

The complaint

Mr M has complained that HSBC UK Bank Plc (“HSBC”) irresponsibly lent to him.

What happened

Mr M opened a credit card account with HSBC in October 2009. His credit limit was £3,000. HSBC increased Mr M’s credit limit on six occasions between November 2017 and March 2022. At its highest, it was £11,500.

Mr M says that HSBC acted irresponsibly by providing him with the credit limit increases. Mr M says that he got into financial difficulty as a result. He asks that HSBC pay him back the interest and charges he incurred as a result of the increases in his credit limit along with statutory interest.

HSBC says it didn’t lend irresponsibly to Mr M and that it did all the necessary checks before it lent to Mr M.

Our adjudicator thought that Mr M’s complaint should be partially upheld. They thought that given the amount it was proposing to lend to Mr M, HSBC should have done more checks in relation to the three credit limit increases between June 2019 and March 2022. And if it had done more checks, it would have seen information which would have indicated that Mr M wouldn’t be able to pay back the borrowing and cover his existing debts in a sustainable way. Our adjudicator didn’t think that HSBC had done anything wrong in relation to the credit limit increases between November 2017 and February 2019.

HSBC disagreed. It said it had done sufficient checks at all stages and there were no indications of any financial strain. Mr M also disagreed. He thought his complaint should have been upheld from the first credit limit increase in November 2017.

As both parties disagreed the case was passed to me to make a decision. I provisionally agreed with the adjudicator’s view and wrote to both parties to explain in detail why this was the case. The evidence at that stage ran to over 2770 pages, some of which was only submitted shortly before my provisional decision.

Following my provisional decision, Mr M again disagreed with the outcome and submitted further information and representations. The evidence now runs to over 3400 pages. I can assure both parties I have spent considerable time reviewing all of the evidence, but I will only refer to the evidence I consider relevant in this case.

HSBC didn’t respond to my provisional decision. And as Mr M didn’t agree, I now issue this final decision to conclude this service’s consideration of his complaint.

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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website and I've taken that into account when I have considered Mr M's complaint. Having done so, I agree with our adjudicator's view, however, as Mr M provided a significant amount of evidence since that view, I provided parties with a provisional (rather than final) decision to allow them to make comments on my findings.

Since then, as I have explained, HSBC has not responded, and Mr M has provided more information. The additional information has not changed my decision. I will explain why.

HSBC needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr M could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Mr M's income and expenditure.

Certain factors might point to the fact that HSBC should fairly and reasonably have done more to establish that any lending was sustainable for Mr M. These factors include things like understanding the total amount Mr M borrowed, the length of time Mr M had been indebted and how much disposable income he had.

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Mr M's complaint is about the credit limit increases on his credit card from November 2017. There isn't any evidence available about the opening of the account some years earlier. HSBC says that it did all the necessary checks each time it increased Mr M's credit limit and it saw nothing to suggest Mr M wouldn't be able to sustainably afford his repayments, even if he used the full credit limit. It says that when Mr M opened his credit card he declared an income of £25,000 a year.

HSBC told us that Mr M passed its own tests. It says Mr M showed no signs of financial difficulty. It says Mr M had no signs of delinquency on his credit file with any lender; he hadn't been shown forbearance in the preceding six months; he'd had no returned payments in the preceding month and there was no evidence that he had used his entire balance for cash withdrawals. HSBC also said that on each occasion Mr M's level of indebtedness and credit scores was within its internal policy limits, which were based on its own internal customer behaviour score and credit card behaviour score. It also looked at the payments Mr M had made over the five months preceding most of the increases to make sure if they continued at the same rate Mr M would be able to pay off the credit card within 36 months. In relation to the last increase in March 2022, HSBC says it also made an income and expenditure assessment using an assessment of the income going into Mr M's current account and modelled information about his essential expenditure using Office of National Statistics data. It says this showed Mr M was likely to have a net disposable income each month of around £954, making the increased credit affordable.

Our adjudicator thought that in relation to the first three credit limit increases that HSBC's checks were reasonable and proportionate. They said that there was no evidence of financial difficulty for Mr M. But in relation to the final three credit limit increases our adjudicator thought HSBC ought to have done more checks and that if it had, HSBC ought to have realised Mr M couldn't afford any more credit.

HSBC disagreed, and so did Mr M.

