

The complaint

Ms M complains that HSBC UK Bank Plc has treated her unfairly and provided poor customer service when her credit card account fell into persistent debt.

What happened

In November 2023 Ms M tried to use her credit card but she found it was blocked. She telephoned HSBC and a staff member said the account was suspended because Ms M hadn't responded to letters that HSBC sent her previously about persistent debt.

HSBC says Ms M's account was in persistent debt so it followed the relevant Financial Conduct Authority (FCA) Regulations for notifying customers about this – by sending three letters ("the persistent debt letters") over the qualifying 36 month period (on the 22 March 2022, 19 December 2022 and 20 September 2023) to the address it held on record. The letters sent in March and December 2022 informed Ms M that HSBC thought she seemed to be in persistent debt and, if things didn't change, her account could be restricted.

HSBC suggested an increased amount that Ms M could pay to rectify the situation and, when that didn't happen, HSBC sent a third letter in September 2023 asking her to get in touch within 60 days or the account would be suspended. Ms M didn't take the steps requested to rectify the situation within the time set out so HSBC suspended the account.

Ms M says she didn't receive the persistent debt letters. She confirmed the address HSBC used is correct and she received other post HSBC sent to that address at the relevant time. She thinks HSBC should have tried to contact her in other ways however - such as via text. She also considers HSBC provided poor customer service because (among other things) :-

- the call handler in November 2023 only gave her two options to resolve the situation - agree a repayment plan or apply for a loan - and a third option, to repay the balance in full, was only provided after Ms M said she would get her lawyers involved
- the loan option was pointless, in any event, as HSBC had already told her she wasn't eligible for a loan - and suggesting she repay the full amount straightaway was unfair, as she needed time to think about her finances
- she was in contact with HSBC for other reasons around the relevant time so staff had access to her account and should have alerted her to the persistent debt issue
- her monthly repayment amount was set by HSBC when she first got the credit card and debited automatically - when she would have been happy to pay more to avoid this situation
- HSBC's failures caused her additional stress and impacted on her safety as HSBC is aware she has experienced domestic violence in the past and her ability to access credit via this card is essential

Ms M wants HSBC to unblock the card. She offered to make a lump sum payment to reduce

the debt and pay more each month towards her account but HSBC refused. It offered to consider removing the suspension if Ms M repaid the outstanding balance.

Ms M referred the matter to our service and one of our investigators considered the evidence. He didn't recommend the complaint should be upheld. He reviewed the FCA guidance for borrowers paying more in interest, fees, and charges than they were paying off their balance – meaning they're in "persistent debt" - and he's satisfied that HSBC followed this guidance when it sent the persistent debt letters.

The investigator acknowledged Ms M says she was out of the country in September 2023 but he's satisfied all of the letters were sent to the right address and he couldn't fairly hold HSBC responsible for the fact Ms M didn't receive them. He thought it was fair that HSBC offered Ms M the opportunity to apply for a loan (even if there was no guarantee this would be successful) and HSBC suggested other options, such as a repayment plan or repaying the balance in full. He accepts HSBC set the minimum monthly repayment but he's satisfied HSBC also explained the implications of paying only this amount in correspondence and it was flagged in monthly statements. He wasn't persuaded that HSBC staff should have mentioned persistent debt when contacting Ms M about other things.

The investigator found HSBC hadn't done anything wrong or treated Ms M unfairly and he didn't recommend it should have to do anything further. Ms M disagreed and asked for an ombudsman to review the matter. In summary, Ms M thinks it was wrong of HSBC to suggest she apply for a loan when it told her previously she wasn't eligible - on residence grounds. She asks if this option being offered means HSBC was wrong to decline her a loan in the past. She considers it must have been obvious to other staff she contacted that HSBC was trying to get in touch with her about persistent debt yet they said nothing. She also thinks it's wrong that HSBC offered to accept the minimum repayment amount when it wanted more. She feels she's being punished because HSBC set the minimum repayment too low when she could have paid a higher amount.

Having considered the available evidence, I wasn't minded to uphold this complaint. My reasons weren't quite the same as the investigator's and I thought it was fair to give the parties the chance to see my provisional findings and respond before I made my final decision. I issued a provisional decision to the parties on 31 July 2024. I've set out below (in italics) what I decided provisionally (and why). This forms part of my final decision.

