

complaint

Mr B complains that HSBC Bank Plc lent to him irresponsibly over a number of years. He approached them for help when he fell into financial difficulty and asked for a consolidation loan – but they didn't help him.

background

Mr B has banked with HSBC for a number of years. He also had a number of loans and credit cards with them.

In May 2013, Mr B found himself in financial difficulty and struggled to pay HSBC the monthly payments for all of his debts. Mr B asked HSBC for help – in particular, he applied for a consolidation loan. Mr B thought this would help his financial situation by almost halving the amount he'd need to pay HSBC each month. But HSBC refused his application.

Mr B spiralled into more debt – and ended up taking out payday loans. He blames HSBC for this as they didn't help with consolidating his debt. Most of Mr B's debt has now been transferred to debt collection agencies.

Mr B has made a number of complaints to HSBC over the years. While reviewing their decision to lend, HSBC carried out an annual review of how they kept Mr B up to date with the outstanding debt amount. They realised some of the statements they provided Mr B didn't cover the correct period, so they refunded some of the interest charged. They also paid Mr B £100 compensation for the time taken to deal with his complaint. But overall they didn't think they'd lent irresponsibly.

The adjudicator who reviewed Mr B's complaint upheld it in part. She explained she couldn't look at some parts due to the time which had passed. And she thought overall HSBC had acted reasonably to Mr B's financial situation. But she did think at times they could have done more. The adjudicator thought HSBC should refund the interest charged from 2013 on the credit card Mr B took out in 1993. And she thought they should repay the interest and charges from 2013 on the current account.

HSBC responded to the adjudicator and explained that any refunds made would be to the debt collection agency – rather than Mr B himself. And they said they were in the process of writing off the current account debt altogether – so Mr B wouldn't be pursued for any of the debt from the current account.

Mr B responded to the adjudicator and remained unhappy. In summary he said, while we can't look at what happened more than six years ago, he has been complaining for around five years. And he wanted to know why the adjudicator could look at a loan from 2011. He also thought HSBC should have helped him with a consolidation loan. And Mr B wanted us to consider the time and expense he'd suffered by complaining for the last five years, and the stress HSBC had put him under by not helping him. Mr B also blames HSBC for ruining his credit score.

As an agreement couldn't be reached, the complaint has been passed to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I agree with the adjudicator for broadly the same reasons. I know this will disappoint Mr B so I've explained my reasons further below.

When we have two conflicting versions of events, I have to make my decision on the balance of probabilities, that is, what I think most likely to have happened.

financial difficulties

Mr B has explained that his financial difficulties began around May 2013. This was due to the death of a family member which resulted in him looking after two children. I'm very sorry to hear about the circumstances surrounding Mr B's financial difficulties. I don't doubt this has been a really difficult time for him.

HSBC haven't been able to provide contact notes to show when Mr B told him about his financial difficulties. But I have seen they accepted reduced payments towards a number of his debts from around May 2013. Therefore, on the balance of probabilities, I'm satisfied that it is more likely than not, Mr B did tell HSBC about his situation. And they agreed to accept reduced payments.

When a customer is in financial difficulties we expect a business to act positively and sympathetically and there are a range of measures that a business can take to help such a customer. This would include reducing or writing off interest – but it isn't the only option. However, based on what I've seen it seems HSBC agreed to reduce payments and to freeze the interest for a couple of months while Mr B reviewed his situation. I find this to be acceptable in the circumstances.

In July 2013, HSBC asked Mr B for an update. As Mr B's situation hadn't improved, they agreed to continue to accept the reduced payments.

In October 2013, HSBC contacted Mr B for an update on his situation. I haven't seen anything to show Mr B told HSBC he was still struggling – and while he wasn't making payments, I don't think it's unreasonable that HSBC continued with their debt collection process. I say that because the letters HSBC sent Mr B when they accepted reduced payments makes it clear the borrowing was still subject to normal debt collection process. So when HSBC sent Mr B default notices and final demands, he should have known the implications and got in touch with HSBC.

I appreciate Mr B was going through a really difficult time – he's said he was depressed and suffering from health issues due to the stress he was under. But I can't fairly hold HSBC responsible for that. They assisted him when he initially told them about his financial difficulties, but he still had an obligation to keep them updated – especially when they got in touch with him asking for an update.

consolidation loan

I'm aware Mr B applied for a loan to consolidate all of his existing loans in April 2013. Mr B said if HSBC accepted his application, it would have reduced his outgoings by around half and therefore he would have been in a better financial position.

