

The complaint

Ms H complains that HSBC UK Bank Plc ('HSBC'), irresponsibly granted her a credit card she couldn't afford to repay.

What happened

In October 2016 Ms H entered into an agreement with HSBC to have access to credit by way of a credit card account. She was given an initial credit limit of £7,650 and there were no increases after that. Ms H says that HSBC didn't complete adequate affordability checks and so failed to ensure she'd be able to manage the card sustainably – and so worsened her already difficult financial situation. She also says HSBC failed to support her when she got into difficulties with meeting the payments on the card.

HSBC said Ms H's complaint about the decision to give her the credit card had been made too late under the time limit rules. This was because the account had been opened more than six years ago. HSBC also said that the monthly statements and letters it sent her about persistent debt and the way she was using her card ought reasonably to have made her aware she could complain under the three-year part of the time limit rule. So, she was too late under both parts of the time limit rules that this service must apply as part of our complaint handling rules.

Our investigator agreed that Ms H had brought her complaint too late. But he also thought Ms H's complaint could be interpreted as being about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s140) which is in time under the rules. Having looked at the complaint on this basis, however, he found that there wasn't enough evidence or information to suggest that HSBC had acted unfairly or unreasonably.

As Ms H didn't agree, her complaint has been passed to me for a final 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 because the decision to lend took place more than six years ago. Our investigator 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, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

Seeing as I've decided not to uphold Ms H's complaint and given the reasons for this (which I'll go on to explain), whether Ms H referred her complaint about the specific lending decision that happened more than six years ago in time or not has no impact on that outcome. And nor does the fact that I agree she ought reasonably to have known that she might have reason to make a complaint at least three years before she did so. That's because, like our investigator, I think Ms H's complaint should be considered more broadly than just the

decision to grant the credit, seeing as she has complained not just about the decision to lend but also the impact this had on her over the course of her relationship with HSBC. Ms H's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of her relationship with HSBC. I would add that some of the events subsequent to the granting of the credit have already been looked into by an ombudsman. I acknowledge HSBC still doesn't agree we can look at the complaint, but given the outcome I have reached, 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 Ms H'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 ("CCA").

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 (Ms H), 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 their 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 Ms H has complained about, I therefore need to think about whether HSBC's decision to provide Ms H with credit 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.

Ms H's relationship with HSBC is therefore likely to be unfair if it didn't carry out proportionate affordability checks, where doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

So I will approach Ms H's complaint on that basis:

Did HSBC complete reasonable and proportionate checks to satisfy itself that Ms H would be able to repay the credit card in a sustainable way?

When assessing affordability, there wasn't a set list of checks that HSBC needed to complete, but they needed to be borrower-focused and proportionate to things like the type of lending, the cost of the lending as well as the amount, and how long Ms H would need to maintain her repayments for.

Before granting the credit, HSBC looked into Ms H's financial situation to find out whether the level of credit she'd requested was likely to be affordable for her, on the basis that it was affordable and could be paid off on a sustainable basis. She declared her annual income on

her application. This was verified by HSBC and formed part of its affordability checks. HSBC also ran checks with a credit reference agency. From that, HSBC saw that Ms H had seven active credit accounts, one of which had been opened in the previous seven months. The application was manually checked by HSBC's underwriting team before the credit limit was given final approval.

I therefore agree with our investigator in that I can't fairly say that HSBC carried out reasonable and proportionate checks at the time it granted the credit.

If reasonable and proportionate checks weren't completed, would reasonable and proportionate checks more likely than not have shown that Ms H was unable to sustainably repay what they were being lent?

The key issue I am looking at here is whether or not HSBC made a fair lending decision. So, I need to understand what, if anything, HSBC might have seen had it carried out better checks. I can't be sure exactly what HSBC would have found out if it had asked. In the absence of anything else, I think it would be reasonable to place some weight on the information contained in Ms H's bank statements as to what would most likely have been disclosed.

Ms H gave us bank statements covering the period leading up to the credit being granted. I've seen that during this time she received a varying level of income but typically it was around £3,350 each month. I've also seen that Ms H was making regular use of an overdraft facility on her current account. Whilst any ongoing use of an overdraft is potentially an issue for concern, it's not necessary enough on its own to show or suggest that a consumer's financial situation might be at risk of deterioration. I am not suggesting that there weren't times when Ms H may have felt financially stretched and was having to juggle her finances from month to month to ensure she was able to meet all her regular committed costs without having to borrow more.

I'm broadly in agreement with the points made by our investigator. The statements show that Ms H's committed expenditure each month – including rent, utilities and existing credit costs – was around £2,400. I've seen that Ms H's food costs and other daily spending varied during this time. Allowing say £400 for these costs, producing a total of £2,800, plus making allowance for other non-committed spending, the new credit looks likely to be affordable. I say that on the assumption that she would use up her available credit and need to repay the card at a sustainable level of say, 5% each month, which works out at £382. I think this demonstrates that Ms H appears to have had enough disposable income each month to make regular, sustainable repayments towards this new credit facility. On that basis, had HSBC completed proportionate checks, I think it's likely it would have discovered this too. That means I'm in agreement that it didn't act unfairly by opening the account.

Did HSBC act unfairly or unreasonably in some other way?

I've seen that HSBC wrote to Ms H at least once a year to warn her that because of her low level of repayments, she was paying more in interest and charges than towards her actual spending on the card. HSBC pointed out that to avoid persistent debt she needed to increase her level of monthly repayments.

Ms H contacted HSBC about payment difficulties she was having in December 2022 and January 2023. She was seeking a reduction in interest rates and/or a payment holiday. Ms H continued to enquire about a payment holiday and interest rate reductions in early 2024 and was given a similar explanation by HSBC. Given that the December 2022 and January 2023 events have already been covered by a decision issued by another ombudsman in March

2024, I won't be looking at those issues again. From my review of what happened when Ms H contacted HSBC in March and April 2024, I can see that she was given the opportunity of taking on a payment plan but declined. And HSBC explained that a payment holiday – which she had benefitted from during the pandemic – was not something that would still be available.

All of this means that based on what I've seen, I won't be making a finding that HSBC acted unfairly or unreasonably. I don't find that Ms H's relationship with HSBC is currently unfair. It's not clear enough to me that HSBC created unfairness in its relationship with Ms H by lending to her irresponsibly. And I don't find HSBC treated Ms H unfairly in any other way either based on what I've seen.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 7 April 2025..

Michael Goldberg

Ombudsman