

## **The complaint**

Ms M complains that HSBC UK Bank Plc lent her money irresponsibly, and failed to help her when she told them she was struggling with her debts.

## **What happened**

I looked at this complaint and made a provisional decision back in March 2021. I'd found HSBC had lent to Ms M irresponsibly. This was different to what our investigator had found, so I gave both HSBC and Ms M the chance to comment, before I made a final decision.

Ms M said she had nothing to add. HSBC said they disagreed with my view. They felt I'd looked at Ms M's overdraft borrowing in isolation, without appreciating the wider checks they'd done about the affordability of the lending they gave her.

I've looked again at the case with those comments in mind, but I'm still of the same view – the lending to Ms M was irresponsible. So I'm going to repeat a lot of what was in my provisional decision. But I'll add more explanation where it'll help show HSBC that I've not considered the overdraft borrowing in isolation, and that I recognise they did some checks when lending to Ms M.

Turning to the specifics of the case, when Ms M raised her complaint with HSBC in November 2019, her borrowing was spread over three products – an overdraft on her current account; a credit card; and a personal loan taken out in 2017.

I explained last time how HSBC and our investigator had focussed on the affordability of just the 2017 loan. But I'd found Ms M's complaint was about all of her borrowing. So I asked HSBC to look again at the complaint on that basis, before I made a decision.

HSBC explained the checks they did when they gave Ms M 17 increases to her overdraft limit and two to her credit card limit. Her overdraft limit rose from £500 to £5,000, while her credit limit rose from £500 to £4,000, before she complained. HSBC felt the checks they did were suitable to meet what was required of them.

My provisional decision didn't resolve the complaint, so I'm now making a final decision. This will become binding on HSBC, if it's accepted by Ms M.

## **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.

Starting with the 2017 loan, I explained last time that I'd heard the call where this was given to Ms M. Ms M told HSBC that the borrowing was to help pay her recurring household bills, which I'd expect HSBC to have been cautious of. But I can hear that they checked Ms M's income and expenditure on the call. The responses they received reasonably led them to believe Ms M could afford the loan repayments.

The tone of the call was helpful and conversational, and I can't hear anything that supports Ms M's complaint that she was forced into having the loan. So in terms of the 2017 loan, I find HSBC lent responsibly to Ms M.

Ms M's affordability issues came from her continued use of her overdraft and credit card, following the 2017 loan. It was directly affected by HSBC's decisions to increase her limits, when Ms M asked them to.

HSBC should have checked the lending was still right for Ms M's circumstances for each of the limit increases they gave her. In response to my provisional decision they say they did, and have listed the things they would have looked at.

Our website has a brief summary of the laws, rules and standards that lenders need to consider, which I'd expect HSBC to be familiar with. Essentially, HSBC needed to make reasonable and proportionate checks that Ms M could repay the money they lent her without undue hardship. And they needed to make sure the lending was sustainable.

Here, I've seen Ms M's bank statements – which HSBC say they would have looked at – and compared these with the dates of the various limit increases Ms M was given. From these, I don't agree with HSBC's view that there were no indications of unaffordability or repayment difficulties in the accounts Ms M held with them. Or that Ms M had sufficient funds to serve the overdraft lending.

I appreciate HSBC say they looked at more than just these statements. But I can't see how the items they've listed could take away or change what the statements show. To do that, I'd really need to see something that showed HSBC were aware Ms M had large savings, or another source of income. More money from somewhere, basically. Without that, Ms M's statements show a pattern of unsustainable borrowing.

A key point for me is 2 November 2017. That's the last time Ms M's account balance had a positive value. Prior to that, I agree she'd shown that although she often went in to her overdraft, her salary and transfers from what seems to be a savings account were able to bring her back out within a month. That's consistent with the overdraft being used as a short-term temporary source of credit.

The negative balance of Ms M's account is important, because it meant that – from that point on – when she was making repayments of her 2017 loan, she was borrowing to do so. Borrowing more to pay debts suggests that the overall borrowing – not just the overdrafts in isolation – was unsustainable. It also meant Ms M was borrowing to pay her regular bills. As I noted above, I'd expect HSBC to be cautious about the long-term impact of further lending in that case.

