DRN-4533367

The complaint

Mrs I is complaining about HSBC UK Bank Plc because she says it shouldn't have approved her application for a credit card as the debt was unaffordable.

What happened

In 2017, Mrs I took out a credit card with HSBC with a limit of £3,000. The limit hasn't changed since.

Our investigator concluded the complaint should be upheld. He felt HSBC didn't carry out adequate affordability checks and that, if it had done, it should have concluded the card wasn't affordable and declined to lend.

HSBC didn't accept the investigator's assessment and made the following key points:

- It carried out an affordability and creditworthiness assessment in line with the requirements of the regulator and this didn't highlight any potential concerns that required further investigation.

- As part of its assessment, it verified Mrs I's income and expenditure using statistical data along with data obtained from a credit refence agency (CRA) and concluded she had disposable income of £387 per month, which was enough to afford repayments.

- The card was used to pay down balances on other cards, meaning Mrs I's indebtedness wasn't increased. It also came with an introductory interest rate of 0% for balance transfers.

The complaint has now been referred to me for review.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Before lending to Mrs I, HSBC was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, there are two key questions I need to consider:

- Did HSBC complete reasonable and proportionate checks to establish that Mrs I would be able to repay the credit in a sustainable way?
    - If so, was the decision to lend fair and reasonable?

    - If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

- Did HSBC act unfairly or unreasonably in some other way?

The rules, regulations and good industry practice in place at the time the credit was approved required HSBC to carry out a proportionate and borrower-focused assessment of whether Mrs I could afford the repayments. This assessment also had to consider whether the credit could be repaid sustainably. In practice this meant HSBC had to satisfy itself that making payments to the credit wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of her making payments, it had to consider the impact of the repayments on Mrs I.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

In general, I think a reasonable and proportionate assessment should be more thorough:

- the lower the customer's income, reflecting that it could be more difficult to make repayments from a lower level of income;
- the higher the amount due to be repaid, reflecting that it could be more difficult to meet a higher repayment from a particular level of income;
- the longer the term of the credit, reflecting the fact that the total cost is likely to be greater and the customer is required to make payments for an extended period; and
- the greater the instances and frequency of credit, and the longer the period of time during which a customer has been given credit, reflecting the risk that repeated refinancing may signal borrowing has become unsustainable.

There may also be other factors that could influence how detailed a proportionate check should've been for a given application, including any indications of borrower vulnerability or foreseeable changes in future circumstances.

HSBC has described the information it gathered to assess whether Mrs I's credit was affordable before it was approved. This included:

- information contained in her application, including residential status, employment status and her income, which was separately verified;
- information obtained from a CRA, giving details of her existing credit arrangements and any past issues with credit, including missed payments and defaults; and
- an expenditure assessment using a combination of modelled data for key expenses such as council tax, utilities, food, clothing, communications, internet, home essentials, travel costs, insurance and wellbeing, along with actual data from the CRA about the cost of her existing credit arrangements.

HSBC maintains its affordability assessment was proportionate to the credit being given and in line with the requirements of the regulator.

After carefully reviewing the information HSBC obtained, I think there were factors that should have prompted it to carry out further checks before approving credit for Mrs I's and I don't agree an affordability assessment based mainly on modelled statistical data (rather than Mrs I's actual circumstances) was reasonable and proportionate in this case. In my view, a combination of the following factors should have prompted further investigation:

- The limit of £3,000 was significant, particularly for a new card where there was no account conduct history available.

- HSBC verified income of £25,000 for Mrs I. The CRA data obtained showed she had unsecured debt of £19,200, which was equivalent to more than 76% of her income.

- Monthly payments on Mrs I's existing credit commitments totalled £663, which accounted for 41% of her income.

In my view, this information suggests Mrs I was already heavily indebted and further checks were required to complete a proportionate affordability assessment.

I can't know exactly what further checks HSBC might have carried out at the time, but I think a consideration of Mrs I's actual income and expenditure would have been reasonable and we've obtained copies of her bank statements for the three months prior to the lending to establish what information HSBC could reasonably have discovered.

As the investigator outlined, these continuously show Mrs I's outgoings exceeded her income during this period and she was consistently between £2,000 and £5,000 overdrawn on her current account. The bank statements also provide more information about the payments Mrs I was making to other creditors.

If HSBC had seen this information, it's my view that it shouldn't have lent to Mrs I.

In reaching my decision, I have taken into account that Mrs I said she'd be using the card to pay off other debt and statements show she immediately transferred balances from two other cards totalling approximately £2,600. This was of some benefit to her in the short-term given the 0% introductory rate, but this was only temporary and it doesn't change my view that HSBC should have concluded the credit was ultimately unaffordable.

In summary, if HSBC had adequately assessed whether the credit repayments were affordable and sustainable, it's my view it shouldn't have lent to Mrs I. It's for this reason that that I'm upholding this complaint.

I've also considered whether HSBC treated Mrs I unfairly in some other way that may have disadvantaged her but I don't believe that to have been the case.

Putting things right

The principal aim of any award I make must be to return Mrs I to the position she'd now be in but for the errors or inappropriate actions of HSBC. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think HSBC should have lent to Mrs I, I don't think it's fair for her to pay interest or charges on the amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, HSBC now needs to take the following steps:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied since it was opened.

- If the reworking results in a credit balance, this should be paid to Mrs I with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

  HM Revenue & Customs (HMRC) requires HSBC to deduct tax from any interest. It must provide HSBC with a certificate showing how much tax has been deducted if she asks for one. If HSBC intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance, HSBC should arrange an affordable payment plan with Mrs I for the shortfall.

- Remove any adverse information recorded on Mrs I's credit file relating to this credit, once any outstanding balance has been repaid.

I'm satisfied this represents a fair and reasonable settlement to this complaint.

My final decision

For the reasons I've explained, I'm upholding Mrs I's complaint. HSBC UK Bank Plc should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or reject my decision before 15 March 2024.

James Biles
Ombudsman