

The complaint

Mr W says HSBC UK Bank Plc, trading as first direct, lent irresponsibly when providing him with a loan in 2023.

What happened

In June 2023, HSBC loaned Mr W £16,000 over an 81-month term. The stated purpose of the loan was to fund home improvements. The interest rate on the loan was an annual percentage rate (APR) of 15.9%. The total charge for the credit was £9,439.56, which meant the total amount repayable by Mr W for the amount he was borrowing was £25,439.56. The monthly repayments were £314.07.

In July 2023, Mr W complained to HSBC that it had lent irresponsibly to him and had worsened his (and his partner's) already difficult financial situation.

HSBC said it wasn't upholding Mr W's complaint. HSBC said the loan application and credit check results were reviewed and processed in line with lending rules and regulations and its own criteria.

Unhappy with HSBC's response, Mr W complained to this service. Our investigator looked into the complaint and recommended that it should be upheld. The investigator thought that HSBC hadn't carried out the checks it should have done prior to making the lending decision. They felt that, if HSBC had, it would have discovered that Mr W wasn't in a financial position to sustainably afford the loan payments. The investigator asked HSBC to put things right for Mr W in line with our general approach.

HSBC didn't agree with the investigator's assessment of the complaint. So, the complaint was referred to me to review afresh.

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 approach to considering unaffordable and irresponsible lending complaints on our website – including the key relevant rules, guidance, good industry practice and law. And I've considered this in deciding Mr W's complaint.

Having done so, I uphold the complaint. I'll explain why.

I confirm that I broadly agree with the investigator's findings on HSBC's lending decision and with the reasoning they've provided. I'm satisfied that the lending rules and provisions at that time meant HSBC needed to assess, by way of undertaking proportionate checks, whether it felt Mr W would be able to repay the credit taking account of factors such as the amount and type of borrowing and his income and expenditure. In summary:

- I recognise HSBC carried out some checks to satisfy itself that Mr W was eligible for

the loan. I don't doubt that HSBC had its own internal lending criteria. But, as I say, there were wider rules and provisions that also needed to be considered by HSBC, irrespective of its own policies.

- Mr W was looking to borrow a substantial amount and over a long period of time. I think this warranted checks in addition to those HSBC carried out. For example, while it made some assumptions about Mr W's income, it would have been reasonable to seek to validate the information gathered. That's despite, for example, not uncovering recent adverse information on his credit file. So, I don't conclude on balance that the checks HSBC undertook were proportionate.
- On review of Mr W's joint current account statements from the time, I consider it likely that proportionate checks would have revealed significant recent spending on gambling activities. For instance, several thousands of pounds were spent on gambling in the months leading up to the loan application.
- The statements show two other large loans had been taken not long before Mr W applied for the loan with HSBC. Most, if not all, of the proceeds of those loans appear to have been spent on gambling very soon after the money was received.
- This would all have indicated potential issues with the affordability of repaying such a large loan – and cast doubt on the true purpose of the loan itself, which Mr W accepts wasn't to fund home improvements after all.

Taking everything into account, I can't see that HSBC carried out proportionate checks that would have enabled it to make a reasonable assessment of the affordability of the loan for Mr W. Had HSBC done so, I don't think it would have satisfied itself that he was able to sustainably afford the credit it was offering. As such, HSBC should put things right for him.

Putting things right

I think it's fair and reasonable for Mr W to repay the principal amount that he borrowed, because he had the benefit of that lending. But he's paid interest and charges on the loan that shouldn't have been provided to him. So, I think Mr W's lost out and that HSBC should put things right for him. HSBC should:

- a) Remove all interest, fees and charges applied to the loan from the outset. Any payments made by Mr W should then be deducted from the new starting balance. If the payments Mr W's made total more than the amount he was originally lent, then any surplus should be treated as overpayments and refunded to him with 8% simple annual interest† calculated on any overpayments made, from the date they were paid by Mr W, to the date the complaint's settled.
- b) If there's still an outstanding balance on the loan, then HSBC should agree an affordable repayment plan with Mr W, bearing in mind the need to treat him positively and sympathetically in those discussions, and take account of his current ability to repay the loan.
- c) Remove any relevant adverse information recorded on Mr W's credit file as a result of the lending.

† HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mr W a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons given, I uphold this complaint. I require HSBC UK Bank Plc, trading as first direct, to put things right for Mr W as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 May 2024.

Nimish Patel
Ombudsman