

The complaint

Mr B and Mrs B complain that HSBC UK Bank Plc wrongly recorded their secured loan as being an unsecured loan.

What happened

In April 2009 Mr B and Mrs B borrowed £74,500 from HSBC. Unfortunately, HSBC has been unable to find the loan application and loan agreement, and Mr B and Mrs B have also been unable to provide a copy of the original loan agreement or other paperwork. HSBC has been able to provide some information from its internal systems, and this shows:

- The loan was taken out on an interest-only basis in joint names.
- Mr B and Mrs B make their monthly payments of £155.30 from an account held in joint names, but as this was an interest-only loan the balance remains outstanding.
- The loan was secured under the existing charge that HSBC has held since 2007.
- The original term was set at 60 months.
- The interest rate quote in January 2009 was 3.50%, and it notes it is 2.00% above base rate. At the time the loan completed in April 2009 base rate had dropped to 0.5%, and a charging rate of 2.5% (2% above base rate) ties in with the monthly payments of £155 that Mr B and Mrs B were making.
- A redemption statement was issued in 2010 which included this loan account, along with the other mortgage accounts.
- A letter was sent to Mr B and Mrs B in October 2014 which said (and which ties in with the original loan term being 60 months as I've set out above):

"I refer to your secured loan account and your recent telephone conversation with my colleague [name].

Following on from that discussion I can confirm the term on this loan account has now been extended and will now be due to be repaid in line with your other Mortgage accounts.

Please also accept this letter as confirmation that the Bank has taken all the relevant steps to ensure that no adverse information has been registered at the Credit Reference Agencies in relation to this matter."

- The terms came to an end on Mr B and Mrs B's other two mortgage accounts in June and July 2022 respectively.

In July 2021 Mr B and Mrs B spoke to HSBC about extending the term of their mortgage. They also approached another lender in August 2021 for a loan, which was declined.

Following the loan application being declined by the other lender Mr B and Mrs B spoke to Experian and obtained a copy of their credit report, which showed this HSBC £75,000 loan was showing as unsecured rather than secured.

Mr B and Mrs B complained to HSBC that the loan was showing as unsecured, and they said it had stopped them recently raising funds due to the impact on their credit files.

HSBC apologised to Mr B and Mrs B, offered them £500 compensation, and said it would amend the records so the loan would show as secured, rather than unsecured.

Our investigator upheld this complaint to the extent that he recommended that HSBC pay Mr B and Mrs B another £250. But he did not think it would be fair to ask HSBC to do anything more than that.

HSBC accepted that opinion, but Mr B and Mrs B did not. As an agreement couldn't be reached the case was passed to me to decide.

What I've decided – and why

In June 2023 I issued my provisional findings, which said:

"Where evidence is incomplete, inconclusive or contradictory, I reach my decision about the merits of this complaint on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I trust Mr B and Mrs B won't take it as a discourtesy that I've condensed their complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint. Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

The Financial Ombudsman Service is independent and impartial. We are not consumer champions, nor do we carry out a consumer protection role and we don't act either for consumers or the financial businesses about which they are complaining. I don't act under either's instructions or take directions on how a complaint will be looked at and what questions should be asked or answered.

I understand Mr B and Mrs B are concerned that HSBC can't find a copy of the original agreement for the loan. It's unfortunate that HSBC can't locate a copy of the agreement, and it's also unfortunate that it seems Mr B and Mrs B didn't keep a copy of their loan agreement and other paperwork for their own records.

Fortuitously, HSBC does hold the key information about the loan terms on its internal system, screen prints of which we've seen, and the information is as I set out earlier in this decision. This shows the key information such as the amount borrowed, that it was on a joint basis, the term, that it was interest-only and the interest rate. It also shows the term was extended in 2014 to tie in with the other two mortgage accounts. I can't provide copies of the internal screen prints to Mr B and Mrs B as they're not for consumer use, but I can reassure them I've reviewed them carefully and I'm satisfied with the information they show.

We're not the regulator, nor are we a court of law. I'm here to decide what's fair and reasonable. I can't order HSBC to provide something it doesn't have (that is, the loan agreement), and I'm satisfied I have enough information to say the loan was taken out in joint names and that it should have been secured on Mr B and Mrs B's property.

It is not in dispute that HSBC reported the loan inaccurately on Mr B and Mrs B's credit files (and HSBC has acknowledged this and corrected the credit file reporting already), so I will uphold this complaint. It only remains for me to decide what would be fair compensation in this case.

Although it seems apparent that the reporting of the HSBC loan as unsecured played a part in the third-party lender's decision to decline Mr B and Mrs B's application, I can't know for sure that it would have been the only reason for that decision. The loan may still have been declined anyway for other reasons further along in the process. I have seen no evidence that the loan would have been guaranteed to have been granted but for HSBC's error.

Mr B and Mrs B have said they've been repeatedly turned down for further borrowing since 2017, but that they never obtained a copy of their credit files to see why as they had no reason to believe there was a problem. But being repeatedly turned down for credit ought reasonably to have given them reason to believe that there was a problem. It seems unusual that they didn't ask, on any of those occasions, why they weren't able to get any further credit. And if they did ask, and they weren't satisfied with the answer, why they didn't look into this further.

