

## **Complaint**

Miss L has complained that HSBC UK Bank Plc (“HSBC”) unfairly provided her with personal loans.

She says that HSBC shouldn’t have lent her so much money as it ought to have seen that this was irresponsible lending.

## **Background**

HSBC initially provided Miss L with a loan for £15,000.00 in September 2021. The loan had an APR of 3.1% and a 60-month term. This meant that the total amount to repay of £16,194.61, which included interest of £1,194.61 was due to be repaid in 1 monthly instalment of £269.62 followed by 59 monthly instalments of £269.61.

HSBC subsequently provided Miss L with a loan for £10,000.00 in October 2021. This loan instead had an APR of 8.9% but also had 60-month term. This meant that the total amount to repay of £12,327.47, which included interest of £2,327.47 was due to be repaid in 1 monthly instalment of £205.33 followed by 59 monthly instalments of £205.46.

There have been a number of extensive representations made on this complaint. In particular given the circumstances around the time of the applications and what has happened since. Given the sensitivities of Miss L’s situation and position, I do not propose to go into any detail on these matters. But what’s important here is that Miss L initially asked us to focus on whether HSBC should have given her these loans in the first place and the service she received when she contacted HSBC after this.

One of our investigators looked at this complaint and thought that HSBC didn’t act unfairly or unreasonably when providing loan 1. But she also thought that HSBC shouldn’t have provided loan 2 as reasonable and proportionate checks would have shown it that the loan was unaffordable for Miss L. Finally, she thought that HSBC provided Miss L with poor service when she got in touch to explain her position.

Miss L didn’t disagree with our investigator’s assessment. But HSBC did disagree and asked for an ombudsman to review the complaint and make a final decision.

As the parties appear to be in agreement over the position relating to loan 1, this decision is only looking at whether HSBC acted fairly and reasonably when providing Miss L with loan 2 and what has since happened afterwards. And all reference made to loan (rather than loan 1 or loan 2) from this point forward is made with reference to loan 2 which was provided in October 2021.

## **My findings**

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/irresponsible lending -

including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Miss L's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Miss L's complaint. These two questions are:

1. Did HSBC complete reasonable and proportionate checks to satisfy itself that Miss L would be able to repay her loan without experiencing difficulty or suffering significant adverse consequences?
  - o If so, did it make a fair lending decision?
  - o If not, would those checks have shown that Miss L would've been able to do so?
2. Did HSBC act unfairly or unreasonably in some other way?

*Did HSBC complete reasonable and proportionate checks to satisfy itself that Miss L would be able to repay her loan without experiencing difficulty or suffering significant adverse consequences?*

HSBC provided this loan while it was authorised and regulated by the Financial Conduct Authority ("FCA"). The rules and regulations in place required HSBC to carry out a reasonable and proportionate assessment of Miss L's ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so HSBC had to think about whether repaying the loan would cause significant adverse consequences for *Miss L*. In practice this meant that HSBC had to take reasonable and proportionate steps to understand that making the payments to the loan wouldn't cause Miss L undue difficulty or adverse consequences.

In other words, it wasn't enough for HSBC to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Miss L. Checks also had to be "proportionate" to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and

- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

*Were HSBC's checks reasonable and proportionate?*

HSBC says it agreed to Miss L's application after it validated her income and undertook a full affordability assessment using a combination of modelled (statistical) essential monthly spending such as her utility bills, her council tax, her grocery shopping etc, as well as any rent or mortgage payments.

It says that it also included any credit commitments Miss L had as a result of carrying out credit checks with credit reference agencies at the time of her application. It then considered if Miss L still had an appropriate level of disposable income to support the required loan payment. In this case, it considered that Miss L did have sufficient funds to make her payments and it was prepared to lend loan 2 (as well as loan 1) to her.

On the other hand, Miss L has said she should never have been accepted for such a large loan on her income.