Regulations call for "*reasonable and proportionate*" checks before lending to someone. What's proportionate will change, depending on how much is borrowed, how often the borrowing happens, and what income the customer has available to pay off the debt. Here, Ms M was constantly borrowing using her overdraft. After November 2017, she stopped paying all that borrowing back each month. After 27 December 2017, her overdraft limit rose to more than the salary she received each month.

These points – where the use of the overdraft became less consistent with its intended function as short-term, temporary credit – meant a proportionate check should have more closely inspected Ms M's borrowing. From looking at Ms M's bank statements, it's clear her debts were increasing every month, and she was paying off her loan with further borrowing.

With this information – and nothing to show Ms M had other sources of income or large savings – I find it more likely than not that a responsible lender would have decided not to let Ms M's overdraft or credit card limits increase the way HSBC did.

### **Putting things right**

Had HSBC provided a more reasonable service, I find it likely they'd have stopped giving Ms M increases to her overdraft and credit card limits in November 2017. So to put things right, I want to put her as close to that position as she can be now.

I've thought about the actual money Ms M borrowed. She's had the use of that, so I'm not going to say HSBC should write off the debts. But I find it's unfair on Ms M for HSBC to charge interest on that money, given I've found they shouldn't really have lent it to her.

So HSBC should stop charging interest on the unsustainable lending they gave Ms M. That's the overdraft balance above £1,500, and the credit card balance above £500. They should also waive any interest they've charged on the balances over those amounts, if Ms M hasn't yet paid it.

I'm conscious that Ms M's already paid some interest on the overdraft balance above £1,500, and on the credit card balance above £500. HSBC should work out how much she's paid and refund this.

I think it'll be fair for HSBC to put any refund owed to Ms M towards her credit card or overdraft. As the 2017 loan has a fixed term and repayment amount, I think it'd be unfair to put the refund towards that. So if the credit card and overdraft are paid off, the remaining refund should be paid to Ms M – together with simple interest at 8% - for her to decide how to use it.

HSBC should also mark that Ms M hasn't been able to make use of any refunded interest to pay off her debts quicker. So their calculations should factor in the reduction in interest or charges there'd have been if the refunded interest payments had been used towards paying off her debts.

In my provisional decision, I asked HSBC to give me an idea of the size of this refund. I can't see that they've done that. So if Ms M accepts my decision, HSBC should provide a written summary of their calculation to her, showing how it meets what I've described. If Ms M then has any concerns about HSBC's calculation, I'd consider it fair and reasonable for her to be able to raise a new complaint with HSBC – and if needed, us – about it.

I've also thought about compensation for the trouble and upset Ms M's experienced. She's described how having to pay off her debts has caused her to worry, and affected how she lives. I'm conscious though that a more reasonable service from HSBC would have meant Ms M still had to prioritise her spending. She'd have likely had to budget based on her income and more limited access to credit. Some stress was always likely because of that.

But I also find HSBC should have done more to recognise Ms M's problem when she raised it with them in 2019. It wasn't enough for them to look at the 2017 loan in isolation, without understanding the overall impact their lending was having on her. Had they done more to help her, I find it likely the trouble and upset caused would have been less.

To acknowledge that, HSBC should pay Ms M £100 of compensation. That – in my opinion – balances the extra upset HSBC caused against the fact that Ms M would have needed to make lifestyle changes in any case, to improve her position with her debts.

HSBC should pay this compensation to Ms M, for her to then decide how to use it.

In addition to all of this, as part of their ongoing service to Ms M, HSBC should also consider what else they can do to help Ms M with her debts. This may mean discussing her overdraft and credit limits with her, or finding lower cost ways to consolidate her borrowing, in a responsible and sustainable way.

### **My final decision**

I uphold Ms M's complaint about HSBC UK Bank Plc. To put this matter right, they should try to put her in the position she'd have been in, if her overdraft had not increased above £1,500 and her credit card had not increased above £500.

This will involve:

- Stopping interest on any borrowing that's still above these limits;
- Waiving any unpaid interest and charges that came from borrowing above these limits;
- Refunding any interest and charges Ms M paid towards the borrowing above these limits;
- Crediting those refunds against the overdraft and credit card money owed;
- Paying simple interest at 8% on any refund outstanding, if the overdraft and credit card are paid off by the refund;
- Giving Ms M a written summary showing how the steps above have been worked out; and
- Paying Ms M £100 compensation for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 30 June 2021.

Paul Mellor  
**Ombudsman**