I asked to see the evidence of the checks HSBC says it did. I wanted to know exactly what it saw when it made its checks rather than just non-specific information about how Mr M met its own undefined internal policies and scores. For example, I wanted to know whether HSBC's checks showed what Mr M's income was. HSBC wasn't able to provide these. While our adjudicator was satisfied that on the face of things HSBC's checks were reasonable and proportionate, I think it ought to have gone further. On the basis of the checks HSBC has told me it did, it didn't appear to have any up-to-date information about Mr M's income. When he had opened the account in 2009 he had told HSBC that his income was £25,000 a year but that was eight years previously and it's likely it would have changed since then. HSBC understood how Mr M was managing his HSBC credit card, but it didn't have information about how much he'd already borrowed elsewhere, I think in these circumstances it was reasonable for it to have sought more information about Mr M's income and expenditure.

I can't be sure what HSBC would have found out if it had asked Mr M about his income and expenditure. Mr M says he was already struggling at this point and that this should have been clear to HSBC. He explained that he received a County Court Judgement (CCJ) on 27 November 2017, ten days after the credit limit increase. This would ordinarily mean that Mr M must have missed payments before the account defaulted and court action ensued, which would have shown on his credit file. Mr M provided a copy of his credit file from 27 December 2017 to support this. However, although he had a very poor credit score I could not identify any difficulties with managing his existing credit. The CCJ was in relation to an unpaid private parking charge and, from other correspondence Mr M supplied, it seems that the CCJ had been imposed without Mr M's knowledge of the legal action. I think this is probably the reason his credit score was so low and not because he wasn't meeting repayments on existing credit. I note also that it also wasn't present on a later credit file, suggesting it had been settled or set aside. Since my provisional decision, Mr M has confirmed this was the case. So, I don't think HSBC would have seen anything of concern in relation to the way he was managing his finances at that point.

Mr M also supplied his bank statements from around the same time. I can see from these that, unsurprisingly, Mr M's income was higher than it was when he declared it when he opened his credit card account. From those bank statements I can see that Mr M was retaining a healthy credit balance while meeting his essential expenditure.

In Mr M's response to my provisional decision, he says that he had managed his finances 'very well' before the credit limit increase in August 2018.

So, if HSBC had asked about Mr M's income and expenditure in November 2017, I don't think it would have found out anything that would have prevented it from providing the credit limit increase.

The same principles around checks applies for the later credit limit increases. I think HSBC ought to have done checks to establish Mr M's income and essential expenditure.

Mr M has provided copies of his bank statements from around the time of each credit limit increase. These show that he was generally in credit apart from short periods. Payments into his account come from umbrella companies through which Mr M contracted. Mr M says that the payments are not income but loans which he had to pay back. These loans came from an umbrella company based outside the mainland UK jurisdiction, in the Isle of Man. While in theory these loans have to be paid back, these types of loan schemes often act as a tax avoidance scheme whereby the loans are never repaid, and the umbrella company takes a percentage of the contractor's fee as an administration fee.

Mr M has included in his evidence a letter from HMRC dated 18 May 2023 reminding him of an overdue requirement to submit a self-assessment tax return for 2018-2019 and indicating that it believes his 'employer' (one of the umbrella companies) was using a tax avoidance scheme involving employees being paid amounts that were described as loans or other types of credit. This demand post-dates the initial decision by our adjudicator. Mr M has also provided copies of his HMRC records from the relevant years showing his taxable income. These aren't the self-assessments required by HMRC in its letter, rather they are records of the income he received from his various employments under PAYE. They do not appear to include the loans under investigation by HMRC.

There is no evidence on any of the bank statements that Mr M paid back any of the loans. I invited Mr M to supply evidence of these repayments, but he did not do so, although he explained how he had worked for an agency and had not understood the payment arrangements. In the absence of that evidence, I can only conclude that the money paid into his account by the umbrella companies was his income and that his HMRC statements of PAYE income do not reflect the reality of how Mr M was paid for the work he undertook. Looking at a sample of Mr M's bank statements in the months leading up to each increase Mr M's income was much higher than his HMRC PAYE records would suggest.

On this basis, having reviewed Mr M's income and essential expenditure on those bank statements, I am satisfied that had HSBC asked about Mr M's income and expenditure in relation to the credit limit increases in August 2018 and February 2019 it would reasonably have thought that the increases in Mr M's credit limit were affordable for him. So, although I don't think HSBC did adequate checks, I don't think if it had done them, it would have seen anything which might have made it act differently and not increase Mr M's credit limit. I note that Mr M had missed one payment on his credit card in December 2018, but he quickly resolved this, and I don't think that alone would have been a reason for HSBC to do further checks.