I've thought about what HSBC has said. But I have concerns at some of the information relied upon. Firstly, Miss L (according to copies of Miss L's bank statements which HSBC provided) only earned around £1,500.00 a month. The combined monthly loan repayments for loans 1 and 2 was close to a third of Miss L's income.

Equally, HSBC was advancing a significant sum over an extended term. Certainly when the combined amount owing is considered Miss L was going to be significantly indebted when taking into account her income.

Furthermore, I also think that the situation was exacerbated by the fact that HSBC, at best, chose to use statistical data to validate Miss L's declaration of her living expenses. I accept that there is a place for the use of statistical data in income and expenditure assessments. This is particularly in cases where there isn't anything out of the norm in terms of the information that a lender has about a borrower.

However, I don't think that the use of statistical data is as appropriate in circumstances where a borrower is being lent such a large amount over an extended period of time and with the monthly payment taking up a significant proportion of the customer's income. I am also mindful that the funds from loan 1 were immediately transferred on to another account and this was only a month prior to this loan. So HSBC ought to have been aware that there was a significant danger that whatever was recorded as Miss L's loan purpose might not have been correct.

Bearing in mind the particular circumstances of the borrowing here, I do think that HSBC ought to have obtained further information before agreeing to provide this loan to Miss L. As there's no evidence that HSBC asked for, or considered, further information, I find that it

didn't complete fair, reasonable and proportionate affordability checks before providing Miss L with this loan.

*Would reasonable and proportionate checks have indicated to HSBC that Miss L would have been unable to repay this loan?*

As reasonable and proportionate checks weren't carried out before this loan was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told HSBC that Miss L would've been unable to sustainably repay this loan.

Miss L has provided us with evidence of her financial circumstances at the time she applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Miss L has provided, it doesn't mean it would've shown up in any checks HSBC might've carried out.

But in the absence of anything else from HSBC showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on it as an indication of what Miss L's financial circumstances were more likely than not to have been at the time.

I've carefully considered the information provided. Having done so, it's clear that Miss L's statements show that she was paying £1,000.00 a month in rent. And most of the approximately £550 to £600 or so she had left in income was being used to meet her existing credit commitments (the existing HSBC loan) and her regular living costs.

Bearing all of this in mind, it seems pretty apparent to me that Miss L was extremely unlikely to have been able to make the payments to her loan (loan 2) without undue difficulty or suffering adverse consequences. I'm therefore satisfied that reasonable and proportionate checks would more likely than not have alerted HSBC to the fact that Miss L would not be able to sustainably make the repayments to this loan.

As this is the case and given what exactly it was HSBC was required to consider, I'm satisfied that HSBC's decision to provide this loan to Miss L wasn't fair and reasonable in the circumstances.

*Did Miss L lose out as a result of HSBC unfairly providing her with her loan?*

As Miss L paid and she's still being expected to pay interest, fees and charges on a loan that she shouldn't have been provided with, I'm satisfied that she has lost out as a result of what HSBC did wrong.

So I'm satisfied that HSBC needs to put things right in relation to this matter.

*Did HSBC act unfairly or unreasonably towards Miss L in some other way?*

I've carefully thought about everything provided. It is clear that there has been some significant back and forth over phone calls and online chats between HSBC and Miss L after she got into difficulties paying her loans. Having listened to some of the calls it's clear that Miss L has been extremely distressed by this situation.

Bearing in mind what has gone on, what HSBC knows about and the other independent third-party evidence I'm aware of, it is clear that Miss L was and remains a vulnerable customer. I accept that HSBC might not have known this when Miss L made her loan applications. But given what it was told at this stage, I certainly think that it ought to have

realised this during its attempts to move Miss L through its collections process. And on one of the calls, at least, it would have definitely realised this had it actually listened to Miss L.

I also say this while particularly mindful of the fact that a lender is required to exercise forbearance and due consideration in the event a borrower is experiencing financial difficulty and it's clear that Miss L was conveying an inability to make her payments.

