

The complaint

Miss Z complains HSBC UK Bank Plc trading as first direct approved a personal loan for her, but then said it'd expired and wouldn't let her draw down the funds.

What happened

I issued a provisional decision setting out what'd happened, and what I thought about that. I've copied the relevant elements of this below, and they form part of this final decision.

On 12 December 2022 Miss Z applied for a home improvements loan of £30,000 at a rate of 4.9% over five years. Miss Z says having heard nothing further, she contacted HSBC to find out what was happening on 10 January 2023. She first contacted them online, and then by phone – and ultimately, she was told to post payslips to HSBC despite asking if she could email them.

On 20 January 2023, Miss Z was told her loan had been approved. After difficulties trying to access the funds, she called HSBC on 29 January 2023 to make a complaint. She says weeks went by and she was told there was a bug in their IT system which was preventing her from drawing down the loan money. She was then told on 18 March her application had actually expired before she sent in her payslips and bank statements, and she'd have to submit a new application. Miss Z wasn't prepared to do this, because the loan would be at a higher annual percentage rate (APR).

Across several responses, HSBC said:

- They were sorry for some of the issues she's had trying to apply for the loan and paid her £50 to recognise this*
- They were sorry about the error messages she was receiving when trying to access her loan*
- After further investigation with their IT department, they determined the reason for the error was because of the application expiring.*
- When Miss Z applied for the loan, they needed three months' worth of bank statements and payslips and had told her this on 15 December 2022. They did receive these, but the loan application had expired by this time, they were sorry this wasn't picked up sooner, and paid her £150 compensation*
- They reiterated Miss Z would need to apply again if the loan was still required and they ultimately agreed to remove the existing credit search (though it seems it didn't get removed by the credit reference agencies)*

So, in total, HSBC paid Miss Z £200 compensation, but maintained they'd told her she needed to post three months' worth of payslips and bank statements to progress her application on 15 December 2022. And, as she didn't do so in time, then it was correct she needed to reapply.

Our Investigator ultimately reached the same outcome and felt Miss Z had been asked to send in the further documents – but didn't do so in time.

Miss Z disagreed. She provided a substantial amount of information. I think her key points were:

- *She never received a notification of the message on 15 December 2022*
- *They didn't use two methods of communication to try and contact her*
- *She's got lots of messages saying the loan was agreed, so they should have to follow through on this legal agreement HSBC have made*

Because Miss Z didn't agree, the complaint's been passed to me to decide. Having reviewed it, I had further questions for HSBC, which our Investigator gathered. I'm now in a position to issue my provisional decision on this complaint.

What I've provisionally 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 think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my decision. I say this as I'm aware I've summarised Miss Z's complaint in considerably less detail than she has. If I've not reflected something that's been said it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless I think it's relevant to the crux of the complaint.

The crux of this complaint is whether HSBC have acted fairly in not allowing Miss Z to draw down the funds from a loan after they told her it'd been approved.

HSBC say the reason they haven't allowed her to complete her loan application is because the timeframe for her to provide additional information they asked for had expired. HSBC say they contacted Miss Z on 15 December 2022 electronically – and now say they also contacted her by text.

Our Investigator didn't uphold the complaint – explaining HSBC had been in touch asking for information by electronic message to Miss Z's online account on 15 December 2022. And, as Miss Z hadn't replied to that, she didn't think HSBC had to do anything further.

Miss Z has been consistent in saying she never got this message. And says she's had nothing but problems with HSBC's online systems since the beginning of this process.

When reviewing Miss Z's case, I felt this to be true. She had issues getting access online before applying for the loan, and clearly there were failings in HSBC's systems following this because otherwise Miss Z shouldn't have been told to send in paperwork when the timeframe for her to do so had already expired.

HSBC told us loan applicants have 28 days in which to provide further information – otherwise the loan expires because people's circumstances change. Miss Z applied for the loan on 12 December 2022 – so taking day '1' of the 28 days as 13 December, this means Miss Z had to provide information by 9 January 2023 for her application to be considered. But, when she called HSBC on 10 January 2023 she was still told to send in paperwork.

Presumably, at this point, the loan application on the system should have expired – and this is what HSBC should have told Miss Z in January 2023 – but they didn't.

So, there were system problems before the application, and there were system problems after the application. With this in mind, we asked HSBC how they could be so sure Miss Z had received the electronic message of 15 December 2022.

HSBC said they'd never shied away from system errors being a problem – and it was the main reason they upheld her complaint.