But HSBC declined Mr B's application. They said he failed external credit checks.

Mr B doesn't understand why HSBC carried out a credit check – as he said he wasn't asking to borrow more money. But HSBC said the loan was to pay back around £11,000 of existing debt and a further £3,000.

Due to the time which has passed, HSBC haven't been able to provide me with a copy of the application form. So I can't be sure the exact loan amount Mr B applied for. But I don't think it makes an overall difference. I say that because regardless of whether there is further borrowing or not, lenders are obliged to carry out 'proportionate' checks on a borrower's creditworthiness and ability to repay a loan in a sustainable manner. There's no checklist to tick off. It's left up to each business to decide its own lending criteria and the checks it will make. What's 'proportionate' will depend on a number of factors including the size and type of loan, credit history and the borrower's financial position.

So while I don't doubt a consolidation loan would have made Mr B's situation easier, he failed HSBC's checks. So I can't fairly say they did anything wrong by not lending to him.

I also note Mr B thinks HSBC ruined his credit score. And that's because they didn't approve the consolidation loan which made him fall into further debt. HSBC are required to report accurate information to credit reference agencies. And therefore, if Mr B stopped paying towards his debts, or if they were transferred to a debt collection agency, it's right that HSBC make the credit reference agencies aware. I appreciate this may have had a detrimental effect on Mr B's ability to apply for further credit. But I can't fairly say HSBC have done anything wrong by reporting accurate information.

jurisdiction issues

While the adjudicator has explained why we can't look at all of the events Mr B is complaining about, and he has accepted, I thought it would be helpful to reiterate our powers when looking at complaints.

I don't have a free hand to decide complaints. I must act within my powers which are set out by the Financial Services and Markets Act 2000 along with the Financial Conduct Authority's (FCA) Dispute Resolution ("DISP") Rules. These can be found on the FCA's website.

DISP 2.8 says that I can't consider a complaint if it's brought to this service more than:

- (a) six years after the event complained of; or (if later)
- (b) three years from the date on which the complainant became aware (or ought to have become aware) that he had cause for complaint;
- unless the complainant referred the complaint to the bank or to our service within that period and has a written acknowledgement or some other record of the complaint having been received.

I've considered each jurisdiction issue in turn under the subsequent relevant headings below.

credit card ending 6213

I'm satisfied we can't look at the selling (and therefore whether HSBC lent to Mr B irresponsibly) of the credit card based on the DISP rules. That's because the card was taken out in 1993 and the complaint was referred more than six years after that date.

I've also seen that there have been no credit limit increases on the card for the past six years. And therefore I'm also satisfied Mr B ought to have known he had cause for complaint more than three years ago. From the evidence I've seen, Mr B complained about the credit card in 2017. So it was referred too late. And I'm not aware of any exceptional circumstances which prevented Mr B bringing the complaint before this time, especially as he was in correspondence with HSBC regularly since 2013.

I have, however, considered HSBC's actions when selling the debt to the debt collection agency as this falls within the time frames we can consider.

I've seen Mr B made his last full contractual payment towards the credit card in May 2013. And it was around this time Mr B's financial difficulties began. In July, August and September 2013 Mr B made reduced payments of around £31.

I have seen however that HSBC applied interest to the credit card in the months they accepted the reduced payments. I don't consider they should have done this – especially as they told Mr B the interest would be frozen while he made reduced payments.

Due to further non-payment, and because Mr B didn't get back in touch when HSBC asked for an update on his financial situation, HSBC issued a final demand notice in January 2014. And they passed the debt – which was around £3,700 at the time, to a third party debt collection agency. I'm satisfied HSBC fairly notified Mr B of this, and made him aware of the consequences of not paying.

However, I consider HSBC should refund the interest charged to the credit card in July, August and September 2013 if Mr B is still being pursued for this debt from the debt collection agency.

personal loan ending 1134

I'm satisfied we can't look at the selling (and therefore whether HSBC lent to Mr B irresponsibly) of the personal loan based on the DISP rules. That's because the loan was taken out in 2009 and the complaint was referred more than six years after that date.