It is unfortunate that Mr B and Mrs B didn't look into this sooner as, had they done so, I've no reason to believe this wouldn't have been resolved at the time. Whilst HSBC made a mistake when it reported this loan as unsecured, it wouldn't have known that mistake had been made until it was told and, as I said, it rectified the mistake once notified. I don't think this error would have been readily apparent to HSBC staff members, as it seems to have been a simple product mis-key that led to the loan being incorrectly reported to the credit reference agencies, rather than the entire loan having been set up incorrectly.

As HSBC put things right once it had been notified of the error, then I can't hold it liable for the various losses Mr B and Mrs B have mentioned, such as not being able to borrow money to fund their roof repairs and needing to take funds from Mr B's pension pot.

Whilst I acknowledge how frustrating it is when a business makes a mistake, mistakes do happen. We're not the regulator; we've no power to fine or punish businesses, and our awards aren't punitive. Clearly no amount of compensation can change what happened. HSBC has apologised for the mistake and increased its compensation offer to £750 at our investigator's recommendation and having considered everything I'm satisfied that's a fair outcome.

I understand Mr B and Mrs B wanted the loan to be marked as in dispute on their credit files, and to not have to repay it when they sold the property. But this loan wasn't in dispute (they borrowed the money and the debt was still outstanding), and it is secured on their property. The complaint Mr B and Mrs B made was that the loan was showing on their credit files as unsecured rather than secured, and HSBC put that right when it changed how it was reporting the information about this loan.

It seems Mr B and Mrs B are now raising some new issues that weren't previously raised with HSBC about the original lending, such as whether advice was given. Our rules state that a business must be given the opportunity to investigate and respond to any issues first, so Mr B and Mrs B should pass any new issues to HSBC as a new complaint if they

want them looked into. Mr B and Mrs B may then be able to bring that as a new complaint to this service if they remain unhappy with the outcome (subject to our usual rules, of course)."

HSBC accepted my provisional decision. Mr B and Mrs B responded but didn't raise any new points that would alter the outcome of this complaint.

I should remind Mr B and Mrs B at this point that their original complaint was that the loan was showing as unsecured on their credit files when it should have been showing as secured, so I can't deal with anything that isn't relevant to that point.

Mr B and Mrs B have said that they never received a copy of the loan agreement. I've dealt with the issue that HSBC now can't provide a copy of the loan agreement, but if Mr B and Mrs B are now saying that they didn't get a copy when they took out the loan then that is a new complaint they would need to raise with HSBC for its consideration.

Mr B and Mrs B have also said that it was only after lodging the complaint with our service that HSBC accepted its failure to register the loan correctly on their credit files, but that's not true. HSBC issued its final response to the complaint accepting that failing in May 2022 and the complaint wasn't referred to us until July 2022.

In respect of Mr B and Mrs B's comment that the agreement was never registered at the land registry I can only refer them back to what I said in the background to this complaint *"The loan was secured under the existing charge that HSBC has held since 2007."* As it was secured under the 2007 charge a further entry wasn't required – that is entirely normal in the mortgage market.

Mr B and Mrs B reiterated what they'd previously said about the impact it had on their ability to raise credit and again I've nothing further to add to what I've already said in my provisional decision. HSBC put this right once it had been notified by Mr B and Mrs B of the error, and it had investigated the issue. There could never have been an immediate resolution as HSBC needed to work out what had happened over a decade earlier, for which it held limited information.

As I said in my provisional decision, I've no reason to believe HSBC wouldn't have put things right had Mr B and Mrs B notified it of the problem in the years before the complaint was made. It is unfortunate that Mr B and Mrs B didn't look into why they'd been repeatedly turned down for credit since 2017, but I can't hold HSBC liable for that as it had no way to know about the error unless Mr B and Mrs B notified it.

Finally, we have been given the text of an email from Mrs B in which she said:

- *"To my knowledge this loan was set up to cover a very old overdraft on a business account in the name of [Mr B], I was not party to this bank overdraft and should not have been party to this loan."*

I would question why my name has been put on this loan particularly as it was set up as an unsecured loan, the status of this did not change until we realised that the size of the unsecured loan was having such a negative impact on the credit rating of myself and [Mr B]."

- *"This loan account is still open and shows as an available facility, therefore it could not have possibly been secured on our property."*

To clarify, as I explained in my provisional decision, the loan wasn't set up as an unsecured loan with the status only changing recently. The loan was always set up as a secured loan, there was simply an error that led to it being reported incorrectly to the credit reference agencies.

I can't comment on whether or not the loan account is still open and showing as an available facility as that is a new point that hasn't previously been raised. If Mr B and Mrs B are concerned about that then they can raise that as a new complaint with HSBC if they wish.

But in terms of this complaint I'm satisfied this was always a secured loan (and the original complaint made by Mr B and Mrs B was that this was a secured loan, but wasn't being reported as one). The fact the facility may show a certain way now doesn't change that.

Finally, the screen prints show this was a jointly held loan. Why it was taken out that way would need to form part of a new complaint to HSBC about the general sale of the loan, along with the other points Mr B and Mrs B had raised such as whether advice was given.

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, and having considered the full file afresh, including Mr B and Mrs B's response to my provisional decision, for all the reasons given I see no reason to depart from the findings I reached in my provisional decision.

My final decision

I uphold this complaint and order HSBC UK Bank Plc to pay Mr B and Mrs B £750 in total (less any amounts already paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 9 August 2023.

Julia Meadows

Ombudsman