

## The complaint

Ms X is unhappy that HSBC UK Bank Plc (“HSBC”) initially declined her application to change her residential mortgage into a Buy to Let (BTL) and declined her application for £50,000 additional borrowing.

## What happened

Ms X has a residential capital repayment mortgage with HSBC and in April 2022 she contacted HSBC with the intention of changing her residential mortgage to a BTL mortgage. She also wanted to borrow £50,000 additional funds. Ms X initially said that she wanted to use the additional borrowing to renovate the property so that she could maximise her assets. However, she later said that the £50,000 additional funds were to be used to purchase another BTL property.

After the initial contact with HSBC in April 2022, Ms X made an application in July 2022. In between these periods Ms X made enquires with another lender about a bridging loan. HSBC didn’t approve Ms X’s application to change her residential mortgage to a BTL mortgage and to take out additional borrowing, as they said that Ms X’s application did not meet their lending criteria

Subsequently, Ms X complained to HSBC. In HSBC’s final response letter dated 20 September 2022 they said that having considered Ms X’s circumstances they were willing to exercise discretion on this occasion and agreed to convert the residential mortgage to a BTL one, even though it was outside their lending criteria. But they didn’t agree to any further borrowing. Ms X believes that the interest rates that were discussed in April 2022 should be honoured since they have agreed to change her mortgage to a BTL one.

Ms X remained unhappy with how HSBC had conducted things. She made a number of comments as to why she wasn’t satisfied with how HSBC acted. She said that they had breached the Data Protection Act and as a vulnerable consumer, they had obligations to meet which they did not do. Ms X has made allegations that HSBC discriminated against her and have been non-compliant in a number of areas.

She said that because of the issues she had with HSBC, she enquired about taking out a bridging loan but after realising the costs involved, she decided to wait for HSBC to deal with her mortgage application which they ended up declining. Ms X said that HSBC have failed to understand her position and have failed her as a customer. She doesn’t believe that HSBC should have declined her application on the grounds of affordability as she knows she can afford the mortgage.

Ms X brought the complaint to the Financial Ombudsman Service where it was looked at by one of our Investigators. She told our Investigator that HSBC also conducted a further credit search against her name, so she had two showing instead of one.

Our Investigator concluded that HSBC were entitled to set their own lending criteria and they had applied those criteria fairly when considering the application. The investigator also didn’t think that the interest rate from April 2022 should be honoured as Ms X didn’t make an application to switch the mortgage rate in April 2022.

Ms X wasn't happy with the view reached by the Investigator. She explained in detail why she didn't agree. In summary she felt that the Investigator had failed to address her complaint and the evidence submitted and provided further commentary as to why she felt she had been discriminated against by HSBC.

As she disagreed with the Investigator's view, the complaint has been passed to me to determine.

I issued a provisional decision on 22 November 2023. I said:

I've considered all the available evidence and arguments provided by both sides to decide what's fair and reasonable in all the circumstances of this complaint.

I'd firstly like to say that I'm sorry to hear about the difficult circumstances that Ms X has had to deal with. I understand that it has been, and still is, a very difficult time for her.

I've taken into consideration everything that Ms X has said, and I know she feels very strongly about her complaint. She has provided detailed comments in support of her views which I can confirm I've read, understood, and considered in reaching my provisional decision. However, I trust that Ms X will not take it as a discourtesy that my findings focus on what I consider to be the central issues and are expressed in considerably less detail. I am required to determine what is fair and reasonable in all the circumstances of the case and as such, I have concentrated on the key points in order to determine a fair and reasonable outcome.

Our service is governed by the "Dispute Resolution: Complaints" ("DISP") chapter of the Financial Conduct Authority's (FCA) Handbook. DISP 3.6.4R sets out what I am required to take into account when considering what is fair and reasonable in all the circumstances of the case:

*"In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:*

*(1) relevant:*

*(a) law and regulations;*

*(b) regulators' rules, guidance and standards;*

*(c) codes of practice; and*

*(2) (where appropriate) what he considers to have been good industry practice at the relevant time."*

The crux of the complaint is that HSBC refused to change Ms X's mortgage from a residential one to a BTL and agree additional borrowing of £50,000. Since Ms X complained to HSBC, they have agreed to change the mortgage to BTL as an exception because of Ms X's circumstances, even though it falls outside their lending criteria. But they said they couldn't agree to any additional borrowing as this didn't meet their affordability criteria. Ms X said that HSBC didn't take into account all her income and her assets which would have meant that the loan should have been affordable.

