

## The complaint

Miss D complains that HSBC UK Bank Plc lent to her irresponsibly.

## What happened

Miss D has had a credit card with HSBC since July 1994. It's not clear what the credit limit was at the time because it was so long ago. But HSBC tells us that Miss D's limit reached £10,000 in 2003 and was reduced over the years. At some point before October 2017, it had been reduced to £6,500, and there's no record of any limit increases since then. Miss D fell into difficulty with the account in 2019, and HSBC stopped applying charges and interest to the account in November of that year when she contacted it for help. It issued a default notice in February 2020 and is accepting reduced payments from Miss D who is now in a Debt Management Plan (DMP).

On 18 October 2023, Miss D complained to HSBC saying it had lent to her irresponsibly. She said the bank should never have allowed her such a large credit limit which was once *"in the region of half [her] salary"*. She said if HSBC had checked her credit file it would have seen she had other credit cards with a high level of borrowing and ought to have refused to lend. She asked for a refund of charges and interest she'd paid.

HSBC looked into Miss D's complaint and issued a final response letter. It said it no longer had any evidence of the lending decisions taken on her account as it only holds records for six years and the lending took place before then. It didn't uphold her complaint.

Miss D didn't accept what HSBC said and referred her complaint to our service and one of our investigators looked into it. When our investigator requested information from HSBC, it provided what it had, but said it didn't consent to us looking into the complaint because it had been brought too late under the complaint handling rules set by the Financial Conduct Authority (FCA).

Our investigator disagreed with HSBC that it had been brought too late under the rules, so considered the merits of the complaint anyway. He said there was not enough evidence from either party to demonstrate that HSBC had lent to Miss D irresponsibly. He didn't uphold the complaint.

Miss D didn't accept what our investigator said, so she asked for a second opinion. As there was no agreement, the complaint has been passed to me for a decision.

## 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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and HSBC thinks this complaint was referred to us too late. Our investigator explained why he didn't, as a starting point, think we could look at a complaint about the lending decisions that happened more than six years before the complaint was made. But he also explained why it

was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974 (s.140), and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. I think this complaint can reasonably be considered as being about an unfair relationship as Miss D says the credit card lending given to her was too high compared to her income and was unaffordable for her. This may have made the relationship unfair as she had to pay more in interest than she could afford and was unable to reduce the debt. It resulted (in part) to her entering a DMP. HSBC hasn't responded to our investigator's view of the complaint, but as I don't think it should be upheld, I don't intend to comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Miss D's complaint can be reasonably interpreted as being about the fairness of her relationship with HSBC, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (HSBC) and the debtor (Miss D), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship.

S.140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given what Miss D has complained about, I need to consider whether HSBC's decision to lend to her, or its later actions, created unfairness in the relationship between her and HSBC such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness. Miss D's relationship with HSBC is therefore likely to be unfair if it didn't carry out proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did HSBC carry out reasonable and proportionate checks to satisfy itself that Miss D was in a position to sustainably repay the credit?
  - If not, what would reasonable and proportionate checks have shown at the time?
  - Did HSBC make a fair lending decision?
- Did HSBC act unfairly or unreasonably towards Miss D in some other way?

HSBC had to carry out reasonable and proportionate checks to satisfy itself that Miss D

would be able to repay the credit sustainably. It's not about HSBC assessing the likelihood of it being repaid, but it had to consider the impact of the repayments on her.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of the monthly repayments and the overall circumstances of the borrower.

Did HSBC carry out reasonable and proportionate checks to satisfy itself that Miss D was in a position to sustainably repay the credit?

HSBC has only limited information about the account as, not unreasonably, it only retains full information for six years. It has provided information to show that the credit limit reached £10,000 and reduced from there to £6,500. But it says all that had happened more than six years ago, so it no longer holds details of the lending decisions taken at the time.

As HSBC hasn't been able to provide evidence of the checks it carried out at the time, I can't fairly conclude that reasonable and proportionate checks were carried out. Having reached the same view, our investigator asked Miss D for copies of her bank statements for the periods prior to the limit increases in order to ascertain what HSBC might have found if it had asked her for further information.

Unfortunately, Miss D has not been able to provide us with any statements, so it's not possible for me to say what HSBC might have found if it had asked at the time. I don't have sufficient information to enable me to say what HSBC would have found had it asked further questions.

In the same way as lack of information meaning I can't say reasonable and proportionate checks were carried out, without evidence of what it might have found had it done more, I can't fairly conclude that HSBC did anything wrong by agreeing to lend to Miss D.

I don't have enough information to conclude that carrying out further checks ought to have led HSBC to have reached a decision not to increase Miss D's credit limit or offer the card in the first place.

Overall, I'm not persuaded that HSBC created unfairness in its relationship with Miss D as a result of its decision to give her the credit card or to increase her credit limit.

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

While there was the occasional late payment, I can see that Miss D made regular payments to her account until 2019. When she contacted it in November 2019 explaining her financial difficulties, HSBC suspended charges and interest from her account and that remains so now. I think that shows HSBC was attempting to treat her fairly. I've not seen evidence to suggest that HSBC treated her unfairly in some other way.

Overall, and based on the available evidence I don't find that Miss D's relationship with HSBC is currently unfair. It's not clear enough to me that HSBC created unfairness in its relationship with Miss D by lending to her irresponsibly initially, or in respect of the credit limits set. I don't find HSBC treated Miss D unfairly in any other way either based on what I've seen.

## **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 4 March 2025.

Richard Hale  
**Ombudsman**