DRN-5428127

The complaint

Mrs G complains that HSBC UK Bank Plc (HSBC) lent irresponsibly to her when she was a victim of an investment scam.

What happened

Mrs G fell victim to an investment scam in late 2023. As part of the scam, Mrs G was persuaded she needed to show her financial commitment to the investment by providing funds that would be returned to her. She didn't have the funds for this so, in September 2023

Mrs G applied for £25,000 from a lender but the loan was subject to her being educated about investment scams, so she returned the loan amount back to the lender.

But in early October 2023 Mrs G said she was persuaded by the scammer to apply to borrow £75,000 over three loans with different lenders. HSBC agreed to lend Mrs G £25,000 which was repayable over a period of 60 months. The repayments were around £497 a month, and in total Mrs G agreed to pay back about £29,821.22 over the five years, after interest was added.

Mrs G says she was groomed and coached by the scammers on how to apply for the loans. She thinks HSBC should have checked her circumstances more thoroughly before agreeing to lend because with better checks, they would have seen she couldn't afford this loan. And that she'd applied for three loans each of £25,000 within a week and all of which were paid into her HSBC account. She complained to them.

HSBC say they completed appropriate checks before agreeing to lend to Mrs G and these showed the borrowing was affordable.

Mrs G wasn't happy with HSBC's response and referred her complaint to us.

Our investigator considered the complaint. He concluded that with reasonable and proportionate checks, HSBC would have considered Mrs G able to sustainably afford this loan.

Mrs G disagreed with the investigator and asked for her complaint to be referred to an ombudsman to decide.

A provisional decision was issued in early March 2025 that said:

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.

Firstly, Mrs G's loan with HSBC is one of three loan applications, in my decision I will only be considering the loan she agreed with HSBC. I'm aware Mrs G has referred other cases concerning some of the other loan applications and these have been looked at under separate case references.

We've set out our approach to complaints about unaffordable and irresponsible lending on our website. I've taken this into account in deciding Mrs G's complaint. Having done so, I'm currently minded to reach a different outcome to that of our investigator as I'm not persuaded it was reasonable for HSBC to agree to lend – I'll explain why.

All lenders have an obligation to lend money responsibly. The relevant guidance is within the Financial Conduct Authority (FCA) rules on creditworthiness assessment as set out in its handbook, (CONC) section 5.2. These say that a firm must undertake a reasonable assessment of creditworthiness, considering both the risk of the customer not making the repayments, as well as the risk to the customer of not being able to make repayments.

So in reaching my decision I need to consider:

1. Did HSBC complete reasonable and proportionate checks to satisfy themselves that Mrs G would be able to sustainably repay the borrowing?

a. If they did, was the decision to then lend to Mrs G fair?

b. If they didn't, would reasonable and proportionate checks have shown that Mrs G could sustainably repay the borrowing?

2. Did HSBC act unfairly or unreasonably in some other way?

The affordability *checks should be "borrower-focused", meaning HSBC need to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mrs G. In other words,* it *wasn't enough for HSBC to think only about the likelihood that they would get their money back without considering the impact of repayment on Mrs G herself.*

I would expect that reasonable and proportionate check would usually need to be more thorough:

- *The lower a customer's income.*
- *The higher amount to be repaid.*
- *The greater the number of* loans *and frequency of loans*.
- *The longer the term of the loans.*

There isn't a set list of what reasonable and proportionate checks should look like. But I'd expect the higher the amount, the greater the checks must be, and the lower the amount, then fewer checks can be made. I think it's reasonable for me to say that this was a loan for a large amount, £25,000 and over a fairly long period (five years) – and so HSBC had an obligation to carry out detailed and proportionate checks before agreeing to the loan.

HSBC did complete some checks to see if the loan was affordable. They've shown they considered Mrs G's income and expenditure for the month prior to the loan being agreed – September 2023. HSBC calculated that Mrs G had an annual income of £50,000. She paid £603 towards her share of the mortgage and £441 towards other credit commitments each month. They modelled her essential spending to be £477 a month, with other outgoings at £1,306. Once the new lending of around £500 was factored in they determined Mrs G had a disposable income of around £1,155 a month.

HSBC said as the bank account they held internally wasn't the bank account into which Mrs G's income was paid, they'd verified her salary through a credit reference agency (CRA) that looked at current account turnover. And for September 2023 this was £6,600. HSBC said the transactional data from Mrs G's account with them also showed the transfer in of funds from other personal accounts to cover Mrs G's bills and expenses.

At this point, I do think it's important for me to set out that HSBC are required to establish whether Mrs G could sustainably make her loan repayments – not just whether the loan payments were technically affordable. This means it wasn't simply about whether HSBC would get their money back but the impact of the lending on Mrs G. Any lending should be borrower focussed.

Mrs G was borrowing a large amount - £25,000 – over a significant term. I have some concerns about HSBC only relying on a CRA data tool to analyse Mrs G's current account turnover data to validate her income. I say this because her current account although not held jointly with her partner at that time shows regular credits paid into it by him. I cannot see how HSBC's checks would have differentiated between these credits and Mrs G's salary.

I think, considering the significant commitment posed by the amount borrowed, the length of time the loan was for and the monthly repayments to the loan, HSBC ought to have got a more reliable understanding of not only Mrs G's take home pay, for example by reviewing her payslips or the bank statements into which her salary was paid. But also, over a longer period than one month, our approach is to consider the three months prior to the loan being agreed.

Mrs G has provided us with her HSBC bank statements and the bank statements into which her salary is paid to show her financial circumstances at the time she applied for the loan. I think it's perfectly fair, reasonable and proportionate to place considerable weight on what this information says as an indication of what Mrs G's take home pay would have been as well as providing a more accurate picture of her financial situation.