My provisional decision

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision 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 can see that Ms M feels very strongly about what happened here. She's gone to some trouble to provide detailed submissions and I want to assure her, if I don't address every point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. I'm going to concentrate here however on what I think is relevant and material to reaching a fair and reasonable outcome. The rules of the Financial Ombudsman Service allow me to do this and it reflects the informal nature of our service, which is a free alternative to the courts.

I note that Ms M has mentioned that her complaint about HSBC may be wider than previously suggested, in recent correspondence with our investigator. She refers to promises HSBC made but failed to uphold, for example. Ms M said she needed more time to provide

additional information and the investigator allowed this but nothing else has been supplied.

As the investigator has explained, it is open to Ms M to raise any additional complaints (regarding any decision to decline a loan, for example) with HSBC, if she hasn't done so already. And, if she's unhappy with the response, she may be able to bring another complaint to our service - although we'd generally be unable to consider issues raised in this particular complaint again.

I think the crux of Ms M's complaint here is that HSBC blocked her card for persistent debt when she didn't know this was an issue and considers she would have been able to rectify things in time if she'd been notified in other ways. HSBC says it provided Ms M with notice, in line with the relevant FCA guidance – by writing to her three times by post and adding relevant communications to her online bank account.

Persistent debt guidance

I've considered the FCA's persistent debt rules and the "Dear CEO" letter the FCA sent to financial firms on 3 February 2020, after its persistent debt review. The rules are set out in the FCA handbook at CONC 6.7.27 and provide (broadly speaking) that lenders must review accounts regularly to check that borrowers are reducing their debts and not paying too much interest. The reason for this is to protect customers from paying too much interest and, possibly, never actually repaying their debts (which may happen if a borrower continues spending and only pays the minimum amount required each month). Where a borrower is paying more in interest and charges than they are paying towards the debt itself (meaning they're in persistent debt), the guidance provides steps which should be taken to deal with this – and, if that doesn't happen, the account may be suspended to prevent customers getting further into debt.

Did Ms M's account meet the criteria for persistent debt ?

I've seen statements for Ms M's HSBC credit card account for the relevant time. She had a limit of £2,000 which was exceeded several times but she generally maintained the balance just under the limit. Ms M made the minimum repayment requested every month but she also continued spending on the account so the debt overall wasn't going down. I'm satisfied the account was in persistent debt at the relevant time and I've gone on to consider the steps taken by HSBC.

What did HSBC do ?

I'm satisfied that HSBC sent several letters to the address it held for Ms M – which she's confirmed was correct at the time. Letters sent in March 2021, March 2022 and March 2023 explained that paying the minimum or close to the minimum will be more expensive overall and letters sent on the 22 March 2022, 19 December 2022 and 20 September 2023, in particular, relate specifically to persistent debt.

I'm satisfied that HSBC complied with the relevant FCA guidance around persistent debt in that Ms M was notified that the amount she paid in the preceding 18 months comprised a lower amount in principal than in interest, fees and charges, increasing this level of payment would reduce the cost of borrowing and the amount of time it would take to repay the balance. HSBC encouraged Ms M to get in touch to discuss her financial circumstances and whether she could increase the amount paid without an adversely impacting her finances. HSBC also warned Ms M of the potential implications of paying a lower amount in principal than in interest, fees and charges in two consecutive 18-month periods and signposted not-for-profit debt advice bodies.

Like the investigator, I'm not persuaded that the options provided to Ms M when she contacted HSBC about her card being blocked in November 2023 were unreasonable. I think the call handler presented several options which might have provided a viable solution, albeit this wasn't guaranteed.

Should HSBC have contacted Ms M in other ways ?

I appreciate Ms M was out of the country for a time in 2023 but I'm satisfied the persistent debt letters were sent to the correct address. Like the investigator, I can't fairly criticise HSBC for the fact Ms M didn't receive them. I realise Ms M feels strongly that HSBC should have used other means to contact her about persistent debt, such as text message, in which case she says she would have rectified things.

The relevant FCA guidance says a firm (HSBC in this case) must provide the notification required to the customer "in an appropriate medium (taking into account any preferences expressed by the customer about the medium of communication between the firm and the customer) and in plain language".

