

Complaint

Mrs H has complained about a credit card which she says HSBC UK Bank Plc unfairly lent to her. Mrs H says that the credit card was never affordable for her given her existing debts and so she shouldn't have been lent to.

Background

HSBC believes that it provided Mrs H with the credit card that is the subject of this complaint sometime in 2000, although it is unable to confirm when this was. HSBC has been able to confirm that by 2007 the account had been closed and a debt was sold to a third-party debt purchaser. However, while HSBC has said that it received an offer of £10,225.24 to settle credit card debt, it hasn't been able to confirm what credit limit it provided Mrs H with when it accepted her application for the card.

One of our investigators reviewed what Mrs H and HSBC had told us. She hadn't seen enough information to be persuaded that HSBC had done anything wrong or that it had treated Mrs H unfairly when it provided Mrs H with this credit card. So she didn't recommend that the complaint be upheld.

Mrs H disagreed and asked for an ombudsman to review her complaint.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having carefully considered everything, I'm not upholding Mrs H's complaint. I'll explain why in a little more detail.

I think it's worth me starting by explaining that given just how long ago the decision to lend took place, more than two decades, there is quite understandably an extremely limited amount of information that remains from the time. It may also help for me to explain that I have to reach my decision on the balance of probabilities. Where the evidence is incomplete and/or inconclusive (like it is here), I have to consider what is most likely to have happened in light of the evidence that does remain available and the overall circumstances.

In essence, HSBC needed to make sure it didn't treat Mrs H unfairly. I've deliberately referred to HSBC needing to ensure that it didn't treat Mrs H unfairly, rather than lend responsibly, as Mrs H applied for her HSBC credit card sometime in 2000. This was not only before the current regulator's (the Financial Conduct Authority ("FCA")) rules and guidance came into force, in April 2014, it also predates the main guidance on irresponsible and unaffordable lending that was introduced by the previous regulator of consumer credit (the Office of Fair Trading ("OFT")) in March 2010.

That's not to say that there weren't any expectations or standards at all in relation to lending at the time Mrs H applied for a credit card. Indeed, I understand that HSBC was a subscriber to then British Bankers' Association's Banking Code, which was in place at the time. But it

would be fair to say that HSBC's obligations and responsibilities at the time were not the same as they are now. For example, the concepts of borrower focused assessments, proportionate checks and sustainability were not part of the expectations or requirements at the time.

What HSBC agreed to do – as a result of it being a subscriber to the banking code – at the time of Mrs H's application, was assess whether it felt that she would be able to repay any lending.

I understand that HSBC may well have carried out credit checks on Mrs H. Nonetheless, HSBC no longer has the output of any the checks that it carried out at the time. And since it is no longer required to have this information more than 20 years later, I've not drawn any adverse conclusions as a result.

In any event, I've not seen anything to indicate that Mrs H had any significant adverse information – such as defaults or County Court Judgments ("CCJ") – recorded against her in 2000. Mrs H has referred to adverse information of this type going on to be recorded against her. However, what she's said and provided suggests that this went on to happen from around 2005 onwards – so after this credit card had already been provided.

Furthermore, while Mrs H has provided a list of her creditors and the amount she owed at the time she entered into a debt management plan in 2006, this doesn't show me what Mrs H's existing debt balances were in 2000. For the sake of completeness, I should also say that while I've seen Mrs H has said that this information, in any event, shows that the amount of debt she was able to accrue was unsustainable, as I've explained, the concept of sustainability only came about with the publication of the OFT's irresponsible lending guidance ("ILG") in March 2010.

In this case, it's also important to note is that Mrs H was provided with a revolving credit facility rather than funds which needed to be repaid in a lump sum. And this means that HSBC was required to understand whether Mrs H could repay whatever credit limit she was given within a reasonable period of time.

HSBC clearly felt that Mrs H would be able to make such repayments. And there isn't anything from the time at least which clearly shows me that it was wholly unreasonable for HSBC to have reached this conclusion. I say this particularly as I'm not only lacking information on the checks carried out, but details on what credit limit Mrs H was provided with as well as an actual record of what Mrs H's financial circumstances were at this stage.

I appreciate that Mrs H may feel that it is unfair to expect her to provide information which she doesn't have and cannot reasonably be expected to have. But I also have to take into account that HSBC isn't required to have retained all of this information either and it was Mrs H that chose to make her complaint in August 2023. As this is the case, I have to decide the complaint on what I have before me.

Furthermore, I can also understand why it may be frustrating for Mrs H that we aren't assessing the facts of her case against the standards and expectations in place now. It is only fair and reasonable for me to uphold a complaint where a firm failed to act in accordance with the obligations expected of it at the time - not obligations that went on to be introduced a number of years later.

Most of Mrs H's submissions are based on borrower focused assessments, proportionate checks and sustainability. While these are standards which lenders have had to adhere to more recently, I'm afraid that I cannot reach the conclusion that Mrs H's complaint should be

upheld for a failure to meet these standards when this credit card was provided a number of years before these standards and expectations were introduced.

As this is the case, I've not seen enough to be persuaded that HSBC did anything wrong when providing this credit card to Mrs H. I've not seen anything to indicate that HSBC failed to act in accordance with its obligations and expectations at the time that it agreed to lend to Mrs H in 2000.

So overall and having considered everything, I've not seen enough here to be persuaded that HSBC treated Mrs H unfairly or unreasonably when lending to her. And I'm not upholding Mrs H's complaint. I appreciate this is likely to be very disappointing for Mrs H – as she clearly feels strongly about this matter. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 2 May 2025.

Jeshen Narayanan
Ombudsman