Ms X has made various other arguments in relation to this complaint. She isn't happy with how HSBC treated her after the application was declined as she said they carried out a second credit check against her without her knowledge. Ms X also says that after she spoke to HSBC in April 2022, she explored the option of a bridging loan. She said she decided not to go ahead with this because of the costs involved so she decided to go ahead with HSBC as it would have been a less risky option for her.

Ms X has also said she only wanted to be contacted via email by HSBC and explained she wanted this as a reasonable adjustment due to her medical conditions. Ms X has said that HSBC breached their duty to make a reasonable adjustment for her based on what she had asked for.

#### *Mortgage application and change to BTL mortgage*

Ms X contacted HSBC in April 2022 and, at this time, interest rates were also discussed with regard to changing the mortgage to a BTL. As HSBC ultimately agreed to change her residential mortgage to a BTL mortgage, Ms X thinks that the April 2022 rates should be honoured.

After this initial contact, HSBC tried to contact Ms X a couple of times, but they were unable to get through to her. Ms X then contacted HSBC on 30 April 2022, but this call ended when HSBC tried to put Ms X through to another department. HSBC didn't hear from Ms X again until 15 July 2022 – with an application being made on 24 July 2022. Therefore, as Ms X's application wasn't made in April, I don't think it's reasonable for me to require HSBC to honour those interest rates.

Initially, HSBC refused Ms X's application to convert her residential mortgage to a BTL mortgage as she did not meet their lending criteria which required the applicant to have a minimum annual income of £25,000. It's also good industry practice to ensure that lending is affordable. Whilst it is ultimately for a business to decide whether or not to lend, they must reach their decision fairly. Having considered everything by both parties, I can see that HSBC took Ms X's income into account. I note she says she has other buy to let properties and assets that she could use. But lending isn't based on assets, lending affordability is only worked out on income so I can't say that HSBC have done anything wrong here. And in this instance, I note that HSBC later exercised their discretion and offered to change Ms X's mortgage to a BTL. They did this after Ms X complained to HSBC and HSBC said they did this to help Ms X due to her situation. So I think they have acted fairly in this situation – where they agreed to allow the switch from a residential mortgage to a BTL mortgage, as they have considered Ms X's circumstances and did this to help her. While I'm satisfied it was fair and reasonable for HSBC to apply their lending criteria, I don't consider it to be unfair and unreasonable that they decided to exercise their discretion in this way even though the lending criteria was not met.

However, it doesn't appear that Ms X took up HSBC's offer to change the mortgage to a BTL without the further borrowing. We have since checked with HSBC to see if this offer is still open to Ms X but they said that Ms X has now stopped paying her mortgage and is over £6,000 in arrears, and there have been more service charges added to the mortgage that Ms X has also not paid. HSBC said if Ms X doesn't pay the service charges, they will need to pay them on her behalf and add the balance to the mortgage. HSBC have to ensure these charges are paid as the property is their security for the mortgage. HSBC said they have tried to contact Ms X to resolve the arrears, but she isn't engaging with them anymore. So they said they won't be able to now honour their previous offer to change the mortgage to a BTL one. Based on recent events, I don't think this is unreasonable.

I'll now move on to consider whether HSBC acted fairly and reasonably in relation to the additional borrowing that Ms X wanted.

I have considered everything provided by both sides. I am not making light of anything that Ms X has said but it's not a requirement for HSBC to lend to customers who've dealt with difficult circumstances. Treating customers fairly doesn't mean putting aside lending criteria or not taking steps to ensure that the lending is affordable. If a customer doesn't meet HSBC's lending criteria, they are entitled to decline the application as has happened here.

I've reviewed the reason why HSBC refused to offer additional lending to decide whether they assessed the application fairly. As already mentioned, HSBC said that based on Ms X's income, she didn't initially meet the minimum lending criteria to switch the mortgage to a BTL, and HSBC said they were not able to lend any additional funds to Ms X. HSBC referred this to their underwriters to see if anything could be done having regard to her circumstances, to see if they could go outside their lending criteria.

It was agreed at this point that they would allow the switch to BTL but wouldn't increase their risk by allowing Ms X to borrow any additional funds. The affordability assessment that HSBC carried out indicated that Ms X couldn't afford the new loan she wanted based on the income she had as it fell under the minimum threshold they allowed. There were also some concerns about the high level of debt that Ms X had in comparison to the income she was receiving. Having looked at the notes provided by HSBC and the considerations they made, I'm satisfied that HSBC considered Ms X's application reasonably and fairly against their lending criteria.

#### *Ms X's bridging loan enquiry*

Ms X said she explored the option of a bridging loan as HSBC were taking too long to get back to her about the application, but she didn't go ahead with this as she wanted to take the additional borrowing from HSBC as this was a safer option. But she was unhappy as the additional borrowing with HSBC got declined. Ms X said that she had to explore other options because HSBC took too long to get back to her.

