

## **The complaint**

A company, which I will refer to as M, complains that HSBC UK Bank Plc failed to pay cashback of £5,000 as promised.

## **What happened**

I set out what happened below:

- In August 2023, M's directors discussed M's borrowing requirements with HSBC's Relationship Manager (RM). There is now some confusion about the purpose of the loan – HSBC has suggested that it may have been used to purchase a nature reserve, and M's directors say it was used as “working capital to assist us with ongoing works around the Estate, ie wall insulation, eco boiler for heating and hot water”.
- Initially the directors had no particular product in mind, but the RM suggested they use a Green Loan – which had a cashback feature. Following discussions with the RM, M's directors believed that M would receive cashback of £5,000 if M were to take out a Green Loan. They later accepted that the documents mention a 1% cashback only, and so they said they would be prepared to accept a payment of 1% of the original loan balance.
- On 31 August 2023 the RM wrote to M confirming that a Green Loan would be available “subject to green use of proceeds and qualifying criteria”.
- On 25 September 2023 M's directors completed the Green Loan application online, and confirmed that M was eligible for the loan.
- The following day, 26 September 2023, the RM emailed the facility agreement to M. The purpose of the loan was stated as “towards general corporate and working capital purposes, but not towards the acquisition of a property”. (M's directors did not initially recall receiving or reading this document, but they now accept that it was sent.)
- The RM's 26 September 2023 emails included a “Green SME Fund – Cashback Payment Letter”, which contained a link to the bank's Green Criteria and outlined the terms required for eligibility for the cashback. The first page of that letter said that a minimum of 90% of the loan advance was to be applied towards a purpose which was listed in the Green Criteria. (M's directors told us they did not read the Green Criteria in 2023, but they also said it was not sent to them when it should have been.)
- The directors signed the facility agreement on 26 September 2023, and returned it to HSBC. M borrowed £270,000 over a term of 60 months (5 years).

- The loan was then drawn down, and HSBC contacted M inviting it to upload documents to evidence that at least 90% of the loan proceeds had been applied towards a purpose listed in the Green Criteria.
- M has provided evidence that some documents were uploaded on 12 October 2023, and that the bank acknowledged those documents and promised a review within a month. (I have not seen all of those documents, but the parties have been given the opportunity to provide them to me.)
- M's directors say that over the next few weeks, the RM repeatedly assured them that M was due cashback on the loan and that she would look into the matter. M was not paid any cashback at any point.
- On 27 October 2023, M raised a formal complaint about the lack of cashback. HSBC did not initially consider the complaint, but it eventually issued a final response on 31 January 2024 (and paid £50 to apologise for its delay).
- HSBC did not uphold the complaint. It said that 1% cashback was available under its Green Loan for customers who could evidence that at least 90% of their loan had been applied for green purposes as defined in its Green Criteria. In M's case, the only evidence it has received has been an invoice for an unspecified sum in respect of fitting a boiler.
- On 17 April 2024, one of M's directors emailed HSBC to "attach further evidence today of payments made from our Business Account to Solicitors for the purchase of the Estate & Nature Reserve – see attached 'Payment Authority'. You will be able to see that the money has left my business account and where it has gone." The accompanying document showed a payment of considerably more than £270,000 to M's solicitors on 17 April 2024, for "part payment for a property".
- M later repaid the HSBC Green Loan and refinanced elsewhere.

One of our investigators looked at M's complaint. He agreed that the RM repeatedly told M's directors that the cashback was due. He accepted that was misleading, but he said her assurances were given after the agreement was signed. In addition, he said that M ought reasonably to have known what evidence HSBC required – and since M did not provide that evidence, its directors ought reasonably to have been aware that the cashback payment was not due.

HSBC accepted our investigator's conclusions, but M's directors did not. Briefly, they said:

- It is only fair and reasonable for a business like M to depend on the advice and guidance provided by an RM, regardless of whether that guidance was verbal or written. An RM cannot simply hide behind terms and conditions which completely contradict the advice provided; a business must be permitted to rely on what it has been told.
- They consider that our investigator placed insufficient weight on what the RM said and wrote. Given that he accepted that the RM's information was misleading, they cannot understand why HSBC has not been asked to pay compensation.
- HSBC ignored their complaint for months, and demonstrated a complete lack of understanding of the product sold.

