

The complaint

With the help of a professional representative (PR) Mr G complains that HSBC UK Bank Plc lent to him irresponsibly. For ease, I'll refer mainly to the actions of the PR as being those of Mr G.

What happened

In May 2017, Mr G applied for – and received - a credit card with HSBC. The bank agreed a credit limit of £5,500 which did not change. Mr G appears to have used the full limit immediately and quickly fallen into difficulty. His direct debit to the account was cancelled and on 20 July 2017, HSBC wrote to him explaining the account was over its limit and he had missed a payment. Mr G applied for an increase in his limit the same month, and HSBC refused it on 31 July 2017.

HSBC sent various over limit and missed payment letters throughout 2018, culminating in a default notice being sent on 20 August 2018 and a final demand on 23 November 2018. Mr G entered a 3-month payment arrangement with HSBC on 2 January 2019 which prevented the default from going ahead. The arrangement was rolled over a few times and HSBC sent 'persistent debt' letters in 2020. It also refused a request from Mr G to transfer a balance from elsewhere to this account in July 2020.

In March 2021, HSBC sent Mr G a cheque for £764.42 representing some charges and interest applied to his account while his account was with its collections and recoveries department.

On 5 March 2024, Mr G complained to HSBC. He said the bank had failed to carry out proper affordability checks on his application and was "*shocked*" to have been given such a large limit. Mr G said around 40% of his income was overtime and he'd recently taken out a "*huge loan...with a credit union*". He asked that HSBC refund all the interest he's paid and clear the debt.

HSBC looked into Mr G's complaint but said he had brought it too late under the complaint handling rules set by the Financial Conduct Authority (FCA) as more than six years had passed since the card was agreed. It said it doesn't retain detailed records for more than six years in accordance with its regulatory obligations.

Mr G didn't accept HSBC's response, so he referred his complaint to our service. One of our investigators looked into it. He said it was reasonable to consider Mr G's complaint as being about the fairness of his credit relationship with HSBC as described by Section 140A of the Consumer Credit Act 1974 (section 140), because Mr G had said the repayments on the card were unaffordable and had forced him into financial difficulties. On that basis, our investigator said, the complaint had been brought on time and went on to look at the merits of it.

Based on the information he obtained from both parties to the complaint, our investigator felt HSBC had reached a fair decision to lend to Mr G, and that HSBC hadn't treated him unfairly during the credit relationship.

Mr G didn't agree with our investigator. In summary, he said:

- He'd used the card for a deposit on a car and took car finance for the remainder.
- He had a secured loan which he took to repay credit cards and loans.
- He had to take payday loans from August 2017 (within a few months of being given the card).
- HSBC shouldn't have given him the card based on his overtime payments – his actual income was around £2,000 rather than the £2,800 HSBC used.
- He was three months in arrears on his interest only mortgage.

As there was no agreement, the complaint has been passed to me for a 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. Our investigator explained why he didn't, as a starting point, think we could look at a complaint about the lending decision that happened more than six years before the complaint was made. But he also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in section 140, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. I think this complaint can reasonably be considered as being about an unfair relationship as Mr G says the card and high limit agreed caused him financial difficulties as he could never afford the repayments. This may have made the relationship unfair as he had to pay more in interest than he could afford and was unable to reduce the debt. I acknowledge HSBC still doesn't agree we can look at this complaint, but as I don't think it should be upheld, 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 G's complaint can be reasonably interpreted as being about the fairness of his relationship with HSBC, relevant law in this case includes section 140.

Section 140A says that a court may make an order under section 140B if it determines that the relationship between the creditor (HSBC) and the debtor (Mr G), 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 G has complained about, I need to consider whether HSBC's decision to lend to him, or its later actions, created unfairness in the relationship between him and the bank such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

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

I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did HSBC carry out reasonable and proportionate checks to satisfy itself that Mr G was in a position to sustainably repay the credit?
- If not, what would reasonable and proportionate checks have shown at the time?
- Did HSBC make a fair lending decision?
- Did HSBC act unfairly or unreasonably towards Mr G in some other way?

HSBC had to carry out reasonable and proportionate checks to satisfy itself that Mr G would be able to repay the credit sustainably. It's not about HSBC assessing the likelihood of it being repaid, but it had to consider the impact of the repayments on him.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of the monthly repayments and the overall circumstances of the borrower.

Did HSBC carry out reasonable and proportionate checks?