Had HSBC verified Mrs G's salary they would have seen from these bank statements that her average take home pay between July and September 2023 was around £3,042 a month. And that Mrs G was regularly using her overdraft facility. In July and August 2023 Mrs G made transactions of £1,000 and £2,000 respectively to a crypto currency online platform. And that in early September 2023 Mrs G had a loan paid into the account for £25,000 which left the account the next day.

In July 2023 looking at both Mrs G's accounts her outgoings were around £6,700 – this included paying credit card balances and crypto currency investment. Her income from her salary and other credits was around £5,900. In August 2023 Mrs G's outgoings were around £7,700 – including paying credit card balances and crypto currency investment. Her Income from salary and other credits was around £6,400. In September 2023 Mrs G's outgoings were around £5,500 – including paying credit card balances. Her income from her salary and other credits was around £8,800.

Both of Mrs G's bank accounts for the three months prior to the loan were regularly using the *overdraft facility and show that she was moving money between the accounts including from her partner and a family relative to help cover this. Several payments into Mrs G's HSBC account were to cover specific bills such as credit cards, holidays and Christmas. And I can see there were regularly payments to savings accounts and premium bonds. But overall, I think Mrs G's bank accounts appear to show she was living beyond her means. And that she was looking to borrow high amounts.*

I think if HSBC had further checked Mrs G's actual financial situation rather than a reliance on modelling data I don't think they would have agreed to lend to her, as Mrs G was showing signs of financial vulnerability.

I'm sorry to hear of the devastating impact this matter has had, and is having on, Mrs G. I don't wish to cause her any further distress – but I must give my decision based on what I consider to be fair and reasonable, taking into account all of the evidence in the circumstances relating to this individual case.

When I *find that a business has done something wrong, I'd normally direct that business – as far as it's reasonably practicable – to put the complainant in the position they would be in now if the mistakes they made hadn't happened. In this case, that would mean putting Mrs G in the position she would now be in if she hadn't been given the loan in question. But this isn't straightforward when the complaint is about unaffordable lending. Mrs G was given the loan and she used the money. I know Mrs G has said she didn't benefit from the funds as they were transferred to the scammer, but I can't undo what's already been done. So, it isn't possible to put Mrs G back in the position she would be in if she hadn't been given the loan in the first place.*

Mrs G wants HSBC to forgo collecting on the loan altogether. Mrs G says she didn't benefit from the loan because the funds were lost to an investment scam. I don't think it was foreseeable to HSBC how Mrs G intended to use the loan funds. Mrs G has told us that she was schooled by the scammer in how to answer questions from her bank to circumvent their safeguarding measures. And Mrs G did have the benefit of the loan funds insofar as they were paid to her bank account and transferred to other accounts in her name before she then transferred and lost the money to the scam. All the loans were applied for and approved over a very short period and so there wouldn't have been time for the lending to be reflected in Mrs G's credit report. As such I can't say HSBC ought to have taken more action to prevent Mrs G from investing in the scam, so, I don't think that is a fair way of putting things right.

In the circumstances, I cannot reasonably hold HSBC responsible for all or part of Mrs G's loss to the scam or tell them to write-off the loan. I must consider another way of putting things right fairly and reasonably given the circumstances of this complaint.

I've also considered whether HSBC acted unfairly or unreasonably in some other way given what Mrs G has complained about, including whether their relationship with her might have been viewed as unfair by a court under Section 140A Consumer Credit Act 1974. But because I'm currently minded to uphold Mrs G's complaint already for the reasons I've explained I don't think I need to make a finding on this. I believe the redress suggested results in fair compensation for Mrs G in the circumstances of her complaint.

Responses to my provisional decision

HSBC haven't accepted or rejected my provisional decision or asked for any further representations to be considered.

Mrs G asked that the remaining balance after interest and charges are removed to be considered and written off. She said she hadn't benefited from the capital amount as this had been transferred to the scammer. She said the incident had caused her considerable distress which had affected her health.

I've given some thought to Mrs G's comments as I appreciate this has caused and is causing her considerable upset. But while I acknowledge that Mrs G wants the entire loan to be written off, in the circumstances I can't agree that is a fair outcome in this case. As I outlined in my provisional decision, I don't think it was foreseeable to HSBC how Mrs G was going to use the loan. And Mrs G has said that she was told how to circumvent HSBC's safeguarding questions thereby preventing HSBC of identifying or advising Mrs G about the possibility that she was being a victim of a scam. Added to which Mrs G transferred the amount initially to another of her own accounts, and it was from this account, not her HSBC account that she transferred the money across to the scammer.

That said, HSBC has an obligation to respond positively and sympathetically to Mrs G when attempting to set up a repayment plan for the balance owed. And I would expect them to adhere to CONC 7.3 in how they work with Mrs G to agree to an affordable and workable repayment plan.

My final decision

I uphold Mrs G's complaint. And ask HSBC UK Bank Plc to:

- Remove all interest, fees and charges applied to the loan from the outset. Any payments Mrs G made should then be deducted from the new starting balance. If the payments Mrs G has made total more than the amount she was originally lent, then any surplus should be treated as overpayments and refunded to her.
- Add 8% simple interest* calculated on any overpayments made, from the date they were paid by Mrs G to the date the complaint is settled.
- Agree with Mrs G an affordable plan to repay any amount left owing.
- Remove any adverse information recorded on Mrs G's credit file as a result of this loan (once Mrs G has repaid any outstanding *balance).*
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**HM Revenue & Customs may require HSBC to deduct tax from this interest. HSBC should give Mrs G a certificate showing how much tax they have deducted.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 23 April 2025.

Anne Scarr
Ombudsman