The complaint was therefore referred to me for an independent review. I issued a provisional decision and gave the parties a further opportunity to provide me with evidence. I said:

“[M]y provisional conclusions are:

- I have no power to consider M’s complaint about HSBC’s delay in considering this matter.
- HSBC misrepresented the Green Loan to M.
- M’s directors would not have chosen the Green Loan but for HSBC’s misrepresentation.
- However, I have not seen sufficient evidence to persuade me that M was eligible for the cashback, nor have I seen evidence to show that M would now be better off if HSBC had not misrepresented the Green Loan. As a result, I do not intend to award any compensation.

I give more details of my provisional findings below. But I stress that I might change my mind about any aspect of this provisional decision in light of further information from the parties.

#### *Why I can’t consider HSBC’s handling of M’s complaint*

The Financial Ombudsman Service cannot consider all the complaints that are referred to us. There are rules, which are set out in full in the Financial Conduct Authority’s Handbook. They are available online at <https://www.handbook.fca.org.uk/handbook/DISP/>.

One of those rules, DISP 2.3.1R, explains that we can consider complaints that relate to an act or omission by a firm in carrying one or more of a specified list of activities. “Lending money” is one of the activities on the list – and we can therefore consider M’s complaint about the Green Loan – but complaint handling is not. That means I cannot consider M’s directors’ concerns about the time HSBC took to consider this complaint, and I cannot consider whether £50 represents fair compensation for that issue.

#### *Did HSBC misrepresent the Green Loan to M?*

I am satisfied that HSBC’s RM did misrepresent the Green Loan to M’s directors.

HSBC has told us that the RM was unaware that the Green Loan could not be used to purchase land (which appears to have ultimately been the primary use of M’s loan). HSBC has also said that the land issue was not identified by its Green team.

Looking at the correspondence between the RM and M’s directors as a whole, I think it is clear that she did not fully understand HSBC’s Green Criteria. In addition, I don’t think the RM fully understood the circumstances in which HSBC would pay cashback in respect of the Green Loan, nor do I think she fully understood when that cashback would be paid. On balance, I therefore think it is likely that she misrepresented the key features of the Green Loan when she described them to M’s directors.

M’s directors say that they should be permitted to rely on what the RM told them. I understand their point of view, but the remedy for misrepresentation is not for the

complainant to be put in the position they would have been in if the misrepresentation had been true. Instead, the remedy is for the complainant to be put into the position they would have been in if the representation had not been made.

In this case, that means I don't think it would be fair for me to order HSBC to pay cashback to M simply because the RM said that cashback was available – I need to consider whether M was ever eligible for the cashback. I also need to consider what M would have done if HSBC had not made any misrepresentations.

*Was M eligible for the cashback under the Green Criteria?*

I don't have enough evidence to be able to make any firm findings as to what M did with the £270,000 borrowed from HSBC.

M's directors have explained that they intended to use the funds for various upgrades to an estate, such as an eco boiler. That is consistent with the information in the application form submitted before they borrowed the money. But I can also see that the directors told HSBC in April 2024 that the money had been used towards the purchase of a property, described in the documents as an "estate".

M's accounts for the year to 30 April 2023, which are publicly available at Companies House, also say "as at 30 April 2023 the company had contingent liabilities in respect of a commitment to purchase [an estate] for [an amount considerably in excess of £1 million], of which £263,250 has already been paid". I note that £263,250 is a similar amount to the £270,000 that M's directors borrowed using the Green Loan.

In the circumstances, I think it is fair for me to accept that M's directors did intend to use the £270,000 they had borrowed from HSBC to make green upgrades to the property they intended to purchase. I don't know if M was able to make any of those upgrades before the purchase completed, but in any event my current view is that it is unlikely that M provided HSBC with the evidence required by the terms and conditions of the Green Loan. M's director's email of 17 April 2024 suggests that regardless of the original intention the funds were eventually spent on a property purchase rather than on green upgrades. Property purchase is not covered in HSBC's Green Criteria.

*What would M have done if its directors had been given accurate information?*

I think it is clear that M wanted to borrow £270,000, and I think it would still have done that regardless of what the RM said about the Green Loan. The reason M's directors approached HSBC in the first place was that M wanted to borrow; their need for borrowing existed before they knew of the possibility of a £5,000 (or £2,700) cashback.

However, I also think it is unlikely that M's directors would have chosen the Green Loan but for the RM's misrepresentations. Bearing M's circumstances in mind, the Green Loan does not appear to have been a suitable product.

