

The complaint

Mr S has complained that HSBC UK Bank Plc acted irresponsibly when it provided him with a credit card, and linked limit increases between 2006 and 2012.

Background

Mr S applied for a credit card with HSBC in 2006. He has explained that by this time he had developed a compulsive spending problem and was gambling excessively online. He believes the lending decisions made by HSBC were irresponsible, both when he applied for the card in the first instance, and later when the limit was increased. He has asked that HSBC write off the outstanding balance and provide him with compensation for the distress and upset he has experienced as result of its failure to support him as a vulnerable consumer.

HSBC has said that due to the passage of time it's unable to provide any information about the credit card application, or additional credit limit increases, as its records of the account only go back to 2017. It has confirmed that Mr S entered a Debt Management Plan ("DMP") in 2012 and that the account was defaulted at that time. It also raised concerns over whether or not this service has jurisdiction to consider Mr S' complaint due to the passage of time since the card was taken out.

Unhappy with HSBC's response to his complaint Mr S contacted our service. One of our investigators has looked into it already. He found that we did have jurisdiction to consider the complaint under s140 of the Consumer Credit Act 1974 ("CCA"). He therefore reviewed the information available to him from both parties but found that he had insufficient evidence to support Mr S' allegation that HSBC had acted irresponsibly and so didn't uphold the complaint for that reason.

HSBC accepted the investigator's findings, but Mr S didn't. He repeated that throughout the period he had the card it was unaffordable due to his compulsive and excessive gambling. He asked why, given he ultimately ended up in a DMP, which he then had to leave as he couldn't afford to maintain it, it wasn't apparent the card was unaffordable for him. He therefore disagreed with the investigator's opinion that there was insufficient evidence to show the lending was inappropriate and asked for an ombudsman to review his complaint again and so it's been passed to me for consideration.

My findings

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 agree with the investigator's findings that there is insufficient evidence for me to conclude the lending decisions made by HSBC were irresponsible. I know this will come as a disappointment to Mr S so I've set out my reasons below.

In its initial submissions to this service HSBC raised concerns that Mr S' complaint should be time barred due to the length of time that has passed since he opened the account with it. In

his view to the bank our investigator set out why he felt the complaint was brought in time. HSBC didn't object to those findings and so I'm proceeding with the merits consideration on the basis that there is no further objection from the business on this basis.

My understanding of Mr S' complaint is that it is formed of two parts. Firstly that the lending decision made when he applied for the card in 2006 was inappropriate because at this time he was already gambling in an excessive and harmful way. Secondly, that throughout the time he had the card, HSBC increased his limit, despite indicators that he was financially vulnerable, including in 2008 when he took out a secured loan against his home to clear the balance on the account, only to run it back up again through more gambling. I will address these two concerns in turn.

The initial lending decision in 2006

When considering whether or not a business made an appropriate decision to provide a consumer with credit we look at a number of things. Firstly, what sort of checks the business ran to establish the person's creditworthiness and secondly what those checks showed. Then, once those initial considerations have been done, the next thing to think about is whether or not, based on that information, the checks were appropriate and sufficient, or whether the business should have asked for more information before deciding whether or not to approve the application. Finally, once we've considered all of the above, we decide whether or not the lending decision was appropriate.

Due to the passage of time, we've not been able to establish what checks HSBC ran on Mr S or what his personal circumstances were at the time. Generally, we would review things like a person's credit file at the time they applied, as well as their fixed income and outgoings each month. That would help us establish whether or not they were likely to be able to meet the monthly repayments in a genuinely affordable and sustainable way. Without access to any of that information I can't safely conclude that the checks HSBC did were reasonable, but I also can't safely conclude that the credit was unaffordable. Mr S has given us a rough idea of what his income was at the time but I've no sight of what his disposable income was, how well his other accounts were being maintained, or if the card might have been problematic. And while I don't doubt what he has told us about his excessive gambling at the time, this doesn't automatically mean the bank would've realised in January 2006 what was happening.

Therefore, as there is no documentary evidence from the time Mr S applied for the credit card for me to review, I can't safely say that HSBC were wrong to approve the application. That's not to say I don't believe what Mr S has told us, just that I can't make a finding on it either way. Which effectively means I can't uphold his complaint from the point of application.

Limit increases between 2006 and 2012

Mr S has said that HSBC increased the limit on his card multiple times throughout 2006 and 2012. However neither party have been able to confirm the starting limit, or when the limit increases happened, how many there were or how substantial they were. I do know that when the account closed in 2012 the final limit was approximately £6,500.

When credit card providers increase the available limit on accounts, they are expected to reconsider affordability again to ensure the new limit is manageable for the card holder. So I would have expected HSBC to run additional checks, reviewing Mr S' circumstances, at the time of each limit increase.

However, due to the passage of time neither HSBC nor Mr S has been able to confirm when

the limit increases took place or how large they were. And HSBC hasn't been able to confirm what checks it ran, or what the outcome of those checks were. So again, I'm unable to safely conclude both that the checks were proportionate, or that the information those checks revealed would have shown that Mr S was financially vulnerable or gambling in a harmful way.

