don't think it was unreasonable for HSBC to lend here – especially as there wasn't anything obvious in the information it had to suggest Mr M wouldn't be able to repay the loan in a sustainable way. I think the repayment period was a fair reflection on Mr M's ability to repay over a reasonable timeframe. And, having seen the credit check and income and expenditure details it had obtained, I don't think proportionate checks would have required HSBC to probe any more deeply into Mr M's finances.

Finally, I've seen that HSBC took steps to support Mr M when personal circumstances led to him getting into difficulty with meeting the loan repayments, from around October 2018. This led to a budget plan being set up in September 2019. And in February 2020, a new account was set up without interest added and with a reduced monthly payment. I think these were steps that would go some way towards lightening the financial difficulties Mr M was having to deal with.

It follows that I don't think HSBC had any reason to think that Mr M wouldn't be able to sustainably repay the loan when it agreed to lend to him.

Overall, and based on the available evidence, I don't find that Mr M's relationship with HSBC in connection with this loan was unfair. It's not clear enough to me that HSBC created unfairness in its relationship with Mr M by lending to him irresponsibly. And I don't find HSBC treated Mr M unfairly in any other way either based on what I've seen.

I'm sorry to have to disappoint Mr M on this occasion, particularly in view of the challenging personal circumstances he's told us about and the impact it had on him.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 March 2025.

Michael Goldberg

Ombudsman