I don't know what other options were available to M. I assume that M had a wide choice of options, both from HSBC and elsewhere, with various interest rates and terms. But based on the limited information currently available to me, I have no reason to think that M would now be better off if its directors had chosen a different loan in September 2023. That means I don't have sufficient information to support an award for financial loss.

If M's directors consider that M would in fact be better off now if M had not taken the HSBC Green Loan in September 2023, I ask them to explain why – and to provide as much supporting evidence as possible. I will consider any further information the parties provide, and I may change my mind about any aspect of this complaint as a result.

*Did HSBC's misrepresentation cause M to have to refinance?*

M's directors told HSBC in April 2024 that unless HSBC paid £5,000 in cashback M would be forced to refinance elsewhere. HSBC did not pay the cashback, and M subsequently repaid its Green Loan with HSBC.

However, it is not clear to me why HSBC's failure to pay £5,000 in cashback resulted in a need for M to entirely repay its HSBC Green Loan. I could understand that being £5,000 short in working capital might result in an application for a £5,000 overdraft, but I don't understand how HSBC's failures could have led to M's need to refinance the entire Green Loan.

I also note that M was required to make a large payment to another party around April 2024 in respect of a property purchase. Companies House's records show that another bank registered a charge against M's assets at around the same time. I think it is possible that M's directors decided to refinance the Green Loan as part of a wider review of M's borrowings (including a need to borrow more money for a property purchase), rather than because M needed the £5,000 that the directors thought M would receive from the HSBC cashback.

Based on the evidence I have now, I am therefore not persuaded that HSBC's misrepresentation caused M to have to refinance, and so I am not persuaded that it would be fair for me to hold HSBC responsible for any costs M incurred as a result. But again, I will consider any further information the parties provide by the date at the top of this provisional decision, and I may change my mind in light of that evidence."

HSBC said it had nothing further to add.

M's directors said:

"[M] has suffered considerably due to the 'misrepresentations' made by the Relationship Manager.

The RM repeatedly made promises and boasts as to what the 'Green Loan' could do for our business. The RM misrepresented its use and applications. The RM did not understand the product and the product was mis-sold.

To state that [M] is 'no worse off' as a result of HSBC's misrepresentations is simply untrue. To date we have received no compensation for the appalling handling of the complaint, nor for the acknowledgement that HSBC did indeed fall way short of the standards one might expect from a Bank offering a loan. The business spent months attempting to comply with requirements which were spurious at best. The business spent months persuading a 'cash back' which was never going to be forthcoming. The time, effort and cost of such delays to a small business such as our way exceed the value of the compensation sought.

I would appeal that this is a clear case of a bank not performing as it should, a bank that sells unsuitable products to a small business before hiding behind T&Cs and small print.

We have experienced a considerable loss, HSBC has misrepresented the loan and failed to consider a complaint. It is only right and proper that HSBC should be held accountable.”

### **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.

Having done so, whilst I am sorry to further disappoint M’s directors I have reached the same conclusions as I did in my provisional decision, for the same reasons.

I understand that M’s directors are extremely unhappy about the way HSBC dealt with their complaint, but I do not have the legal power to consider that issue. I have no discretion on that point – the issue is simply not within my jurisdiction. That means I will not comment on the time the bank took to respond to the directors’ concerns about the cash back, and I cannot make an award for any inconvenience that may have been suffered in pursuing the complaint.

I think M’s directors are right to say that HSBC misrepresented (or mis-sold the loan). But I don’t agree that the bank’s error should automatically lead to compensation. As I said in my provisional decision, I need to consider the impact of the error. I have carefully considered everything both parties have said, but I am not satisfied that the error caused M to suffer a financial loss. M’s directors wanted to borrow money, and the Green Loan allowed that. I acknowledge that M later refinanced, but I don’t have the evidence to conclude that the refinancing was a result of HSBC’s misrepresentation.

Where I uphold a complaint, my aim is usually to put the complainant in the position they would have been in but for the bank’s error. But here, based on the evidence available to me I cannot say that M would now be in a different financial position if the bank had not made a mistake. I know that M’s directors strongly disagree with me, but in the overall circumstances I don’t think it would be fair for me to make an award.

### **My final decision**

My final decision is that I do not require HSBC UK Bank Plc to pay any compensation to M.

Under the rules of the Financial Ombudsman Service, I’m required to ask M to accept or reject my decision before 21 February 2025.

Laura Colman  
**Ombudsman**