Having looked at what happened at that time, Ms X contacted HSBC on 29 April 2022 wanting to discuss the mortgage. The person she spoke to on the phone wasn't quite sure what Ms X wanted so they got another colleague to speak to Ms X – who was familiar with her. The adviser tried to call Ms X back a couple of times but was unable to get through. Ms X called back on 30 April 2022 and while HSBC were putting her through to the right department, it appears she got cut off. HSBC didn't hear back from Ms X until 15 July 2022. It seems as though the enquires that Ms X made about the bridging loan happened somewhere during this time. But I can't see that she did this because of any delays caused by HSBC because from what I have seen, after the initial telephone call that Ms X had with HSBC on 30 April 2022, she didn't get back in touch with HSBC until 15 July 2022. There also wasn't any indication that the additional borrowing would be guaranteed so I think it was Ms X's choice to explore the bridging loan and not something I can hold HSBC responsible for.

#### *Credit score concerns*

I've thought about the concerns Ms X has with the credit score issues and have looked at the information that I have been provided with to understand what has happened. Ms X has provided us with a document that shows two credit searches were conducted by HSBC. One of them is showing as a new first charge search conducted by HSBC on 24 July 2022. The other is showing as a new unrecorded enquiry conducted by HSBC on 26 July 2022.

The first credit search was recorded was on 24 July 2022 – the same day that Ms X applied for the mortgage with HSBC. So, this is something that would show on her credit file as it was part of the application process.

The second check showing on 26 July 2022 is an unrecorded check. HSBC have told us that this is the date their underwriters submitted their decision on the case as part of the checks that HSBC conduct. But this isn't an official entry on Ms X's credit file. The check does state it's an 'unrecorded enquiry' which is usually a search that a lender does for their own lending purposes.

We have contacted Experian to ask about this and they have checked Ms X's credit file and confirmed the additional check conducted by HSBC has had no impact on Ms X's credit rating and it was an unrecorded entry. This doesn't affect Ms X's credit rating and it's only recorded as a reference and is not something that a third party will be able to see. So even though HSBC may have carried out two credit searches, only one of them has been recorded against Ms X's credit file. It's entirely appropriate given that Ms X made an application, and she agreed to the credit search being carried out when she submitted the application form – that one would be recorded.

#### *Breach of the Data Protection Act (DPA)*

Ms X has said that HSBC have breached the Data Protection Act. She said that the Act requires HSBC to report breaches to the Information Commissioner's Office (ICO) within 72 hours, but this had not been done.

She also said that HSBC deliberately manufactured data which is evidence of their non-compliance with the DPA which she would also like investigated. She said she received a Subject Access Request (SAR) which she believes was fabricated after she complained to HSBC which ties in with subsequent phishing exercises following her complaint.

It's not for the Financial Ombudsman Service to decide if HSBC have broken the law with regards to data protection and we can't fine them or tell them to change their processes. But we can look at what is fair and reasonable and the impact that any failings have had on Ms X if they have done something wrong. Ms X can report her concerns to the ICO if she wishes to do so.

I haven't seen that Ms X has provided specific information as to what she believes HSBC have fabricated and what information hasn't been reported to the ICO. If she would like me to make a determination about this, she will need to provide specific information when she responds to this provisional decision along with any evidence that she has in order for me to consider it. But like I have said, it's not for me to fine or punish HSBC as that is the role of the regulator.

#### *Discrimination against Ms X*

Ms X has said that she has been discriminated against by HSBC and has provided a large amount of information surrounding this, some of which is of a sensitive nature. So far as this aspect of Ms X's complaint is concerned, the relevant law here is the Equality Act 2010. Ms X is alleging that because of certain protected characteristics she holds (such as disability, race and sex) HSBC refused to convert her mortgage to a BTL, as well as refusing her application for additional borrowing. Ms X alleges that in doing so HSBC were discriminating against her. She has also alleged discriminatory behaviour by HSBC in relation to certain sensitive personal circumstances. Ms X has said that decisions should be made in favour of the individual with protected characteristics.

Although Ms X has specifically complained of discrimination contrary to the Equality Act 2010, it's important to note that it's not the role of the Financial Ombudsman Service to decide whether the business has acted unlawfully or not – that's a matter for the Courts.

Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that, however, we have to take a number of things into account including relevant law and what we consider to have been good industry practice at the time. So, although it's for the Courts to say whether or not HSBC have breached the Equality Act 2010, we're required to take the Equality Act 2010 into account, if it's relevant, amongst other things when deciding what is fair and reasonable in the circumstances of the complaint. That includes thinking about what a Court would

likely decide if Ms X were to make a claim under the Equality Act 2010. I have set out below the relevant provisions which Ms X has mentioned as part of this complaint:

#### *Direct discrimination*

This means treating one person worse than another person because of a protected characteristic. Here, Ms X submits that HSBC have discriminated against her because of her disability, race and sex.

#### *Indirect discrimination*

This can happen when an organisation puts a rule or a policy or a way of doing things in place which has a worse impact on someone with a protected characteristic than someone without one. Ms X says decisions should be made in favour of an individual with a protected characteristic and that she feels that HSBC have been non-compliant which has been detrimental to her. Ms X said that HSBC's policies and reporting requirements were not adhered to in reference to her complaint.

#### *Reasonable adjustments*

Where an organisation

- adopts a policy or practice;
- has a physical feature of the service provider's premises; or
- a service provider fails to provide an auxiliary aid

which puts a person with a disability at a substantial disadvantage when compared to someone who is not disabled the Equality Act 2010 says a service provider (such as a lender) should take reasonable steps to avoid the disadvantage. Where a disabled person is at a substantial disadvantage compared with people who are not disabled, there is a duty to take reasonable steps to remove that disadvantage by:

- changing provisions, criteria or practices
- changing or removing a physical feature or providing a reasonable alternative way to avoid that feature
- providing auxiliary aids

The duty to make a reasonable adjustment is both an anticipatory duty and a continuing duty. I am mindful that the Equality and Human Rights Commission Services Code ("EHRC Services Code") explains that what is a reasonable step for a service provider to take depends on all the circumstances of the case. It is an objective test based on the following relevant considerations:

- The type of service provided.
- The nature of the service provider, its size and resources.
- The effect of the disability on the individual disabled person.

The EHRC Services Code also sets out a non-exhaustive list of factors which might be taken into account when considering what is reasonable:

- Would the step effectively overcome the substantial disadvantage?
- Is it practicable for the service provider to take the steps?
- What are the financial or other costs of making the adjustment?
- Would taking the step cause any disruption?

- What are the service provider's financial and other resources?
- How much of the service provider's resources have already been spent on making adjustments?
- Is there any financial or other assistance available?

I've taken the provisions I've set out above into account when reaching my conclusions on what is, in my opinion, fair and reasonable in all the circumstances of Ms X's case.

It's my view that it's unlikely a Court would conclude that Ms X suffered direct discrimination. Ms X hasn't provided any evidence, nor have I seen any evidence having reviewed everything provided by both parties, that suggests that the reason HSBC declined the application for the additional £50,000 and the initial decision to reject the BTL switch was to do with sex, disability and/or race.

Further, Ms X has not fully or clearly articulated how she has been indirectly discriminated against based on what I have seen, nor have I seen any evidence to support this having reviewed everything provided by both parties. Ms X applied for additional borrowing, and she wanted to switch her residential mortgage to a BTL. There are criteria that HSBC have in place that they consider when someone wants to borrow additional money or make changes to their mortgage, and I can't see that there's any evidence that would support the conclusion that she has been discriminated against because of a particular protected characteristic that she holds.

Indirect discrimination happens when there is a policy that applies in the same way for everybody but disadvantages a group of people who share protected characteristics, and who are disadvantaged as part of this group. If this happens, the person or organisation applying the policy must show that there is a good reason for it. Ms X hasn't identified or evidenced how a provision, criterion or practice has disadvantaged her personally because of a protected characteristic she holds, and I've not seen anything from the surrounding circumstances that supports this.

Ms X hasn't explained how her disability means she should have the additional £50,000. Ms X wanted HSBC to make a reasonable adjustment and only communicate with her by email. and it's not clear from the surrounding evidence how any of their provisions, criteria or practices have put Ms X at a substantial disadvantage. I therefore consider it likely that a Court would not find that she has been indirectly discriminated against. I also think it's unlikely a court would conclude that HSBC have breached their duty to make reasonable adjustments. I do not consider it likely on the available evidence that a court would conclude that HSBC should grant Ms X additional borrowing as a reasonable adjustment.

Ms X has also said that HSBC should have made reasonable adjustments because of her medical conditions. I have seen an email that she wrote to HSBC where she asked them to contact her by email only, and I note that HSBC responded and acknowledged her request. From reviewing the evidence, it appears that HSBC did in fact contact Ms X by phone when she had explained she only wanted to be contacted by email. I think even though HSBC did this, I haven't been provided with any reasons Ms X gave to HSBC on why HSBC calling her would put her at a substantial disadvantage due to her disability such that the duty to make reasonable adjustments would arise. As such, I consider it unlikely that a court would conclude that HSBC acted in breach of their duty to make reasonable adjustments. Although HSBC did contact Ms X by phone when she had previously asked to be contacted by email, I do not consider that it is likely that a court would see HSBC's agreement to email Ms X as something relating to the duty to make reasonable adjustments (rather than a communications preference).