I'm also aware Mr B was in receipt of regular statements for the loan – and payments were being taken from his account on a monthly basis. Therefore I'm also satisfied Mr B ought to have known he had cause for complaint more than three years ago. From the evidence I've seen, Mr B complained about the loan in 2016. So it was referred too late. And I'm not aware of any exceptional circumstances which prevented Mr B bringing the complaint before this time, especially as he was in correspondence with HSBC regularly since 2013.

I have, however, considered HSBC's actions when selling the debt to the debt collection agency as this falls within the time frames we can consider.

I've seen Mr B made his last full contractual payment towards the loan in June 2013. In July, August and September 2013 Mr B made reduced payments of around £44.

I can't see that HSBC applied interest to the loan for the time Mr B was making reduced payments and therefore I think their actions were reasonable in helping him with his financial situation at the time.

Due to further non-payment, and because Mr B didn't get back in touch when HSBC asked for an update on his financial situation, HSBC issued a final demand notice in January 2014. And they passed the debt – which was around £4,200 at the time, to HSBC Recovery Services, which I find acceptable in the circumstances.

personal loan ending 4486

The loan was taken out in 2011 for a total amount of £3,000. And I can see Mr B complained to HSBC about the affordability of it in 2017. As this was within six years of the loan being taken out, I'm satisfied it's within the time limits for us to consider.

I haven't seen a copy of the loan application, but I have seen the affordability assessment. The payments for this loan were for around £75 per month and based on the information HSBC collected from Mr B, I'm satisfied the loan and monthly payments were affordable at the time of lending.

Mr B also successfully paid his contractual payments on time for around two years until May 2013 when his financial difficulties began. He made a reduced payment in July 2013 for around £28. And HSBC issued a default notice and final demand in December 2013. They transferred the debt, around £2,700, to HSBC Recovery Services in January 2014. And I find this reasonable in the circumstances.

current account ending 3823

From the statements it appears Mr B's salary stopped being paid into the current account from around June 2013. This is also around the time his financial difficulties started. He also exceeded his planned overdraft of around £500 in June 2013.

In July 2013, Mr B had a number of Direct Debits returned unpaid, and HSBC applied charges to the current account.

While I appreciate Mr B didn't discuss the current account with HSBC in particular when the reduced payments were discussed for his other debt, I think they had enough information about his circumstances to realise the further borrowing from his overdraft was due to the same financial difficulties. And therefore, I don't think HSBC should have applied charges to the current account.

Having said that, HSBC have confirmed they have written off the debt for the current account and they haven't passed it to HSBC Recovery Services. Therefore, because Mr B isn't being pursued for the debt, or the charges, I don't consider HSBC have to do anything in relation to the current account.

other issues

Mr B thinks HSBC should reimburse him for the time and expense he has incurred trying to deal with this issue over the last five years or so. And he says they have put him under a lot of stress and ruined his credit score. I appreciate Mr B's strength of feeling about this. However, I've found, for the lending I've been able to consider that HSBC lent responsibly to

Mr B. Therefore it wouldn't be fair for me to ask them to reimburse Mr B for the time he's spent complaining to them.

I recognise they could have dealt with some of his complaints sooner, but I've seen they've offered him £100 compensation for that. And I think that's reasonable. So I won't be asking them to pay anything more.

I appreciate Mr B says HSBC have failed to provide him certain information over the last five years he's been complaining. But under the regulations a bank is only required to keep documents for six years. So while I appreciate how frustrating this must be for Mr B, I can't reasonably say HSBC have done anything wrong in not still having some of the information, such as loan agreements.

overall

Overall, I'm satisfied HSBC acted reasonably when lending to Mr B and responding to him when he found himself in financial difficulties. I also find they were fair to pass the debt onto the debt collection agencies when they did.

However, I don't think HSBC should have added interest to the credit card in July, August and September 2013 when they accepted reduced payments from Mr B. So I think they should refund those charges if Mr B is still being pursued for that debt.

my final decision

For the reasons I've explained above, I uphold Mr B's complaint against HSBC Bank Plc.

HSBC Bank Plc must:

- refund all interest and charges applied to Mr B's credit card in July, August and September 2013,
- if applicable, apply the refund to reduce any debt outstanding to the relevant debt collection agency (with any credit balance being paid to Mr B directly).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 April 2019.

Hayley West
ombudsman