DRN-4309727

The complaint

Mrs P says HSBC UK Bank Plc, trading as first direct, irresponsibly lent to her.

What happened

Mrs P took out three loans from HSBC. The first on 14 July 2020 was for £5,000 – but it was refinanced within 14 days by a larger loan for £7,000 over 54 months. I will refer to this as loan 1 throughout this decision. The monthly repayments were £147.55 and the total repayable was £7,967.05. A second loan was taken out on 22 April 2022 for £5,000 over 48 months. The monthly repayments were £114.69 and the total repayable was £5,505.31.

Mrs P says she could not afford the loans, her debt was increasing and she had to borrow from family to make her repayments. This has caused her anxiety. Also HSBC did not stop advertising credit to her when she asked it to.

Our investigator upheld Mrs P's complaint in part with regards to loan 2. He said loan 1 was not given irresponsibly, but proportionate checks would have shown loan 2 was not affordable as her income had reduced whilst she was on maternity leave. He found HSBC had changed Mrs P's marketing preferences once she had confirmed what she wanted on 24 May 2023, after it had replied to her original request on 25 January 2023.

Mrs P initially said she had no further comments to make, but then flagged that HSBC was still marketing loans to her on its mobile banking app.

HSBC disagreed with the assessment and asked for an ombudsman's review. It said the results of its checks for loan 2 did not show any concerns or suggest further checks were needed. Had Mrs P declared the change in her circumstances the application would have been manually assessed but she did not.

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.

Our approach to unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - is set out on our website and I have followed it here.

HSBC is required to lend responsibly. It needed to conduct checks to make sure that the loans it offered to Mrs P were affordable and sustainable. Such checks need to be proportionate to things like the value and terms of the loans it offered Mrs P, how much she had to repay (including interest and charges) each month, her borrowing history with it and what it knew about her circumstances. But there is no set list of checks it had to do.

This means to reach my decision I need to consider if HSBC carried out proportionate checks at the time of Mrs P's applications; if so, did it make fair lending decisions based on the results of its checks; and if not, what better checks would most likely have shown. I also need to think about, bearing in mind the second loan was taken out prior to loan 1 being repaid, whether there was a point at which HSBC ought reasonably to have realised it was increasing Mrs P's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further borrowing.

As neither party disputed the investigator's findings about loan 1 I will focus here on loan 2. I would reassure Mrs P however that I have reviewed the first lending decision and reached the same conclusion as the investigator – that proportionate checks were carried out and these showed no reason not to lend.

Loan 2

Before approving this loan HSBC asked Mrs P about her net income. It says it then validated the income she supplied and undertook a full affordability assessment using a combination of modelled essential monthly spending such as utility bills, council tax, grocery shopping etc and any rent or mortgage payments. It included any credit commitments taken from credit reference agencies at the time of the application. From this it concluded Mrs P had sufficient disposable income to afford loan 2.

I think it should have done more, I'll explain why.

Mrs P applied for this loan 21 months into the 54-month term of loan 1. Giving the loan to Mrs P meant she would then need to spend over 30% of her declared income on her credit commitments. Once HSBC was aware of this from its initial checks, I think it ought to have carried out a fuller financial review to get the assurances it needed that this would not cause Mrs P financial difficulties during the term of the loan.

To understand what better checks would most likely have shown HSBC I have looked at Mrs P's bank statements from the months prior to her application. I am not saying HSBC had to do exactly this but it is a reliable way for me to recreate the likely findings of further checks. Whilst Mrs P's income was broadly as declared in January and February 2022, it fell significantly (to around half) in March and April 2022. This was because Mrs P was on maternity leave. And in these circumstances the loan was not affordable for Mrs P.

HSBC told us it verified Mrs P's declared income by looking at her current account turnover using one of the credit reference agencies. I accept in the circumstances of some applications this may be proportionate. But in this case, given the other results from the initial checks, it don't think this went far enough. As HSBC is aware verifying income using current account turnover can at times mislead as it will include all credits onto an account. So it is not a definitive view of an applicant's monthly income or regular guaranteed incomings. As I said, this may not matter in the context of other checks, but here I think it did because of the amount Mrs P would be committing to spend on credit each month.

Had HSBC known Mrs Ps income had fallen I think it would have declined her application. It also said that Mrs P had a responsibility to declare any known change to her circumstances. But this does not diminish its obligation to carry out proportionate checks in order to make a fair lending decision.

It follows I think HSBC was wrong to give loan 2 to Mrs P.

Did HSBC act unfairly towards Mrs P in some other way?

Mrs P was also unhappy that HSBC continued to promote loans to her after she had opted out of its marketing. Looking at the timeline of the communication between the parties I agree with the investigator that as soon as Mrs P had confirmed which channels (phone, email, text and/or post) she wanted to opt out of HSBC actioned her request. Mrs P more recently told us that she was still seeing loan adverts on her mobile banking app. HSBC has explained that it only very recently (25 September 2023) introduced the capability for customers to opt out of marketing on its app. It has now changed Mrs P's preference through this channel to 'no marketing' but advises this can take up to 28 days to come into effect.

I understand Mrs P was frustrated the loan adverts did not stop on the app at the same time as the other channels, but this was not a systems capability HSBC had earlier this year for any of its customers. So I cannot find it has treated Mrs P unfairly in this regard.

I do think however it could have better managed Mrs P's expectations. Its communication to Mrs P on 25 May 2023 said that she had *'been opted out of all marketing'* and that was somewhat misleading. For the confusion and inconvenience this caused HSBC should apologise to Mrs P.

Putting things right for loan 2

It is reasonable that Mrs P repay the capital she borrowed as she has had the benefit of that money. But she has paid interest and charges on a loan that should not have been given.

So it should:

- Refund all interest and charges, so add up the total Mrs P has repaid and deduct that sum from the capital amount of loan 2.
- If this results in any overpayment this should be refunded to Mrs P along with 8% simple interest (calculated from the date the overpayments were made to the date of settlement)*.
- If this results in there being an outstanding capital balance HSBC must agree an affordable repayment plan with Mrs P.
- Remove any adverse information from Mrs P's credit file about loan 2 once any outstanding capital balance has been repaid.

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

When HSBC sends its redress calculation to Mrs P it should also apologise for not making clear it was unable to turn off the marketing on her mobile banking app in May 2023.

My final decision

I am upholding Mrs P's complaint in part. HSBC UK Bank Plc, trading as first direct, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 1 November 2023.

Rebecca Connelley
Ombudsman