I say this because, by Mr S' own admissions, throughout this time period, he was becoming increasingly dependent on credit and was 'borrowing from Peter to pay Paul'. So, it's possible he was effectively masking his problems, and if he was meeting his minimum repayments each month it may have been the case that HSBC was unaware how he was using the card. It could also be the case that the fact Mr S was becoming over extended was apparent. But without any evidence to consider I can't conclude that the bank failed to realise that Mr S was struggling with his finances or that he would be unable to meet his minimum monthly repayments.

Mr S has asked why we can't rely on the fact he applied for a £38,000 secured loan to consolidate his debt in 2008 as evidence that he was financially vulnerable and that HSBC would have been aware of this.

There are multiple reasons why people take out loans to consolidate debt and while it might be a sign that someone is struggling, it could also be a way to reduce monthly outgoings and repay less overall. It would be unreasonable to assume that all consolidation loans are an indication that someone is in financial difficulty. Likewise, the fact that Mr S used some of the funds to clear the balance on his HSBC credit card at this time could have been viewed as an indicator that he was managing the account well by the bank. And neither HSBC nor Mr S has said following the repayment of the card at this time he spoke to the bank about the problems he was having or asked it to reduce the limit or close the account. So again, I've no evidence available to me to say the bank should have realised these actions were indicative of financial vulnerability.

Mr S has cited different regulations and legislation that he believes should be applied to demonstrate how HSBC failed to support him. However, it's important to clarify that the Consumer Duty, which he has mentioned specifically, didn't come into force until the end of July 2023 and can't be applied retrospectively. Also, the standards set out in the Consumer Credit Sourcebook ("CONC") and the Office of Fair Trading ("OFT") all came into being after Mr S took out his credit card.

Mr S has also said that it's 'illegal' for people in the UK to use credit cards to gamble. This is incorrect. In April 2020 the UK Gambling Commission placed a ban on gambling merchants from receiving payments from credit cards. But the ban wasn't applied to the credit card providers themselves. That said a lot of providers have since stated in their terms and conditions that their credit cards should not be used in this way. But it's not illegal to do so, and some gambling merchants, primarily those that are unregulated or based outside of the jurisdiction of the UK Gambling Commission, continue to do so. And regardless, this ban was put in place eight years after Mr S' account was closed and so doesn't apply to the time period I need to consider.

It is also important to clarify that businesses don't necessarily monitor how people use their credit cards by reviewing the individual transactions that take place. So, it's feasible that throughout the time Mr S had the credit card, no-one in HSBC reviewed his account in that way or realised that he was using it to gamble. Instead, it's quite possible that any reviews completed would have been based around whether or not Mr S was meeting his monthly repayments and keeping his spend to the agreed limit. And if he was managing the card in that way it's unlikely any further reviews would have taken place.

None of which is to say I don't believe what Mr S has told us about his struggles during this time or the devastating and far-reaching impact his addiction has had on him. And I don't doubt that having access to this credit allowed him to gamble more than he would have if he didn't have access to the card. But I can only uphold his complaint if I can safely conclude that HSBC should have known, or did know, what was going on and continued to provide him with credit or approve additional credit. And because there is little to no documentary evidence to review I've not been able to make that finding. And for that reason, I can't uphold Mr S' complaint.

Mr S has queried why HSBC don't have any information about his account prior to 2017. He believes this is contrary to the standards of other businesses as he has made similar complaints to other lenders, some of whom have been able to provide full records of accounts held during the same time period. The rules that govern how long businesses should retain information state that businesses are only required to keep records for the previous six years. Which is why, when Mr S complained in 2023, HSBC's records only went back as far as 2017. I appreciate how frustrating this is but would like to assure Mr S that while some businesses may choose to keep records for longer, and thus were able to provide some of the information HSBC hasn't been able to give us, that's not because the bank has behaved in an incorrect way. There is a level of discretion involved if businesses want to keep records for longer, but I can't say HSBC were wrong not to do that as there is no legal obligation on the bank to do so.

Finally, Mr S has queried why HSBC, who had made an offer to write off the balance on the account, withdrew that offer once he brought his complaint to this service. He has said that he believes doing so was an attempt to stop him from bringing his complaint to us. I don't think that was the intention of the bank and it's not unusual for businesses to pause or withdraw settlement offers once complaints have been escalated to us. HSBC did make the same offer again once the complaint was brought to us, but Mr S declined it on the basis that HSBC had made the offer without accepting liability and because he felt compensation should be paid as well as the balance cleared.

As I'm not upholding the complaint I can't instruct HSBC to reinstate the offer it made to Mr S. If Mr S wants to know whether or not it's still available to him he should contact HSBC directly. I would remind the business that it is expected to treat Mr S with forbearance and understanding given his current circumstances.

I've also considered whether HSBC acted unfairly or unreasonably in some other way, including whether its relationship with Mr S might have been viewed as unfair by a court under s.140A CCA. However, for the same reasons I've set out above, I've not seen anything that makes me think this was likely to have been the case.

My final decision

For the reasons set out above I don't uphold Mr S' complaint against HSBC Bank UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 February 2025.

Karen Hanlon
Ombudsman