In the circumstances, I think it's more likely than not Miss Z didn't receive the message on 15 December 2022 telling her to send in information. I think there is so much evidence here of system failings by HSBC in relation to this application that I can't be certain the message was sent.

I also noticed when reviewing the file HSBC said they'd sent a text message to Miss Z about the information they wanted – also apparently on 15 December 2022.

HSBC have provided evidence they say shows this text message was sent. But, Miss Z has said she never received a text message, and nothing in HSBC's evidence shows it was actually received by Miss Z. This is important because if I'm making a finding that there were so many system issues, I can't be satisfied the 15 December 2022 electronic message was actually sent to Miss Z, then without evidence to the contrary I can't make a different finding about the text message.

HSBC have told us they don't give deadlines for people to reply to loan applications – saying it's not unreasonable for people to reply promptly when information is requested. I take their point, but in the spirit of providing clear, fair and not misleading information to their customers I also think it wouldn't be unreasonable for HSBC to include a deadline, and an explanation of what happens if that deadline isn't met. Ultimately that hasn't impacted Miss Z's case, as I'm not satisfied she got either message in any event.

At this point then, I think it's more likely than not HSBC didn't send the messages to Miss Z and because of that, she's lost the opportunity to provide the information required to get the loan at the applied for interest rate. I think had HSBC not made this error, then Miss Z would, more likely than not, have sent in the information. She's applied for the loan, and clearly wanted it to carry on her building work. So, I next need to consider what would have happened had she returned those documents. Ordinarily, when someone has been turned down for lending, that's a matter for the lender on whether they'd have actually granted the lending and on what terms. It's not often I'm in a position to say a lender would have granted the lending but for the errors they made.

Here though, I think I am.

A manual review was undertaken to ask for payslips and bank statements as Miss Z hadn't long joined HSBC. These documents were eventually received following Miss Z's call on 10 January 2023. So, given a manual review was undertaken to ask for the information, I think the same process would then have taken place when these documents were received.

Following that the loan was approved, and Miss Z was sent messages to say she can draw down the funds.

So, someone has manually looked at her paperwork, and approved the loan. This seems to be different from the system issues which I've referred to above – as human intervention has approved the loan.

In addition, the only reason given for the loan application not succeeding is because HSBC's IT department identified that it'd expired before the documents were received. There has been no suggestion from HSBC that I can see that the loan shouldn't ever have been approved.

In the circumstances, I uphold this complaint.

Other issues

I've noted Miss Z has said HSBC have turned her down for other loans she applied for – and wanted them to be considered as part of this complaint. As our Investigator correctly explained, this would be a new complaint so isn't something I can consider as part of this decision.

I've also noted Miss Z has said she doesn't see why she needs to contact the credit reference agencies to get this search removed. But HSBC have shown they've done all they can to get it removed, so I can't reasonably ask them to do anything further. As I'm now upholding this complaint though, it's right the credit file search for this loan remains.

Putting things right

The loan

While I do think it's clear HSBC intended to grant Miss Z the loan at the time, but for the errors she experienced, I won't order them to give her a loan. That is within the scope of my powers, but for reasons I'll go on to explain I don't think it's appropriate for me to do so.

I say that because I don't know Miss Z's current circumstances or HSBC's lending criteria. Ultimately, HSBC have to be satisfied Miss Z can make the necessary repayments to the loan over the whole term of the loan – as they have regulatory requirements on them to ensure they lend responsibly. And given it's been around a year since Miss Z's application it seems very likely her circumstances have changed. HSBC's lending criteria may well have also changed.

So, I'm going to require HSBC to offer to carry out a new loan application for Miss Z and if granted, this loan should be for £30,000 over five years. Given I'm satisfied HSBC intended to give Miss Z a rate of 4.9%, they should pay the difference between the current rate (if accepted) and 4.9% interest. I'd remind HSBC they're required to treat Miss Z's application fairly, and if Miss Z is unhappy with the outcome of the new application, then she can raise a new complaint.

If the application is accepted my suggestion is Miss Z only makes the £563.34 monthly payment originally proposed and HSBC top up the difference each month – but if they want to propose a different way which gets us to the same place that'd be fine.

