

The complaint

X complains HSBC UK Bank Plc (“HSBC”) lent three loans to them irresponsibly between 2006 and 2008.

What happened

In July 2006, X was provided with a flexi-loan for £2,000. Then in May 2007 a loan for £5,000 was provided – around £4,500 was used to consolidate the flexi-loan along with other debts owed to HSBC. Then in April 2008, another loan was provided to X for £6,500.

In April 2024, X complained that since being a young adult, they’d been crippled with debt that they were unable to afford. They believe it’s the initial lending by HSBC that caused a cycle of being in debt.

X said they were vulnerable and has provided evidence to support this. They feel that while HSBC wouldn’t have been aware initially, they would’ve known later down the line of their issues and feels HSBC failed to safeguard their wellbeing and failed to act responsibly.

HSBC responded in the same month. They said they felt the complaint was made outside of the time limits set by the Financial Conduct Authority (FCA). That is, the complaint was made more than six years from the date of the event, and more than three years from when X ought reasonably to have been aware of their cause for complaint.

I looked into things and deemed the complaint was in jurisdiction and remain satisfied I can consider the complaint. Following a review of the available evidence, an Investigator here looked into the merits of X’s complaint.

They said the complaint should be upheld, because while there’s no record of the checks that would’ve been completed at the time, using X’s current account statements it’s clear there wasn’t enough disposable income at the end of each month to repay any of the three loans X was provided with.

X accepted the view that was issued, but HSBC didn’t. They said they still believed the complaint was made outside of the time limits set by the FCA, and with regards to the merits they believed due to the time that’s passed, they’ve been prejudiced when trying to defend their actions. They’ve raised concerns regarding calculating redress, and they believe generally there’s a lack of compelling evidence to support the findings reached.

I previously issued a provisional decision that said the following:

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having carefully considered everything, I’m not intending to uphold X’s complaint. I realise this will be deeply disappointing for X, but I need to explain why in more detail. I understand X has had answers from our service that have been upheld, so this might be surprising for them, but I hope I’ve explained why I’m reaching a different conclusion.

I also want to say that it's very clear to me just how important this matter is for X. They've set out their position in great detail and has provided lots of supporting information. I think it's important I explain that whilst I have read and considered all the information provided by both parties, I've outlined my findings in considerably less detail. I don't mean any discourtesy by this, rather this reflects the informal nature of our service.

While we do have an explanation about how we handle complaints about unaffordable and irresponsible lending on our website, the vast majority of our website guidance covers lending from more recent years. The first of the lending decisions predates the regulation of consumer credit lending. While the second and third loans were provided after the revisions to the Consumer Credit Act 1974 came into force on 6 April 2007, they and were nonetheless provided prior to when the obligations, which our current guidance is based on, were introduced.

HSBC have been unable to provide anything about the checks they carried out at the time of X's application for each of the three loans. X hasn't been able to provide evidence relating to the checks that HSBC carried out either. But they have been able to provide their current account statements from the time. I've considered everything provided with a view to determining whether HSBC acted in accordance with the obligations expected of them at the time.

Prior to the regulation of consumer credit (so when the first loan was provided), while a number of lenders signed up to various voluntary codes, a lender wasn't required to be regulated in order to provide credit. Irresponsible lending only became a nebulous concept when the 2006 revisions to the Consumer Credit Act 1974 came into force on 6 April 2007. Even then, the main guidance regarding this wasn't introduced until the OFT published its Irresponsible Lending Guidance in March 2010.

That's not to say there weren't any expectations or standards in relation to lending at the time X applied for the loans. The then British Bankers' Association ("BBA") had a Banking Code, which was in place at the time and represented good industry practice. HSBC were members of the BBA and therefore agreed to act in accordance with these standards.

However, it would be fair to say that its obligations and responsibilities were much more limited, and they certainly weren't the same then as they are now. For example, the concepts of irresponsible lending, borrower focussed assessments and proportionate checks, which the Investigator has relied on in their assessment of X's complaint, were not part of the expectations or requirements at the time.

What subscribers to the banking code agreed to do at the time of X's application for the loans was to assess whether they felt they would be able to repay any credit provided. I therefore need to consider X's complaint and HSBC's decisions to lend in accordance with these expectations.

July 2006 – FlexiLoan (£2,000)

Although named a FlexiLoan, the product was actually a revolving facility rather than a loan. And this means HSBC was required to understand whether a credit limit of £2,000 could be repaid within a reasonable time, rather than in one go.

HSBC hasn't been able to provide any details on what they found out about X as a result of the credit checks they carried out prior to providing the FlexiLoan. Given that they gave X this product nearly 20 years ago, I wouldn't expect them to have retained this information.

This is particularly as the balance was settled less than a year after it was granted. Therefore, I've not drawn any adverse conclusions as a result of HSBC not being able to provide this information.

I'm also mindful that I've not been provided with any information and neither has it been argued that X had any significant adverse information – such as defaulted accounts or county court judgements ("CCJ") recorded against them at the time of this lending decision. In fact, X has been quite clear that this product was their first introduction to credit – along with two other products HSBC provided them with on the same day.

X told us they were a student at the time the FlexiLoan was granted, but they've also said they'd just received a job offer and had been offered a role with a salary of around £11,000. So, when I think about HSBC's actions against the obligations and expectations that were in place at the time, I have to keep in mind there wasn't a need for verification at the time.

