

The complaint

Ms M says HSBC UK Bank Plc ('HSBC'), irresponsibly lent to her. She says that it didn't take reasonable steps to ensure she could afford the repayments towards a personal loan. She says that her financial situation was precarious at the time of the loan approval, she had significant other debt, and she lost her job shortly after the lending was approved. HSBC should have found out about this and not lent to her. She says that all of this caused her financial problems and affected her mental health.

What happened

This complaint is about a fixed sum loan agreement that Ms M took out in March 2021. Ms M borrowed £25,000. The agreement was for 48 months, and Ms M was due to make one payment of £606.29 and then a further 47 payments of £606.12. Making a total to repay of £29,093.93.

Ms M was unable to pay the loan from September 2021, and the account has been passed to HSBC's repayment services. The account was defaulted and closed as an active account in March 2022 with a balance of £22,826.26. I understand Ms M is continuing to correspond with HSBC's repayment services.

HSBC considered this complaint, and it didn't uphold it. It thought it'd done proportionate checks, which showed that Ms M could afford the lending. It said its processes produced consistent decisions and ensured fairness for all customers. It didn't think it had made any errors in the customer service it had provided to Ms M. Ms M didn't agree with this and brought her complaint to the Financial Ombudsman Service.

Our Investigator didn't uphold Ms M's complaint. She thought it wasn't clear HSBC had made proportionate checks. But there wasn't enough to say if it had made better checks that the loan would've been affordable. And our Investigator didn't think that the customer service HSBC provided was unfair, particularly as Ms M hadn't made it aware of the problems she was having until after the loan was defaulted.

Ms M didn't agree with the Investigator. She said that, in summary:

- As HSBC had not performed proper checks, the loan should be presumed to be lent unfairly.
- And a better check would have shown that she was in financial difficulty. HSBC's own checks only showed she had a modest amount of disposable income.
- She was vulnerable at the time of sale and HSBC should have recognised this and not lent to her.
- The default now on her credit file was a result of HSBC's failings and should be removed.
- The relationship was unfair under Section 140A of the Consumer Credit Act due to HSBC's failings.
- Even though she could not provide evidence of her circumstances at the time this should not disadvantage her.

There was some further correspondence, but no new issues were raised. Because Ms M didn't agree, this matter has been passed to me to make 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.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider when deciding what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did HSBC complete reasonable and proportionate checks to satisfy itself that Ms M would be able to repay the credit in a sustainable way?
 - a. if so, did HSBC make a fair lending decision?
 - b. if not, would reasonable and proportionate checks have shown that Ms M could sustainably repay the borrowing?
2. Did HSBC act unfairly or unreasonably in some other way?

And, if I determine that HSBC didn't act fairly and reasonably when considering Ms M's application, I'll also consider what I think is a fair way to put things right.

Did HSBC complete reasonable and proportionate checks to satisfy itself that Ms M would be able to repay the credit in a sustainable way?

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders to consider things such as the amount, duration, and payments of the finance being applied for, as well as the borrowers' personal circumstances at the time of each application.

On the loan application Ms M said that she was employed and earning £3,000 a month. HSBC looked at the current account information it had and used a monthly salary of about £4,000 to assess the lending. I think it's reasonable to say that it verified Ms M's income.

Ms M said that she spent just under £1,700 each month. HSBC used a combination of what Ms M had told it, statistical averages and information from a credit reference agency, to determine that she was spending around £3,200 each month. This was comprised of living costs of about £850, accommodation costs of just under £500 and existing credit commitments of about £1,850 a month.

HSBC noted that the credit card she had with it, and the mortgage account, showed no signs of difficulty or repayment problems.

After adding the cost of the new loan to this, it thought she would have around £300 spare each month and so HSBC thought the loan was likely to be affordable for her.

But Ms M was borrowing a significant amount, and she was committing to make payments over five years. So, I think it would have been important for HSBC to ensure that she could afford the repayments to the new loan. And I think it would have been proportionate to have asked more questions about Ms M's existing credit, as the repayments she was making to this are high. So, I'm not persuaded that the checks HSBC did were reasonable and proportionate.