Given this is the case, I find that HSBC (it says) incorrectly telling Miss L that her loan (or loans even to me at this stage it's not entirely clear) was being written off to be particularly galling. This is particularly bearing in mind that HSBC will have been aware, or at the very least ought to have been aware, of the impact of its errors in relation to this matter on a vulnerable customer.

As this is the case and while it has continually referred to this matter as if it somehow completely resolved what happened, I'm nonetheless satisfied that the £125 it has offered in relation to the poor service it has provided is not fair and reasonable in the circumstances. In my view, it's more of a gesture than a genuine attempt to address the impact of the actions of its extremely poor service on Miss L (a vulnerable customer) when she was going through a very difficult and traumatic time.

In these circumstances and given my own investigation leaves me satisfied that HSBC's poor service here resulted in it acting unfairly or unreasonably towards Miss L in some other way, I'm satisfied that my direction (on what HSBC should do to put things right) needs to consider this.

I will therefore return to this point and what it means towards the latter part of the '*Fair compensation – what HSBC needs to do to put things right for Miss L*' section of this final decision.

### **Fair compensation – what HSBC needs to do to put things right for Miss L**

#### *The outstanding balance on loan 2*

I've carefully thought about what amounts to fair compensation in this case. Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they would be in now if that wrong hadn't taken place.

In essence, in this case, this would mean HSBC putting Miss L in the position she'd now be in if she hadn't been provided with loan 2. But when it comes to complaints about irresponsible lending this isn't straightforward. Miss L was given the loan in question and the funds have dissipated – albeit it is possible Miss L may not have derived an actual benefit from these funds.

So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Miss L back in the position she would be in if she hadn't been given loan 2 in the first place because Miss L doesn't have the £10,000.00 available to return to HSBC for the agreement to be unwound. As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind the particular circumstances of the case.

Having done so, I'd like to explain the reasons why I think that it would be fair and reasonable for HSBC to put things right in the following way, bearing in mind everything that has happened. As we explain on our website where we find, or a lender agrees, credit was provided irresponsibly, we'd typically say it's fair reasonable to expect the borrower to repay

the funds they were lent but not any associated interest, fees or charges. But I don't think that such an award goes far enough here. I think that this is the case for three reasons.

Firstly, for the reasons I have in some detail already explained, HSBC ought to have been aware that there was no prospect of her being able to make her monthly loan payments given her rent commitments alone. Furthermore, although I cannot look into these matters, I understand that both parties are in agreement that the funds have dissipated since the loan was provided.

Secondly, it is also my understanding and HSBC appears to accept that Miss L is having a very tough time. She is unwell, struggling financially and there is a considerable amount of independent third-party evidence supporting that she's gone through an extremely tough time since she was provided with her loans. So I'm satisfied that life will clearly be difficult for Miss L in these times, given her current financial position.

It's difficult to see how Miss L will be able to make payments to this loan going forward or repay the outstanding capital within a reasonable period of time, in these circumstances, without experiencing severe financial difficulty.

Bearing in mind the circumstances in which HSBC lent, Miss L's current financial position and the amount of distress and inconvenience HSBC not only unfairly providing this loan to Miss L but (my third reason of it) also telling her the balance was written off at an extremely vulnerable period for her is likely to have caused, I don't think removing the interest fees and charges goes far enough.

The circumstances of this case and in particular the financial hardship which is likely to be caused by requiring Miss L to pay funds she doesn't have and is unlikely to get any time soon, as well as all of the circumstances at play here, lead me to think that the fair and reasonable thing for HSBC to do here, given all the circumstances, is write off the outstanding balance on loan 2.

#### *The position in relation to loan 1*

As I've explained Miss L is currently going through a difficult time. Therefore, her ability to make payments to loan 1 is also affected. I'm mindful that Miss L is no longer complaining about the provision of this loan – or at the very least she's accepted an outcome from our investigator. So it wouldn't be appropriate for me to now look into HSBC's actions in providing this loan in the first place, or makes a direction which relates to this.