HSBC has told us that before lending to any customer, it carries out a detailed creditworthiness and affordability assessment to ensure it complies with regulations. To do so, it uses information provided by the consumer in the application, information it holds on existing accounts and data gathered from Credit Reference Agencies (CRA). It verifies the consumer's income and then uses statistical information to work out expenditure. It also accounts for other credit commitments using information from the CRA's.

I think the above would ordinarily be sufficient to make up a reasonable and proportionate check assuming everything it found was in order. But due to the time elapsed since the application was assessed, HSBC says it no longer has details of what it found. That being so, I can't fairly conclude that reasonable and proportionate checks were carried out because I don't know that everything it found was in order.

If not, what would reasonable and proportionate checks have shown at the time?

Because I can't be sure that reasonable and proportionate checks were carried out, I need to think about what HSBC might have found had it done so. Mr G has provided a copy of his credit file dated 20 October 2024 and his bank statement from 1 February to 1 June 2017. I've looked carefully at each to understand what HSBC might have seen at the time.

Credit file

While the credit file provided is much more recent than Mr G's application, it still has some details of accounts he had at the time which have since closed. It shows that at in May 2017,

he had a small credit card, a current account with an overdraft, mortgage and mobile phone contract.

The mortgage was showing as being in an arrangement, so it seems there may have been some arrears on it. But I can't see when that started because the data only goes back to December 2016 and the arrangement was in place then. I can see the status on the mortgage changed in April 2017 – just before his application for this credit card – but it's not clear if that was due to an improvement or further problems. I suspect it was due to an improvement because I can see that in October and November of 2017, the mortgage was showing as up to date. Mr G's other accounts appeared to be up to date and working satisfactorily.

In his comments about the investigator's assessment of his complaint, Mr G refers to a hire purchase (car finance) agreement he took as well as a secured loan. I can see from the credit report that these were taken in June and November 2017 respectively - both after the credit card had been agreed. I can't reasonably conclude that HSBC ought to have been aware he was planning to take those finance agreements, so I can't take that into account.

I don't think there's anything on the credit file I can reasonably say means that HSBC shouldn't have lent to Mr G on this basis alone. I think it probably ought to have asked further questions to obtain a better understanding of Mr G's circumstances in view of the apparent issues with his mortgage, but nothing to say it should have refused his application at this point. One thing it might have done to gain a better understanding is to look at Mr G's bank statements.

Bank statement

The statements from 1 February to 1 June 2017, show that Mr G received income of around £650 - to £750 per week. There were occasions when less was received, but Mr G's average income was around £2,900 per month. His regular essential expenditure totalled almost £1,900, so it appears he had a reasonable amount of disposable income each month - certainly sufficient to enable him to maintain a credit card.

Mr G did use his overdraft, but the account came back into credit for reasonable periods of time each month. He says a large proportion of the income going into his account was overtime. But there is no way for HSBC to have been aware of that had it looked at his statements.

I've seen nothing in Mr G's bank statements to make me think that Mr G was struggling financially or would have put HSBC on notice that he may not be able to manage a new credit card.

Did HSBC make a fair lending decision?

HSBC agreed quite a sizable limit for Mr G - £5,500. While this is larger than I might see for many opening limits, given Mr G's income and expenditure coupled with his relatively low borrowing levels at the time, I don't think it reached an unfair decision to lend.

Did HSBC act unfairly or unreasonably towards Mr G in some other way?

I can see that Mr G struggled with the account from early in the relationship. But HSBC has entered into a number of payment arrangements with him to try to keep the account on track. In 2018, it stopped Mr G's use of the card for around 18 months which allowed him to reduce the balance and it then allowed him to use the card again. It also refunded £764 of interest for a period in 2018 when his arrears were at their worst, albeit that was done later, in 2021.

So it's clear that HSBC was monitoring Mr G's use of the credit card as I'd expect and it offered support through payment arrangements as needed. It has also written to him a number of times over the years and has signposted organisations such as StepChange Debt Charity and the Citizens Advice who may be able to help him if he is in financial difficulty.

Overall, I've seen nothing which suggests HSBC has treated Mr G unfairly in some other way.

I realise Mr G will be disappointed by my decision, but for the reasons I've set out above, I'm not persuaded that HSBC acted unfairly when it approved his application for credit. As I've said, I can see he went on to take a lot of credit elsewhere shortly after he took this card which will have affected his ability to pay this agreement. I would encourage Mr G to contact the organisations signposted by HSBC if he feels he is in financial difficulty with his creditors.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 13 May 2025.

Richard Hale
Ombudsman