I've seen Miss Z say HSBC have to give her the loan on the terms they did because legally the loan has been agreed. I'm unsure what specific law Miss Z means, but ultimately although they sent her emails saying the loan was approved, it never actually was on their system. Even if there has been an error, we don't look to make incorrect information true, instead so far as possible we try and put people back in the position they should have been in but for the error. Here, that's not entirely possible for the reasons I've explained above. So, I don't think they're required to give her the loan as she's suggested. I do realise Miss Z may be disappointed with this outcome, but in the circumstances, I'm satisfied this is a fair way to put matters right.

Financial losses and compensation

Miss Z has provided a substantial amount of information to justify the costs she's incurred as a result of HSBC not granting her the loan. As a starting point though I've noted most of the invoices she's provided show the building work began long before an application was made for these funds. So, I don't find it fair to require HSBC to pay any costs when they weren't required to grant the lending. This means, I don't think HSBC are responsible for any costs until they told Miss Z the loan had been granted.

This was 20 January 2023 when they first told her the loan had been approved. And I think they're responsible for any other costs she wouldn't reasonably have incurred had the loan been granted until 18 March 2023, when she was first told about the application having expired.

I've limited the costs consideration to 18 March 2023 because HSBC offered to process a new loan for her on that day once they'd identified the problems with her drawing down the funds. Miss Z refused to do so. I understand why she didn't think this was fair, as HSBC were telling her the new loan would be on the interest rate applicable as of March 2023 – which was higher than December 2022. But ultimately, they made an offer to try and help Miss Z which she chose not to take up. Consumers such as Miss Z have a duty to mitigate any costs and I think she could have done so here. So, I don't award any of the costs she's claimed for since 18 March 2023 because of that.

Coming back to costs between 20 January and 18 March 2023 Miss Z has told us she had to use credit cards and her savings to pay items related to building work. I think it'll be difficult for Miss Z to exactly quantify this loss because it's interest she's paid on her credit cards and interest she's lost on her savings. So, for simplicity I'll factor it in to the amount of compensation I award.

To date they've paid her £200 compensation, but I think that falls short of what's happened here. Miss Z has had messages telling her that her loan for building work was going ahead – when HSBC had no intention at the time of giving her that money. Given this was a significant amount of lending, it's not unreasonable to think this would have a significant impact. Under the circumstances, I'm satisfied a payment of £500 is fairer to reflect the inconvenience Miss Z has experienced, and the interest she's lost.

Responses to my provisional decision

Miss Z replied and said she was happy with this decision.

HSBC said their system shows the text message was sent, so it's highly likely it was received by her. They didn't think it was fair or reasonable to conclude the system issues regarding the loan related to electronic communications also. They accepted there were system issues when trying to draw down a loan against an application that'd expired – but that's why they had issues. HSBC also felt Miss Z hadn't been consistent – giving differing information about external borrowing and about when the work had started. Overall, they felt the redress already paid was sufficient taking into account the text, they asked why she waited a month to make contact, and if they agreed a loan it'd be at the rate offered by the system at the time.

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.

Prior to issuing my provisional decision we'd arranged to ask HSBC if they could prove Miss Z had received the text message – and the screenshot they've provided only shows on their systems it was sent.

I do understand their point about the issues regarding the loan system, but I have to be satisfied the text and electronic message asking Miss Z to provide the relevant information was sent – and for all the reasons I've mentioned in my provisional decision I'm still not. The only reason the text message has become a focus of this case is because I saw their systems said they should have sent one – HSBC didn't even bring up this point – I needed to ask about it to fully understand what'd gone on.

In respect of their point about Miss Z not being consistent I take the point I think they're trying to make – which is Miss Z might not be telling the truth about not receiving the text or the electronic message. I can't rule that out as I can't know for certain either way. But ultimately I have to decide this case by what I'm persuaded by. HSBC's systems have significantly failed, and because of that I'm simply not satisfied Miss Z had been treated fairly.

So, I still uphold this complaint, and have set out what HSBC are required to do below. I should clarify, HSBC are required to pay Miss Z a *total* compensation amount of £500 – that means they can remove the £200 they've already paid Miss Z from the final figure they send her.

My final decision

I uphold this complaint and require HSBC UK Bank Plc trading as first direct to:

- Offer to process a loan for Miss Z for £30,000 over five years
- If the loan application meets all of HSBC's lending criteria, then Miss Z should only have to pay the original monthly repayment of £563.34 and HSBC will need to make up the difference each month – how they do that is up to them
- Pay Miss Z a total of £500 compensation – HSBC can remove any compensation already paid for this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Z to accept or reject my decision before 31 January 2024.

Jon Pearce
Ombudsman