HSBC just had to be satisfied it could be repaid in a reasonable period of time and given that X was living at home with parents, had no other debts and was soon to be leaving education for full-time employment, I can't say they've acted unfairly here.

May 2007 – Loan (£5,000)

When considering the next loan that was granted in May 2007, I've used the same considerations and HSBC's responsibilities were effectively the same as the OFT's Irresponsible Lending Guidance wasn't published until March 2010.

X was using this loan to consolidate the other products they held with HSBC at the time, totalling around £4,500. This loan came with a fixed monthly repayment of £200.17 per month. X has been able to provide statements from the time, so I can see that this loan is more likely than not to have put them in a better position each month. Although the figures provided vary, there are times where they've paid significantly more than the £200.17 repayment on the loan towards the three products. As well as this, X was now employed earning £11,950 a year, which was around £775 per month. So I'm satisfied HSBC would've been satisfied X could repay the loan in a reasonable period of time.

I note the Investigator upheld X's complaint here on the basis of a retrospective income and expenditure assessment they carried out based on the content of the bank statements that have now been provided. I accept that the rules and obligations in place today require a lender to carry out a borrower focussed assessment of affordability before lending. However, even then this does not require a lender to go through bank statements before providing credit.

April 2008 – Loan (£6,500)

This loan was provided to consolidate the previous loan and had fixed monthly repayments of £235.97. By this point, X had used the other products held with HSBC again, despite them being consolidated previously. It's unclear whether this loan was used in part to clear some of that debt, but based on the information available it seems likely.

By this point, X's monthly income had increased to around £890. It's at this point X's spend on gambling began to increase significantly. But I need to overlay this with the rules and obligations I've mentioned above. And I don't think it's likely HSBC would've been aware of X's gambling at this time.

There are also significant amounts of cash withdrawals from the account. I appreciate X has said these were for rent to their mother and I don't discount the possibility that they were. But even if HSBC had considered the statements which for the reasons I've explained they didn't need to, they wouldn't have known X were making rent payments for this amount. This is especially as the amounts vary dramatically each month.

Again, HSBC just needed to be satisfied that X could meet the monthly repayments and given the information they will have had – that is, their income had increased, and they were still living at home – with no obvious payments for rent - I can't say they've treated X unfairly here.

In reaching my conclusions, I do accept that a line-by-line analysis of X's bank statements together with the commentary that they've provided on the payments, may, by today's standards at least, result in a lender concluding that these loans were unaffordable. However, considering bank statements in this way simply wasn't part of the obligations expected of lenders at the time HSBC lent. So, I can't reasonably say that it was unfair for HSBC not to consider X's application in this way, simply because I'm looking at this case today, rather than at the time HSBC lent.

I appreciate how important this complaint is to X, and I'm grateful for the information they've provided to help us assess their case. I understand this is going to be extremely disappointing for them, but as I can't see anything to say that HSBC failed to meet the standards that applied at the time, I'm not in a position that they failed to act fairly and reasonably.

So overall and having considered everything, while I can understand X's sentiments and appreciate why they're unhappy, I'm nonetheless not intending to uphold this complaint. In reaching my conclusions, I've also considered whether the lending relationship between HSBC and X might have been unfair under s140A of the Consumer Credit Act 1974 ("CCA"). However, for the reasons I've already explained, I'm satisfied that HSBC did not lend irresponsibly or act unfairly when providing X with the loans. And I haven't seen anything to suggest that s140A CCA would, given the facts of this complaint, lead to a different outcome or additional award here."

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.

HSBC responded to the provisional decision letting me know they agree with what was said. X also responded. Again, I'd like to acknowledge here how X set out their position in great detail. I have read and considered all the information provided and appreciate the time taken to formulate the response, but I've outlined my findings in considerably less detail. I don't mean any discourtesy by this, but as explained before, this reflects the informal nature of our service.

X has said they were in financial difficulty already as they had an overdraft facility with HSBC, and they believe that wasn't being used as intended. They said they rarely saw a credit balance in the year prior to the lending in 2006. Guidance around overdrafts didn't come into play until the Office of Fair Trading's (OFT) guidance in 2010, and even then, literature varied between each individual firm. Utilising an overdraft fully wouldn't automatically be considered 'adverse' in the way X has suggested. So, I can't say that this would be a reason for HSBC not to lend further.

I note X's comments regarding their living situation. And I'm sorry it was challenging. But I've had to consider what HSBC would have known at the time, and what X would more likely than not have declared to HSBC given that they approached HSBC to apply for further lending. As X wasn't paying a fixed, contractual amount each month, while I don't know exactly what HSBC did and didn't consider at the time, I can't rely on the varying cash withdrawals now as a fixed expenditure when evaluating whether, considering it against the backdrop of the rules at the time, X would have been able to repay the credit being provided.

Again, I reiterate that I've considered everything X has said, and I am truly sorry to hear of the difficult challenges they've faced. But I can't hold HSBC to standards, rules and regulations that exist now but didn't at the time any of these lending decisions were made.

So while this will come as a disappointment to X, their submissions haven't changed my opinion on the complaint, and unfortunately, I can't say HSBC were unfair when they made the decision to lend to them in 2006, 2007 and 2008. So, what I said in the provisional decision remains the same for the same reasons.

My final decision

It's my final decision that HSBC UK Bank Plc didn't lend irresponsibly to X between 2006 and 2008.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 5 June 2025.

Meg Raymond
Ombudsman