DRN-3668671

The complaint

Ms W has complained that HSBC UK Bank Plc was irresponsible when it provided her with a credit card in 2016.

What happened

HSBC opened a credit card account for Ms W in July 2016 with a credit limit of £5,500. This type of credit was an open-ended or running account facility.

Ms W says that HSBC shouldn't have given her this amount of credit at the time. She says it didn't carry out appropriate credit checks before lending to her, and such checks would have shown that she had a high level of existing debt and was dependent on short term loans. Ms W says she transferred a balance to the card, but the high limit became unmanageable once interest was incurred. She said she struggled to meet her repayments and had to borrow from elsewhere.

HSBC says that any type of lending requires a credit scored application which reviews information held with credit reference agencies. It decided to offer Ms W a credit limit of £5,500 and she hadn't been in contact to say that she had concerns about this or was in financial difficulty. HSBC says that it had since agreed a repayment plan with Ms W and didn't uphold her complaint.

Ms W brought her complaint to us. Our investigator assessed the complaint and found that HSBC should have gone further in its affordability checks when it opened Ms W's account. They concluded that, had proportionate checks been carried out, HSBC would have learnt that Ms W wasn't likely to be able to repay the credit sustainably. They concluded that HSBC shouldn't have opened an account for Ms W and recommended that it pay compensation for this.

HSBC disagreed with our investigator's recommendation. It said it carried out the required credit checks and found the account affordable for Ms W. However, it also told us that no external debts were considered at the time of her application because no information was returned from its request to the credit reference agencies. HSBC has since identified that its information retrieval failed on this application. It reviewed Ms W's application alongside this new information and was still of the view that the facility was affordable for her.

Ms W asked for her complaint to come to an ombudsman to review and resolve, and it came to me. I issued a provisional decision on 10 August 2022 explaining why I thought Ms W's complaint should be upheld and setting out what needed to happen to put things right for her. Ms W agreed with my decision. HSBC didn't agree and provided further information and comment on what I'd said. It did agreed to carry out some of my redress proposals as a gesture of goodwill to settle Ms W's complaint.

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.

As before, I've also had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as HSBC, need to abide by. HSBC will be aware of these, and our approach to these types of complaints is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement, HSBC needed to check that Ms W could afford to meet her repayments sustainably. CONC 5.3.1G(1) stated that in making its assessment a firm should take into account more than assessing a customer's ability to repay the credit. In other words, HSBC needed to check Ms W could repay the credit out of her usual means, within a reasonable period of time. This isn't explicitly defined but means a customer should be able to repay the credit on a timeline similar to that used for other forms of unsecured lending, for example a fixed sum personal loan of an amount equivalent to the credit limit. HSBC also needed to check that Ms W could meet her repayments without having to borrow further and without experiencing financial difficulty or other adverse consequences.

The overarching requirement was that HSBC needed to pay due regard to Ms W's interests and treat her fairly. CONC 2.2.2G(1) gave an example of contravening this as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

Having considered everything again, including what HSBC has said in response to my provisional decision, I remain of the view that Ms W's complaint should be upheld and that my proposals for what needs to happen to put things right for her should stand. I will set out everything again in this final decision.

HSBC said that in order to assess Ms W's creditworthiness, it asked her about her income, estimated her expenses and considered information from her credit file about her existing debt repayments. Ms W told HSBC that her income was just under £29,000. HSBC estimated that she had a net monthly income of about £1,815. It estimated Ms W's expenses as £607 and her rent as £442, a total of £1,049, leaving her with £766 of disposable income.

I've reviewed the application and assessment information HSBC provided. I can't see that HSBC took steps here to independently verify what Ms W had said about her income. The regulations in place at the time stated that that if a lender took income or expenditure into account in its assessment it wasn't generally sufficient for it to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer (CONC 5.3.1G 4(b)).

In response to my provisional decision, HSBC acknowledged that this hadn't been covered in its previous response but clarified that Ms W's annual income was validated in line with the normal range based on age, job type and demographic information, by which I've assumed it sense-checked what Ms W said about her income with statistical data. HSBC says it believes this proportional approach to income verification met the relevant CONC requirements that were live at this time: 5.2A.15 (2): "The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the customer's current income". With respect to HSBC those regulations were not in place until November 2018 and the relevant regulations were CONC 5.3.1G, as I'd quoted which also stated that lender should take account of actual current income or expenditure.

Leaving aside the question of whether HSBC's check was in line with that guidance, I'd provisionally concluded that its checks overall weren't proportionate on this occasion. I'd also had concerns about the check HSBC carried out on Ms W's existing debts. I'd said that, given the amount of credit relative to her stated income, I thought HSBC was right to consider what existing debts Ms W had and look for some independent verification of these. As mentioned, HSBC has since identified that it didn't receive the information it had requested from the credit reference agencies and that it didn't in fact include any existing debt its assessment of Ms W's creditworthiness. Given that HSBC says it estimates an applicants' expenses and relies on this data in its assessments I think it needed to take further steps here to ensure that the information it relied on was complete and correct (CONC 5.3.3G).

Altogether, I remain of the view that the checks HSBC carried out here weren't proportionate in the circumstances of this case and it ought to have looked into Ms W's finances in more detail before agreeing credit for her on this occasion.

