

The complaint

Mr H says HSBC UK Bank Plc irresponsibly lent to him.

What happened

Mr H opened a credit card with HSBC in December 2003. It is not known what the opening limit was but by June 2004 his credit limit was £7,000. After he failed to make his contractual repayments HSBC took legal action and a CCJ was registered against him in 2009.

Mr H says HSBC failed to adequately check he was in a financial position to repay the funds it was lending. He had to enter a DMP in 2006 as by then he owed around £60,000 in unsecured credit. He also had a mortgage of £259,000. He says he was unable to afford his priority bills given the level of his debt. He is still repaying his debts, and will be until 2073, and this has caused immense stress for him. His wife is disabled and unable to work, since 2013 he has been her full-time carer. They have eight children, six of whom are dependents. Their monthly income is £3,863 and outgoings £3,583 – the remaining £280 is split between 35 creditors (his and his wife's). So they continue to be in extreme financial hardship, and this is affecting his mental health.

He wants HSBC to consider writing-off the debt and to refund all interest and fees paid on the card, plus statutory interest. He wants the debt to be written-off and the CCJ to be discharged.

HSBC said Mr H had brought the complaint too late based on the regulatory rules this service must follow.

Our investigator first explained why we could consider this complaint, even though the events being complained about took place over six years ago. She found Mr H's explanation as to why he only became aware he could complain in August 2023 to be plausible and so said the complaint fell within the time limits we are bound by.

HSBC then agreed we could investigate, but said it had no records going back this far so there wasn't any information it could provide about the issue of the credit card, or the checks made at the time of any limit increases.

Our investigator did not uphold Mr H's complaint. She said without information showing what HSBC's checks at the time would have shown she could not conclude it had acted unfairly. She noted Mr H had provided various information from around the time the card was issued but explained why it could be relied on to show the lending was unaffordable/irresponsible.

Mr H disagreed with this assessment and asked for an ombudsman's review.

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 are independent and impartial and our role is to listen to both sides of a complaint, take evidence from both parties, and then decide on a fair and reasonable outcome. So - it's important that we must see evidence from both the customer and the firm concerned to do this. And that is difficult in this case as we are lacking evidence-based information relating to what happened in 2003.

The Office of Fair Trading (OFT) was the regulator when Mr H borrowed from HSBC. The Consumer Credit Act 1974 set out the factors the OFT needed to consider when looking at how businesses lent to its customers, and it stipulated that the lender needed to assess the consumer's creditworthiness using both information supplied by the applicant as well as data obtained from a credit reference agency.

HSBC says it would have done this when Mr H applied but due to the time that has passed but no longer has records of these checks. I don't think this is surprising or unreasonable, but it means I cannot know what HSBC saw when it completed its checks before lending. So I cannot assess if its checks were proportionate, nor if it made a fair lending decision based on the information it gathered.

In cases like this we can consider other information, such as bank statements, to look at what proportionate checks would most likely have shown the lender. But there is no such evidence available here.

Mr H has provided details of his debts in 2006, what he recalls his income and expenditure to be in 2003 and statement of benefits for his pension from 2001. But I cannot fairly rely on a 2006 summary to know what HSBC most likely learnt in 2003, and nor can I fairly rely solely on Mr H's recollections of his financial position from over 20 years ago. For me to come to a decision as to whether HSBC lent responsibly, I need to see the information it saw at the time for Mr H – or a proxy for what it would have seen had it completed proportionate checks (in the scenario where it hadn't). And this just isn't possible in this case given the time since the event(s).

It follows I can't fairly conclude HSBC was wrong to lend to Mr H. So I am not instructing it to take any action. I would add that even if I had upheld Mr H's complaint, this service does not have the power to overturn a judgment issued by the courts.

I am sorry to hear about Mr H's challenging situation. I can see how difficult things have been for him and his wife over the years. I hope he now has the support he needs. I anticipate he will be disappointed by my decision, but I hope he can see why it is the only fair conclusion I can reach based on the available evidence.

My final decision

I am not upholding Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 10 April 2024.

Rebecca Connelley
Ombudsman