DRN-5018681

The complaint

Mr G, through a representative, says HSBC UK Bank Plc irresponsibly lent to him.

What happened

Mr G opened a credit card account with HSBC on 8 November 2019. He was given a £9,000 credit limit. Mr G says he already had a significant about of unsecured debt that he was struggling with. He does not consider that HSBC carried out proportionate checks before approving the credit card. Had it done so, it would have seen he did not have the level of disposable income required to sustainably afford the repayments on the card.

HSBC says Mr G's application was correctly assessed and subsequently approved after it met its lending criteria.

Our investigator did not uphold Mr G's complaint. Whilst he said HSBC ought to have verified Mr G's income he did not think had it done so this ought to have led to a different lending decision.

Mr G disagreed and asked for an ombudsman's review. In summary, he said the amount of borrowing he had was substantial relative to his income and he was not in a position to take on more lending. His average monthly salary was £1,885, which should have been verified. He asked why we have not discussed his high debt to income ratio. In the month he applied his net income was £1,845.02 and his existing credit commitments were already £1,395.32. So after taking into account non-discretionary living costs he could not afford this card.

I reached a different conclusion to the investigator so I issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties to send any comments by 11 September 2024.

Extract from my provisional decision

I've looked at the checks HSBC carried out. It asked Mr G's for his income and checked this fell within 'normal range' based on age, employment status and demographic information. It used data from the credit check to obtain his share of the household mortgage. It modelled his likely monthly expenses taking into account his marital status. It carried out a credit check to understand his existing credit commitments and credit history. From all its checks combined it concluded Mr G had £1,046 disposable income each month and so could afford this credit.

I am not persuaded these checks were proportionate given the amount of credit being offered and the amount of unsecured debt Mr G already had. As a minimum I think HSBC needed to do more to verify Mr G's actual income. Dependent on that finding, it may have needed to review his actual outgoings too.

From bank statements Mr G provided I can see his salary averaged £1,844.88 in the three months prior to application. And as a household they were in receipt of a monthly benefit of £137.50 so HSBC could reasonably have used income of £1,913.63 for its affordability *assessment. This is around £2,080 less than the £3,994 it did use. So had it carried out this proportionate check I think it would have been clear to HSBC that Mr G did not have the disposable income to afford more credit.*

HSBC has previously raised that Mr G used the 0% promotional rate but this does not change my finding. I accept this would be the case initially, and so this was not all incremental credit and cost, but Mr G was applying for an open-ended line of credit with a range of interest rates. And as the credit limit allocated allowed Mr G to transfer only half his revolving debt he would not be able to close the other cards. So the lender's decision opened up more credit to Mr G – something that better checks would have shown would most likely not be sustainably affordable for him.

It follows I find HSBC was wrong to lend to Mr G.

I then set out what HSBC would need to do to put things right if I went on to uphold Mr G's complaint.

Mr G accepted my provisional decision.

HSBC did not. It said Mr G transferred balances from two external credit cards to a 0% interest rate which allowed him the opportunity to reduce expenditure on more expensive credit lines and budget more efficiently to manage non-essential spending.

In terms of affordability, it argued that by using a modelled approach it reduces the burden on the customer to provide excessive information and promotes a fair and consistent assessment across all applications. It said its models are developed to predict the likelihood of an arrears event occurring. This allows HSBC to quickly quantify the level of risk represented and supports an automated decision.

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.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website including the key relevant rules, guidance and good industry practice. I've had this approach in mind when considering Mr G's complaint.

I have thought carefully about HSBC's response to my provisional decision but its comments do not change my findings. I'll explain why.

HSBC argues that by using a modelled approach it reduces the burden on applicants to provide excessive information. But in the circumstances of this case I do not find that asking for, say, payslips to check Mr G's actual income would have created any detriment to Mr G. Rather, using actual data would have prevented Mr G taking on the much more harmful burden of unaffordable debt. I would also remind HSBC that its checks need to be borrower-focused and not just focused on the likelihood of getting its money back – as inferred in its explanation that its models are built to predict the probability of an arrears event.

I addressed HSBC's point in my provisional decision about the balance transfers and why this facility alone did not evidence HSBC had the assurances it needed that the credit was affordable for Mr G. As I said, whilst the promotional rate meant he could make cost savings initially, Mr G was applying for an open-ended line of credit with a range of interest rates.

It follows I remain satisfied that better checks would have shown this loan would most likely not be sustainably affordable.

Putting things right

As I don't think HSBC ought to have opened the account, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I do think Mr G should pay back the capital he has borrowed as he has had the benefit of that money.

Therefore, HSBC should now:

- Rework the account removing all interest, fees, charges and insurances (which have not already been refunded) that have been applied.
- If this results in Mr G having made overpayments these should be refunded to Mr G along with 8% simple interest (calculated from the date of overpayment to the date of settlement)*.
- If this will result in an outstanding balance, HSBC should agree an affordable repayment plan with Mr G bearing in mind its obligation to treat him fairly and with forbearance as appropriate.
- Once Mr G has cleared any outstanding capital balance, any adverse information in relation to the account should be removed from his credit file.

*If HSBC deducts tax from the interest element of this award, it should provide Mr G with the appropriate tax certificate so he can submit a claim to HMRC if applicable. If it intends to apply any refund to reduce the outstanding balance it must do so after deducting the tax.

As I said in my provisional decision, I also considered whether the relationship might have been unfair under Section140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above will result in fair compensation for Mr G in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

My final decision

I am upholding Mr G's complaint. HSBC UK Bank Plc must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 10 October 2024.

Rebecca Connelley
Ombudsman