In response to my provisional decision Mr M provided copious more documents, mainly relating to his circumstances after February 2019. I have reviewed all of these, but they do not change my opinion on what HSBC would have seen if it had completed adequate checks before June 2019. It was not necessary or proportionate for HSBC to complete a forensic examination of Mr M's financial and personal circumstances. It was enough for it to see evidence of his income and essential expenditure. As I have already explained, had it done so, I don't think it would have seen anything to make it act differently and no increase Mr M's credit limit.

In June 2019 Mr M asked HSBC for a further credit limit increase, from £7,000 to £8,000. HSBC agreed to this. Although this was at Mr M's request, this didn't mean HSBC didn't have a responsibility to make proportionate checks to establish whether the increased lending was affordable for Mr M. HSBC has supplied no evidence at all about the checks it did in relation to this increase, so I can only assume that it didn't do any.

Again, I think HSBC ought to have done further checks, especially as Mr M proactively sought the credit limit increase, indicating he needed more credit. I think it ought to have checked his income and expenditure in the same way I have described earlier.

Mr M has provided copies of his bank statements from that time, too. In the month before the credit limit increase Mr M's income was in the region of £3,070 and his essential expenditure was around £2,900. Figures for the preceding two months show a similar amount of disposable income. While my calculations differ slightly to our adjudicator's, I agree with our adjudicator that Mr M did not have sufficient disposable income to manage his essential living expenses and make increased repayments on his credit card. He was also significantly overdrawn throughout the months leading up to the increase.

So, if HSBC had done the checks I think it ought to have done, I think it would have concluded Mr M couldn't afford the additional borrowing.

I have not considered the two following increases in great detail, because I don't think it makes a difference to the final outcome. However, I have noted that immediately following the June 2019 increase Mr M took out a large personal loan with HSBC, part of which he used to consolidate other lending with HSBC. He also entered into a car finance agreement in November 2019 which added to his essential repayments. His bank account remained overdrawn and he began to miss payments he owed elsewhere. So I don't think Mr M's finances improved to the extent that any additional borrowing on his credit card would have been affordable.

So, on the evidence available to me, I don't think HSBC acted fairly when it increased Mr M's credit limit above £7,000. I think Mr M lost out as a result and that HSBC should compensate him.

I understand that Mr M will be disappointed with my final decision, and I appreciate Mr M holds HSBC responsible for the majority of his later financial difficulties. In his later representations Mr M explains several life changing events which were the catalyst for his later financial difficulties. In his latest representations he seeks the 'maximum amount of compensation businesses should pay.' This would be £350,000. However, I am unable to conclude that HSBC's actions directly led to all of his problems, that Mr M has suffered a loss of that size as a result of HSBC's failings or that such a direction for compensation could be considered reasonable in the circumstances.

Putting things right

As I don't think HSBC ought to have increased Mr M's credit limit above £7,000, I don't think it's fair for it to be able to charge any interest or charges above that amount. But I think Mr M should pay back the amount he has borrowed. Therefore, HSBC should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £7,000.
- If the rework results in a credit balance, this should be refunded to Mr M along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. HSBC should also remove all adverse information regarding this account from Mr M's credit file.
- Or, if after the rework there is still an outstanding balance, HSBC should arrange an affordable repayment plan with Mr M for the remaining amount. Once Mr M has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

*HM Revenue & Customs requires HSBC to deduct tax from any award of interest. It must give Mr M a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

In my provisional decision I also explained that Mr M had asked me to consider directing that HSBC pay him compensation for the distress and inconvenience the events have caused him. I can see that Mr M feels that HSBC has, cumulatively, caused him serious financial problems over the years. However, I am only considering this case. I do not think HSBC can be held wholly responsible for all the problems Mr M has experienced or to have reasonably

foreseen the impact its decisions to increase Mr M's credit limit might have caused. And as I have explained above, I do not think HSBC is wholly responsible for Mr M's problems.

Having said that, I do think Mr M has experienced distress and inconvenience as a result of the decisions to increase his lending from June 2019. I think it would be fair for HSBC to pay Mr M £100 in compensation for the distress and inconvenience he has experienced. I explained this in my provisional decision, and I have received no objection or representations from HSBC so I now direct HSBC pay this.

My final decision

I uphold Mr M's complaint about unaffordable lending in part and direct HSBC UK Bank plc to pay compensation as described above.

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

Sally Allbeury
Ombudsman