Ms X has also said that HSBC have breached the Human Rights Act 1998. As above, it's not our role to determine whether Ms X's human rights have been violated as findings on these matters are for the Courts. But in considering what is fair and reasonable I've taken into account what a Court would likely decide if a claim was made for breach of her human rights. Based on the evidence that both Ms X and HSBC have provided, I haven't seen any supporting evidence that suggests this was in fact the case. HSBC have applied their lending criteria when assessing whether Ms X could borrow additional money and switch her mortgage to a BTL one. I haven't seen any evidence that would support the conclusion that her human rights have been violated.

Having thought about the allegations that Ms X has made against HSBC, it would not be fair and reasonable to say that HSBC have done anything wrong. Having considered everything very carefully, HSBC made a lending decision based on their own criteria, and I would therefore find that it would be unlikely that a Court would conclude that Ms X's Human Rights have been breached.

I've set out above why I consider it unlikely that a Court would consider there to have been a breach of the various provisions of the Equality Act 2010 but even if I were wrong about what a Court would decide regarding the Equality Act 2010, I consider that HSBC haven't acted unfairly or unreasonably towards Ms X.

It's evident that Ms X is vulnerable based on the sensitive and personal information that she has provided, and she believes that HSBC haven't treated her fairly with regards to this. I can see that HSBC were aware of Ms X's personal challenges and medical conditions and I have seen from their contact notes that they did let her know that they had a specialist banking team and provided their details to her so that they could help her and offer additional support to her.

I think Ms X was told about the specialist banking team and from what I can see, she was able to request support if she wanted it from them. Ms X has said that she only wanted to be contacted by email and she said that HSBC did call her which she was very unhappy about. I think it would be fair and reasonable of HSBC to only contact Ms X by email/letter if this is what she has requested. I understand there may be times where HSBC may need to speak to Ms X urgently, but they should make contact by email to see if Ms X is willing to discuss anything on the telephone first rather than just attempting a telephone call that Ms X will not be expecting. But they should ensure they take into account the communication requests that Ms X has made, or this could be deemed as HSBC acting unfairly based on the fact that Ms X only wants to be contacted a certain way.

I appreciate that Ms X will be disappointed with my decision, but I'm minded to not uphold this complaint as I can't conclude that HSBC have acted unfairly in these circumstances.

## **Developments**

HSBC responded and said they didn't have any further comments about the provisional decision but wanted to provide some context and commentary regarding the Mortgage Financial Support Team contact strategy.

They said they are unable to communicate in full with a customer via email SMS or letter. They need to speak to the customer first in order to agree a plan for them however all letters/emails/SMS communications that do go out, ask customers to call HSBC. They allow their customers to do this at a time that suits them based on their opening hours but if they do not receive any contact, then they attempt to make contact attempts on all available methods.



HSBC said that if a customer doesn't want to be contacted by telephone, they can remove their contact numbers so they do not receive any unsolicited calls and will only send them letters, emails or SMS asking them to make contact. They pointed out that they cannot communicate in full by these methods so a customer would need to speak to them over the phone in order for them to help and agree anything with the customer. They said they would need Ms X's engagement to proceed on this basis.

Ms X responded and didn't accept the provisional decision, but she didn't provide any new information or evidence for consideration.

### **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.

Ms X has made it clear she doesn't accept the provisional decision. She said it does not appear to be lawful and has made some allegations as to why she doesn't agree with what has been said.

I appreciate that Ms X has been going through and still is going through a very difficult time but based on what I said in my provisional decision, I cannot conclude that HSBC have acted unfairly towards her.

HSBC have explained their process for the Mortgage Financial Support Team based on the communication preferences that Ms X has said she has. Ms X should engage with HSBC to agree help and what future contact will look like. I understand that HSBC have said they will always try to contact consumers by telephone if they are unable to get through to them, but they should be mindful that Ms X would prefer contact to be made by letter or email – so they should do this where possible. If Ms X would like HSBC to remove her telephone number from their records to ensure that she doesn't receive any telephone calls, then she should let them know.

I have nothing further to add to the provisional decision, so I see no reason to depart from it.

### **My final decision**

For the reasons I've given above and in my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms X to accept or reject my decision before 15 February 2024.

Maria Drury  
**Ombudsman**