DRN-4190380

The complaint

Mr C complained that, in October 2021, HSBC UK Bank Plc ("HSBC") irresponsibly granted him a loan that he couldn't afford to repay.

What happened

In October 2021, Mr C took out a loan of £14,000 over a term of 60 months, with a monthly payment of £251.93.

In summary, Mr C told us that, during a period of poor mental health, he got into debt through overspending on an online game. This spending started in late 2020. As a result he had to take out loans with HSBC and another lender to structure the borrowing. Mr C thought HSBC irresponsibly granted the loan.

I should say here that Mr C also thinks HSBC should have taken action to limit his spending on the game. However, that is being considered as a separate complaint, and in this decision I am only considering whether HSBC acted responsibly in granting the loan in October 2021.

HSBC said it had carried out appropriate checks before granting the loan, and told Mr C that it did not uphold his complaint. Mr C then brought his complaint to this service. Our investigator looked into it and thought it should be upheld. HSBC didn't agree, and asked for it to be reviewed by an ombudsman.

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.

Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website, and I've taken this into account here.

I've decided to uphold Mr C's complaint. I'll explain why.

In summary, before providing credit, lenders need to complete reasonable and proportionate affordability checks. There isn't a set list of checks required of a lender, but it needs to ensure the checks are proportionate when considering matters such as the type and amount of credit being provided, the size of the regular repayments, the total cost of the credit and the consumer's circumstances. So I've considered whether HSBC completed reasonable and proportionate checks to satisfy itself that Mr C would be able to make the repayments on his loan account in a sustainable way.

HSBC sent in copies of Mr C's loan agreement and his current account statements for the relevant period, and its notes of the loan application and underwriting checks.

HSBC's notes of the loan application show that Mr C seems to have stated limited outgoings, such as no mortgage or rent, or other borrowing, although as I don't have the original loan application it's not entirely clear what questions would've appeared on the application and how Mr C answered them.

Looking at the underwriting notes, HSBC used its own affordability calculation which showed Mr C's monthly income to be £2,596 and his outgoings as living costs of £980, accommodation costs of £420, credit commitments of £941, and the cost of the new loan as £252. This left a monthly disposable income of £3.

I think such a low level of disposable income should reasonably have prompted a more detailed look it Mr C's financial situation, as it would have left him unable to cover any unexpected expenses. But the underwriting notes contain references to some figures being overridden – the income figure because of the salary seen on Mr C's account, and the living and accommodation costs because of the figures declared on the loan application memo. The only additional contact with Mr C seems to have been to check the purpose of the loan, and it's not clear that HSBC looked at Mr C's current account in any detail – this account was held with HSBC so it would reasonably have had access to the information. It also seems likely that HSBC would've used information on Mr C's credit record to carry out its affordability checks, so it's not clear why information would've been overridden without further checks – for example Mr C had a mortgage and credit cards, which ought to have shown on his credit record.

From all this I don't think HSBC carried out reasonable and proportionate checks – as I noted above I think the low disposable income figure should have prompted more detailed enquiries of Mr C with regard to his income and outgoings, and there's no evidence such checks were completed.

I have looked at the bank statements that HSBC provided, and in particular those for the months leading up to the loan being granted. I can see from these that Mr C's monthly income was around £2,596 and that he had a loan with another provider. The monthly payments on Mr C's joint mortgage seem to be around £1,000, and I can also see monthly payments to two credit card accounts – some quite large. There were also two amounts transferred *in* to Mr C's current account from one of the credit card providers. These two transfers totalled £7,500. And just before the loan application there was a payment to a 'buy now pay later' company of £1,700, suggesting a further credit commitment (albeit most likely short term). I also note that Mr C's current account balance was regularly quite low just before he was paid.

Whilst I don't have complete details of Mr C's credit commitments, the information on his bank statements seems to be consistent with the figure on HSBC's affordability assessment, based on the existing loan and his likely credit card balances I also don't have details of how HSBC calculated Mr C's living costs, but the figure doesn't seem unreasonable based on what Mr C has said about his circumstances. So it's difficult to see on what basis HSBC made its decision to override these figures.

I have also looked at the transactions relating to the online gaming that Mr C told us about. As I explained above, I will not comment here on Mr C's complaint that HSBC should have taken action to limit his spending on the game – that is the subject of a separate complaint. But I have taken account of the effect on the affordability of the loan.

The bank statements show numerous transactions to the company involved – sometimes several on the same day – in the period leading up to the loan (and indeed earlier, although as I noted above I have focused on the months preceding the loan application). As an example, in the first two weeks of August 2021 – shortly before Mr C applied for the loan – I found 56 transactions totalling just over £1,040. The rest of the period leading up to the loan shows similar numbers of transactions. So it seems to me that Mr C was living beyond his means at that point.

Overall, based on the evidence I've seen, I think that if HSBC had carried out more detailed checks on Mr C's income and outgoings, those checks would've shown that the monthly repayments on the new loan were unlikely to be sustainable. I say this because, taking account of the commitments detailed above, and the pattern of transactions on his current account, I'm not satisfied that Mr C was left with enough disposable income to manage those repayments sustainably. So I don't think HSBC acted fairly in granting this loan to Mr C.

HSBC argued that Mr C had always made the loan repayments and maintained a strong credit balance in his current account. I've thought about these points – but in this decision I am concerned with Mr C's circumstances when the loan was granted. I do not have details of how he was managing his finances afterwards so as to meet the payments, although I note that he took out another loan with a different provider shortly after the HSBC loan.

In summary, having carefully considered all of the evidence and information, my conclusion is that HSBC acted unfairly in granting the loan in October 2021, so I've decided to uphold Mr C's complaint.

Putting things right

I think it's fair and reasonable for Mr C to repay the capital that he borrowed in October 2021 because he has had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been provided to him. HSBC must put this right.
It should:

- remove all interest, fees and charges applied to this loan from the outset. The payments Mr C has made should be deducted from the new starting balance – the £14,000 originally lent. If, once all adjustments have been made, this shows that Mr C has made overpayments leading to a credit balance, these overpayments should be refunded to Mr C, together with interest at 8% simple a year* from the date they were made to the date of settlement.

- if, once all adjustments have been made this shows that Mr C still has an outstanding amount to repay, HSBC should contact Mr C to arrange a suitable repayment plan.

- if no outstanding balance remains after all adjustments have been made then HSBC should remove any adverse information (if any) it recorded on Mr C's credit file.

*HM Revenue & Customs requires HSBC to deduct tax from any award of interest. It must give Mr C a certificate showing how much tax has been taken off if he asks for one.

My final decision

For the reasons set out above, I have decided to uphold Mr C's complaint. HSBC UK Bank Plc should compensate Mr C as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 November 2023.

Jan Ferrari
Ombudsman