Ms M has said that it should be assumed that the lending was unfair or irresponsible as HSBC didn't make proportionate checks. But in order to uphold the complaint, it needs to be shown that the checks were not proportionate *and* that better checks would have shown HSBC that Ms M couldn't afford the lending. Just because HSBC didn't make the right checks it doesn't necessarily follow that the loan wasn't affordable.

Ms M says that she had had significant credit card debt, she was a single mother, and she was responsible for a child. She says all of this contributed to her being in financial difficulty at the time the loan was approved.

I've taken on board what she has said about this, but Ms M hasn't been able to provide any further evidence, such as bank statements or a credit report, that shows this to be the case at the time of the lending. So, I can't say, with any degree of certainty that HSBC would have seen that the loan wasn't affordable for her if it had made more detailed checks. In saying this I'm bearing in mind that whilst more detailed checks would have been better, I think HSBC did establish what she earned and spent each month, and it was aware she had other debt.

And this is particularly important here as Ms M has told us that she lost her job shortly after the loan was started and she fell into financial difficulties. So, I don't think it's established, or even likely, that it was this lending on its own that led to her problems. It doesn't seem unreasonable to say that her change in circumstances was, at the very least in part, responsible for the problems she had.

So, and while I appreciate this will come as a disappointment to Ms M, I'm satisfied that, had HSBC carried out reasonable and proportionate checks, I think that it's likely that it would have found the finance to be sustainably affordable. And it's for this reason why I won't be asking them to refund all or part of the payments Ms M paid, or of any interest and fees she may have been charged.

Did HSBC act unfairly or unreasonably in some other way?

As I've said above, Ms M had difficulty repaying the loan from September 2021. In time the loan was defaulted with the debt being passed to HSBC's recoveries department in 2022.

I've seen all the correspondence about this, but I'm not going to produce a detailed timeline about it, as all the parties are aware of the full circumstances. And it's important that this decision is anonymous.

The loan has been defaulted, and Ms M thinks this is unfair, as it she thinks it was lent irresponsibly. I'm not upholding Ms M's complaint about the lending itself and so I don't agree that the default should be removed for this reason.

Added to this loan is defaulted when a consumer cannot reliably repay it and, to some extent, the relationship between the two parties has broken down. I think this is what happened here. The arrears to the loan were increasing and I can't see that a way to repay these was agreed and I've seen correspondence where HSBC tried to contact Ms M but wasn't always able to. Overall, I don't think HSBC was acting incorrectly when it defaulted the loan.

Ms M had provided some evidence of her work situation and mental health problems and how this all affected her ability to repay the loan. I can see that Ms M has been through a difficult time, and I hope things have improved for her.

But it's worth noting that the regulations that surround issues about mental health, and other capacity related circumstances, are clear in that a business only needs to change its processes when it is informed about these issues. The industry regulators consumer credit sourcebook (CONC) says that in section 2.10.4 that:

'A firm should assume a customer has mental capacity at the time the decision has to be made, unless the firm knows, or is told by a person it reasonably believes should know, or reasonably suspects, that the customer lacks capacity.'

As far as I can see HSBC wasn't informed about any of the problems Ms M was having until 2023 at the earliest. So, I don't think it's reasonable to say it should have acted on the basis that Ms M was having difficulties, in fact the guidance is that it shouldn't have assumed that Ms M wasn't in a situation that could have led to her judgment being impaired or that she was vulnerable. Until it was informed about this.

And I don't agree that HSBC should retrospectively consider what Ms M says was her vulnerable status at the time of lending. I don't think this would be fair and is not what the regulations expect of a lender.

I have considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think it lent irresponsibly to Ms M or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

I haven't seen anything to make me think HSBC acted unfairly or unreasonably in some other way.

My final decision

For the reasons I've explained, I don't uphold Ms M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 3 December 2025.

Andy Burlinson
Ombudsman