Nonetheless, HSBC is now aware of Miss L's struggles and has been provided with extensive information in this. And once a lender is told, or it realises, that a borrower is experiencing financial difficulties we would expect it to exercise forbearance and due consideration, in line with its regulatory obligations.

In these circumstances and as it is aware of Miss L's current inability to repay, I think that HSBC should take measures to ensure that it doesn't pursue Miss L for the outstanding balance on loan 1, unless and until her position and ability to repay her loan changes. Miss L is encouraged to get in contact with and update HSBC on any changes to her circumstances.

To be clear, I'm not directing a write off on loan 1, HSBC can pursue the outstanding debt on this loan, once Miss L is in a position to repay what she owes within a reasonable period of time. A reasonable period of time will take into account the amount owing and matters such as the typical period of time to repay such a balance.

### *Miss L's credit file*

I turn now to Miss L's credit file. We'd typically expect a lender to remove any adverse regarding a loan, from the borrower's credit file, where a complaint is upheld for irresponsible lending. However, I don't think that doing this would be the fair and reasonable thing to do here given what I'm asking HSBC to do in terms of the loan balance.

To explain, the basis for Miss L's complaint was and is that her position was made worse by HSBC's decision to lend to her in October 2021, in circumstances where she is unlikely to ever be able to repay what she owed. I've accepted this is the case and this has played a large part in my decision to uphold Miss L's complaint and make the direction I am making.

In these circumstances, it seems to me removing the adverse information relating to loan 2 from Miss L's credit file (and asking HSBC to record this loan as having been settled early, which would be the effective result here, when a substantial portion of the capital was written off), thus increasing the chances of her being able to borrow further would be counterproductive and arguably not in her best interests, or those of any potential lender.

And, in these circumstances, I think it is fair and reasonable for HSBC to reflect what I'm asking it to do in relation to the outstanding balance on the loan. So HSBC should record that it wrote off a balance on loan 2 on Miss L's credit file. For the sake of completeness, I should say that HSBC should also accurately record the position in relation to loan 1 too.

### *HSBC poor service and any distress and inconvenience caused to Miss L*

I have already set out why I think HSBC (additionally) didn't act fairly and reasonably towards Miss L as a result of its poor service once became aware of Miss L's difficulties and ability to repay. I've also said that this is a matter I need to consider when determining fair compensation.

In particular, I was not satisfied that HSBC's payment sufficiently addressed the poor service it provided Miss L once she got in contact about her difficulties. In my view, the payment did not address Miss L's circumstances or the fact that she was a vulnerable customer experiencing a very difficult and traumatic time.

That said, I'm mindful that I'm directing HSBC to write off the outstanding balance on loan 2 and this will result in Miss L having repaid substantially less than the amount she was lent to begin with. I've already explained

Therefore, while I've carefully thought about matters and I am not satisfied that HSBC's payment of £125 in compensation was sufficient and while I may have told HSBC to pay a not insubstantial amount of compensation for the distress and inconvenience its actions caused Miss L were it not for my direction to write off the outstanding balance, I am nonetheless satisfied what has been and will be done here will fair produce a fair and reasonable result. And I'm not making an additional award for distress and inconvenience .

### *Summary of my direction on what HSBC needs to do to put things right*

Overall and having thought about everything, I think that HSBC should put things right for Miss L by:

- writing off the remaining balance on loan 2 and discharging Miss L from any potential liability in relation to this debt;

- not pursuing the outstanding balance on loan 1 unless and until it is able to reasonably conclude that Miss L's circumstances have changed and that she is able to repay this balance in a reasonable period of time.

**My final decision**

For the reasons I've explained, I'm upholding Miss L's complaint. HSBC UK Bank Plc needs to put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 22 December 2023.

Jeshen Narayanan  
**Ombudsman**