I asked HSBC if Ms M had expressed any such preference. HSBC told us Ms M indicated in 2020, for marketing purposes only, that she did not wish to receive such information by post or telephone – however other correspondence about the account was supplied routinely by post, including monthly account statements.

I've also considered HSBC's terms and conditions which say (under the heading "How we'll communicate with you") - "We'll use the most recent postal or email address, phone and mobile numbers we have for you. We'll let you know in the quickest and most secure way if we think there's something wrong. This might be a text or a phone call. We'll do this, for example, if there's actual or suspected fraud on your account or threats to your account security. We may give you notices or other information about your credit card, for example, in your monthly statements. They could be on paper or digital".

This wasn't an instance of suspected fraud or account security and I can't see that sending Ms M correspondence by post was contrary to any relevant preference that she had expressed previously. I'm satisfied that HSBC sent relevant correspondence here in plain language and I can't fairly find post wasn't an appropriate medium. I've seen nothing to show that Ms M objected to HSBC sending other account related letters or monthly statements by this method, for example. It looks as if two of the persistent debt letters (dated 23 March and 20 December 2022) were also added to Ms M's account online under "my docs" so she also had other ways to access this information. I realise this is frustrating for Ms M but I'm not persuaded that HSBC was under any obligation to contact her in more ways than it did, in this particular situation.

I've given some thought to Ms M's comments about the contact she had with other departments at HSBC. I understand she feels the persistent debt issue would have been apparent to staff and they should have raised this with her at the time. I am not persuaded however that it's reasonable to expect call handlers, who are likely trained in certain specific account areas, to bring up issues which don't fall within their remit in this situation.

I am very sorry to hear about Ms M's previous experience of domestic violence. I understand she has concerns about being able to access credit because of past experiences however I'm unable to reasonably find this means HSBC was wrong to suspend her use of this account in these particular circumstances.

Taking everything into account, I'm satisfied that HSBC took appropriate steps – in accordance with the relevant regulatory guidance - to notify Ms M that her account was

regarded as being in persistent debt and what she needed to do to rectify the situation. Ms M didn't take the steps required or get in touch with HSBC within the time limit set out in the letter sent in September 2023 and I can't reasonably find it was wrong of HSBC to suspend her account.

The monthly payment amount

I realise my provisional findings above will probably feel unfair to Ms M because she maintained her minimum repayment each month and I appreciate she feels HSBC was wrong to set the minimum amount at the level it did. I'm satisfied however that the minimum payment amount was explained in the account terms and conditions. HSBC also referred to this in various letters and monthly account statements flagged the issue suggesting a higher payment amount - the "voluntary payment option" - on the first page. It follows I'm not persuaded that HSBC did anything wrong in this regard.

Taking everything I've seen so far into account, I'm not persuaded that there are sufficient fair and reasonable grounds to find HSBC did something wrong here or treated Ms M unfairly and I'm not minded to uphold the complaint.

Responses to my provisional decision

I invited the parties to consider my provisional findings and let me have any new comments, or evidence that I hadn't seen before by 21 August 2024. I said I'd review all the evidence available after that and make my final decision.

Ms M asked for some additional time to respond, which was agreed, and she provided further detailed submissions as follows (in summary) :-

- HSBC failed to follow FCA guidance around persistent debt which requires lenders to provide options to enable a debtor to repay the outstanding balance. HSBC waited for her to take the initiative and then suggested solutions that weren't appropriate - such as applying for a loan – and not all of the solutions offered by HSBC were put forward initially by the November 2023 call handler
- the solution Ms M suggested at the time - a simple transfer of £500 - would have been enough to reduce the borrowing and address HSBC's stated reasons for suspending her account however HSBC wouldn't accept this. She thinks HSBC didn't want to resolve things and has ulterior motives that haven't been addressed or considered in response to her complaint
- HSBC ignored postal laws and failed to prove that she received relevant letters. She offered to provide witness statements and suggested there may be other ways to show that she didn't receive the letters – by subpoenaing mailing records or CCTV footage, for example. She has also said there are relevant legal precedents and civil and criminal prosecutions in England and Wales have been dismissed due to the failure to prove that letters were received
- she hasn't got a commercial contract with HSBC whereby they agreed in advance that notice by post was sufficient and her communication preferences are set to 'email' and 'phone'- she de-selected all other methods - so HSBC failed to use her preferred method of contact
- HSBC failed to meet the standards of the Consumer Duty. This provides that customers should receive helpful and accessible customer support, timely and clear information, products and services that are relevant, services to provide fair value and protection if

in a vulnerable situation. HSBC confirmed it is aware that a number of these points are relevant to her yet it failed to act in accordance with the relevant recommendations

- she has been in touch with another lender who has different protocols to HSBC around persistent debt and contacts customers in multiple ways, not just by post. That credit provider told her the persistent debt process is not punitive, it's intended to help the customer resolve debt, so it offers payment plans, cards are frozen only as a last resort and accounts may be re-activated after suspension

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.

