

## **The complaint**

Mr S complains that HSBC UK Bank Plc ('HSBC'), irresponsibly granted him a credit card he couldn't afford to repay.

## **What happened**

In April 2015 Mr S entered into an agreement with HSBC to have access to credit by way of a credit card account. He was given an initial credit limit of £500 and there were no increases after that. Mr S says that HSBC didn't complete adequate affordability checks and so failed to ensure he'd be able to manage the card sustainably, causing him considerable distress.

HSBC said Mr S's complaint about the decision to give him the credit card had been made too late. This was because the account had been opened more than six years ago. Given the way Mr S was managing his account from 2017, HSBC was sending him notifications about being in arrears as well as letting him know that making only minimum payments would cost him more in the long run. HSBC therefore said Mr S ought to have known he had cause for making a complaint more than three years before he started it. And that meant he was too late under the time limit rules that this service must apply as part of our complaint handling rules.

Our investigator agreed that Mr S had brought his complaint too late. But he thought Mr S's complaint could be interpreted as being about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s140) which is in time under the rules. But due to the time passed and the lack of evidence from each party, he said he hadn't seen enough to be able to uphold the complaint.

As Mr S didn't agree, 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 decision to lend took place more than six years ago. Our investigator explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

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

complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of his relationship with HSBC. I acknowledge HSBC still doesn't agree we can look at the complaint, but given the outcome I have reached, I don't intend to comment on this further.

In deciding what is fair and reasonable, I am required to take relevant law into account. Because Mr S'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 S), 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 S has complained about, I therefore need to think about whether HSBC's decision to lend to Mr S 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 S'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.

When assessing affordability, there wasn't a set list of checks that HSBC needed to complete, but they needed to be borrower focussed and proportionate to things like the type of lending, the cost of the lending as well as the amount, and how long Mr S would need to make repayments for.

Before granting the credit, I would have expected HSBC to look into Mr S's financial situation to find out whether the account was likely to be affordable for him and something he'd be able to pay off affordably. Given that this was a relatively modest opening credit limit of £500, I wouldn't necessarily expect the checks to be in-depth checks, particularly at the start of the lending relationship. And I've kept in mind that Mr S was already an HSBC banking customer. Nevertheless, given that HSBC no longer has information about the checks it carried out at the time, I don't want to make assumptions about what it saw, or otherwise. But I'm nevertheless aware that Mr S had debt owing with other lenders at the time, which I would have expected HSBC to look into by carrying out a check with a credit reference agency. I'd also expect it to check that the credit looked likely to be affordable for Mr S. So, I agree with our investigator in that I can't fairly say that HSBC carried out reasonable and proportionate checks at the time it granted the credit.

Our investigator also requested bank statements from the months leading up to the lending decision. This was in order to gain a better understanding of what HSBC would likely have seen at the time as part of its affordability checks. Unfortunately, Mr S hasn't been able to provide these.

The key issue I am looking at here is whether or not HSBC made a fair lending decision. So, I need to understand what, if anything, HSBC might have found out if it completed reasonable and proportionate checks. Mr S has also told us about the amounts he owed to other lenders at the time. I appreciate that some of this is supported by his credit report, although other information that's relevant to his credit history is no longer shown, given the time that has passed since Mr S took out the card.

I've seen that Mr S has set out details of his credit commitments at the time, and I'm grateful for that. But what I don't have is an overall picture of Mr S's wider financial situation, including his and any household income as well as regular monthly commitments. So, I can't make a finding as to what HSBC would most likely have seen had it carried out reasonable and proportionate checks.

To summarise, Mr S hasn't provided sufficient information to help us determine whether or not HSBC made a fair lending decision. As I'm not persuaded that HSBC acted unfairly, I don't think they need to do anything to put things right.

I would add that, from what I can see of Mr S's account history with HSBC, I don't think HSBC acted unfairly or unreasonably when it provided support to Mr S, including when he got into difficulty with managing the account and other credit in 2016.

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

### **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 S to accept or reject my decision before 6 March 2025.

Michael Goldberg  
**Ombudsman**