HSBC says had it successfully retrieved data on Ms W's credit commitments at the time it would have identified a credit card balance of £6,350 and a fixed monthly payment of £158. It says it's based this on batch data it has since obtained, but I haven't seen a copy of this and I don't know how it differs from information it might have obtained at the time.

HSBC goes on to say that these debts would have added £476 to Ms W's monthly estimated expenses of £1,049, assuming a 5% payment to the credit card. This would reduce her disposable income to £290. HSBC says "The total monthly cost to service maximum monthly interest charges and repay a £5,500 credit balance in 36 months is £275 per month, which was covered by the customers calculated disposable income at the point of application."

HSBC also said "Whilst we assess affordability under a scenario where the customer does not transfer existing balances to their new HSBC card, we would note that had the customer done this and closed or reduced existing credit card facilities, they would have been able to reduce their total borrowing considerably during the 0% promotional term without increasing their outgoings."

HSBC was required to consider more than Ms W's ability to repay her credit in a reasonable period of time. It also needed to consider whether or not Ms W would be able to do so without experiencing financial difficulty. I don't think HSBC's assessment was in line with the regulatory guidance at the time if it found (or should have found) that she'd potentially have £15 a month with which to meet any unexpected or seasonal costs after meeting her usual expenses and all her financial commitments. I note that its estimates suggest Ms W was spending over a quarter of her income on repaying her existing debt and might potentially end up spending over 40% if it agreed further credit for her.

Furthermore, I don't think the information HSBC has now provided shows the full extent of Ms W's existing debt at the time of her application. She's provided a recent copy of her credit file which shows some of the debts she had at the time of applying for this credit card in June 2016. These include a hire purchase agreement with monthly payments of £288, a loan with monthly repayments of £198 and an outstanding short term loan with a payment owing of £433. I think this information shows that Ms W was unlikely to be able to meet her repayments for this credit card without difficulty.

I understand that Ms W missed payments in late 2017 and throughout 2018. Her credit file shows she took cash advances on her credit card in most months in these years. HSBC told us that Ms W applied for a £6,000 loan in February 2017, some seven months later but was declined due to her level of existing debt. She was accepted for a current account about a year later in July 2017 but was not offered an overdraft facility, an application for which was declined in November 2017 due to her having multiple short term loans. A further loan application was declined in late 2018 and Ms W's card was blocked in late 2019 due to the level of arrears. I understand HSBC agreed a repayment plan with Ms W in early 2021.

Altogether, I've concluded that had HSBC looked into Ms W's finances in more depth, it would most likely have declined her application for a credit card at this time and so I think it was irresponsible to have given her this facility. I've set out below what it needs to do to put things right.

Putting things right

Where we find credit to have been agreed irresponsibly, our approach to putting things right is to direct the lender to refund any interest, fees or charges associated with the credit that were paid by the borrower. In addition, we usually direct the lender to pay a refund of 8% per annum simple interest on these payments where the borrower was unfairly deprived of their money. We'd expect the borrower to repay the capital borrowed as they have had the use of these funds.

I've found that HSBC was irresponsible when it offered Ms W's the account. In order to put Ms W back into the position she would have been in had this not happened means she shouldn't have to pay any interest or charges on the account from the outset.

The redress proposals set out in my provisional decision also included removing any adverse information HSBC had recorded on Ms W's credit file as a result of her not managing to meet her repayments.

HSBC said in response to my redress proposals that historic data on Ms W's credit file ought to remain. This is because Ms W didn't pay anything when she missed her payments and it was likely she wasn't making any payments to her other debts. HSBC says that Ms W could have paid something towards her debt with it and that the missed payments should remain to highlight to other lenders the affordability issues Ms W has had in the past.

While I appreciate the purpose of a credit record, in this case I've found that this credit facility should not have been granted to Ms W because of the likelihood of her "incurring financial difficulties or experiencing significant adverse consequences" (CONC 5.2.1G(2)). I think having adverse information about this account recorded on her credit file is an example of a significant adverse impact on Ms W's financial situation and needs to be considered when putting things right for her.

I've concluded, as before, that while it's fair that Ms W repays the money she borrowed she shouldn't incur any associated interest or charges or be impacted by the consequences of not paying them.

I'd also directed HSBC to refund any associated insurance premiums that Ms W might have paid. HSBC has confirmed that there weren't any associated with this account and so I haven't referred to them in my redress below.

In summary, HSBC should:

- Rework Ms W's account to ensure that from the opening of the account no interest is charged. Any late payments or overlimit fees should also be removed; and

- Apply Ms W's repayments to this adjusted balance; and

- If the effect of this reworking results in there no longer being an outstanding balance to pay, then any remaining amounts paid by Ms W should be treated as overpayments and returned to her along with 8% simple interest* on the overpayments from the date they were made (if they were) until the date of settlement. In this case, HSBC should remove any adverse information about the account from Ms W's credit file.

- If an outstanding balance remains on the account once these adjustments have been made HSBC needs to ensure that Ms W only pays this adjusted balance. If it considers it appropriate to record negative information on Ms W's credit file, it should backdate this to when it shouldn't have provided the credit in question in the first place.

* HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Ms W a certificate showing how much tax it's taken off if she asks for one.

My final decision

As I've explained above, I am upholding Ms W's complaint about HSBC UK Bank Plc and it now needs to put things right as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 22 September 2022.

Michelle Boundy
Ombudsman