I have considered Ms M's submissions carefully. I think much of what she says has been addressed already in my provisional decision and nothing that's been put forward since has persuaded me to change my mind.

For the reasons I've given, I remain of the view that HSBC complied with the FCA guidance around persistent debt by sending the correspondence referred to above. I think the persistent debt letters contained enough information to make Ms M aware of her situation, what she needed to do to rectify things and what might happen if she didn't. HSBC also encouraged Ms M to get in touch to discuss her finances and whether she could increase the amount being paid towards this debt without any adverse impact financially. In addition HSBC offered support and signposted Ms M towards not-for-profit debt advice bodies.

I'm satisfied that HSBC sent the persistent debt letters by post to the address it had on record for Ms M. She doesn't dispute that this was her correct postal address at the time. HSBC was sending other account related correspondence (such as monthly statements) by the same method. I've seen nothing to show that Ms M objected or asked to be contacted in a different way - except as regards marketing materials. And I don't think it's unusual for customers to have different contact preferences for routine account correspondence and marketing.

For the reasons I've given already, I'm not persuaded it was wrong for HSBC to send the persistent debt letters by post. I note that Ms M told HSBC (during the telephone call in November 2023) she was out of the country for 8 weeks in September 2023. I've seen nothing to suggest that she informed HSBC about this before she went away however. And I don't think it's unreasonable to expect a customer to arrange for their post to be monitored in that situation.

I appreciate Ms M considers HSBC is in breach of notice requirements. She says parties to some court proceedings are required to prove that notice was actually received rather than simply show it was sent. Ms M has not asked me to consider any specific legal precedents in this regard but I accept proof of receipt (in the form of a signature, for example) may be required by law at times. I'm not persuaded that's the case here however and I'm unable to reasonably find HSBC is obliged to prove that Ms M received relevant correspondence in these particular circumstances.

Ms M has also said HSBC failed to comply with the Consumer Duty. This was introduced by the FCA in July 2023 and provides new standards for financial businesses. Part of Ms M's complaint relates to actions taken by HSBC after July 2023 so I have considered it in my decision.

I think the letter HSBC sent Ms M in September 2023 offered timely and clear information

about what she needed to do and why - and what might happen if she didn't get in touch to resolve the situation. Ms M didn't contact HSBC within the time set out and I can't fairly find it was wrong of HSBC to suspend her account in the circumstances. I also consider the options and support offered to Ms M after that were fair and reasonable. HSBC had to ensure that any resolution was affordable for Ms M. It wasn't obliged to accept the solution she suggested - nor was it required to take the same steps as another credit provider might in this situation.

Taking everything into account, I think HSBC took enough fair and reasonable steps here to try and assist Ms M. I'm satisfied she was presented with two potential solutions initially in the November 2023 call. She was given the option to discuss a repayment plan - in which case the account would remain suspended until the debt was repaid - or apply for a loan to repay the balance (subject to eligibility) and continue to use the card with a reduced credit limit (to ensure payments were affordable). Ms M rejected both options, indicating that her level of earnings meant affordability was not an issue, and the call handler suggested a third option, to repay the balance in full. I don't think that was unreasonable in the circumstances.

Having considered all the available evidence, I'm not persuaded that there are sufficient fair and reasonable grounds to uphold this complaint. I can't fairly find HSBC did something wrong or treated Ms M unfairly. It follows, I'm unable to reasonably require HSBC to do anything further. I realise this decision is likely to come as a disappointment to Ms M but she's not obliged to accept what I've said - in which case it remains open to Ms M to pursue the matter by any other means available.

My final decision

For the reasons I've given, my decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 9 December 2024.

Claire Jackson
Ombudsman