

## The complaint

Ms B and Mr H complain that HSBC UK Bank Plc trading as first direct unfairly declined their mortgage application.

## What happened

In 2024, Ms B and Mr H applied to first direct to remortgage from their existing lender. They wanted to borrow £154,000 over four years and ten months at an interest rate of 4.9% fixed for two years.

The application was eventually declined. The reason given by first direct was that the term of the mortgage extended past Mr H's intended retirement. It said that it could only accept evidence that Mr H had sufficient pension income to support the mortgage once he had retired. The source of income that Mr H had when he retired was outside its lending criteria.

Ms B and Mr H complain:

- The issue of what was acceptable post-retirement income should have been dealt with at the outset or at an earlier point of the application.
- Ms B was encouraged to give a false declaration about when Mr H would retire.
- first direct refused to speak with Mr H despite having authority to do so.
- The correct documentation was not looked at when they spoke to first direct.
- It was unfair to only accept a pension as post-retirement income and not other forms of income. There was no explanation why first direct treated those forms of income differently – particularly as first direct accepted the same type of income pre-retirement.
- It was not explained why first direct concluded that all of their joint capital, income and assets would not be sufficient to support the mortgage for one year in the event of any problem with Mr H's income post-retirement.
- First direct said that there was no statement to show how the income was calculated but it never asked for that information. It did have proof of payment from Mr H's firm who was making both the pre-and post-retirement payments.
- They were not given the opportunity to properly present their complaint. It was “shut down” and the response included inaccuracies and framed the complaint in a misleading way. And it showed that first direct had again misunderstood the basis of Mr H's post - retirement income.
- First direct has refused to provide a proper response to their subject access request.

On review, the investigator thought the complaint should be upheld in part. She said that first direct had applied its criteria rigidly without giving proper weight to the evidence of Mr H's

post-retirement income.

The investigator recommended that first direct should pay the difference between the interest rate Ms B and Mr H took when their application was declined (5.3%) and the interest rate they would have taken had first direct approved the application (4.9%) for two years – and pay interest on the refund at 8% simple per year. She also said that first direct should pay Ms B and Mr H £300 for any distress and inconvenience caused by this matter.

Ms B and Mr H accepted what the investigator said – first direct did not. It responded to make a number of points, including:

- As the term of the mortgage extended into Mr H's retirement and less than ten years away its policy requires a manual calculation using verified pension income.
- When it tried to verify the pension income it was sent a letter from the partnership. It didn't know and couldn't quantify the terms of any partnership deed and it wasn't an acceptable income into retirement in line with its policy.
- Given Mr H was so close to retirement it asked for a formal pension projection, expecting it to show the income declared – but it was significantly lower.
- It attempted to discuss changing the term so it did not go into retirement, but Ms B and Mr H would not agree to that.
- The argument is that the income post-retirement is the same as the income pre-retirement, which it had accepted. But that would mean that it had to consider every income source post-retirement. But to do that it would need to have an understanding of "partnership agreements/ investment returns etc" which it now avoids. It is "potential income subject to change not currently being drawn against". Its policy is "really" prescriptive for what it will accept in terms of pension confirmation and it has followed it in this case.

### **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.

It is for first direct to decide who it wants to lend to, how much it is prepared to lend and what evidence it needs to support its lending decisions. That includes what type of income is acceptable or not to it and its overall appetite for risk. I would not usually look to interfere in the legitimate exercise of first direct's commercial judgment. But I must decide what is fair and reasonable in the individual circumstances of this case. And having done so I agree with the investigator that first direct has not shown that it reached its decision or exercised its judgment fairly and reasonably in the individual circumstances of this case.

The relevant rules – MCOB – require first direct to lend responsibly. For the sake of completeness, I'd note that MCOB did not allow first direct to take into account equity in the secured property to assess affordability. But it does include a requirement to obtain evidence of income and to take into account future changes to income including after retirement.

MCOB 11.6.15G(2) says:

*If the term of a regulated mortgage contract or home purchase plan would extend beyond the date on which the customer expects to retire (or, where that date is not known, the state pension age), a firm should take a prudent and proportionate approach to assessing the*

*customer's income beyond that date. The degree of scrutiny to be adopted may vary according to the period of time remaining to retirement when the assessment is made. The closer the customer is to retiring, the more robust the evidence of the level of income in retirement should be. For example, where retirement is many years in the future, it may be sufficient merely to confirm the existence of some pension provision for the customer by requesting evidence such as a pension statement; where the customer is close to retirement, the more robust steps may involve considering expected pension income from a pension statement. In accordance with MCOB 11.6.12R (1), a firm should take a common sense view when assessing any information provided by the customer on his expected retirement date.*

Mr H's intended retirement date was during the term of the mortgage. So it wasn't unreasonable for first direct to require robust evidence of his post-retirement income. On the other hand, the remaining term of the mortgage once Mr H retired was only around a year – and the rules say that lenders' approach should be proportionate.

MCOB also says that some borrowers will have a variety of different sources of income and the evidence available to support that income will differ as a result. I think that applies here. I don't think it would be fair for a lender to restrict lending into retirement to borrowers who can show they will have sufficient pension income to support the mortgage payments. There are likely to be other valid sources of income that some borrowers will continue to receive after they have retired. I don't consider it would always be fair for a lender to refuse a mortgage solely because the source of income post-retirement was not a pension, if that income could be shown as sufficient to support the mortgage.

I don't consider that there was any regulatory barrier for first direct to accept the proof of post-retirement income that Mr H provided. I consider that in the individual circumstances of this case it was unfair for it to decline the application because of the source of Mr H's post-retirement income.

Taking into account the source of Mr H's post-retirement income, I agree there might be circumstances where a lender might have to satisfy itself about the underlying nature of the partnership agreement. For example, if the term of the mortgage was intended to run significantly into retirement. But that was not the case here. I consider a lender acting reasonably could consider on a case-by-case basis what is adequate and proportionate evidence that the borrower will have sufficient income to support the mortgage (for a short time) into their retirement.

I note first direct had a duty to enable Ms B and Mr H to achieve their financial objectives. It was not required to go beyond what a prudent firm carrying out the same activity in relation to the same product would do. In my experience it is good industry practice for mortgage lenders to consider applications that are outside their lending policy and to apply a degree of flexibility in considering mortgage applications. That will depend very much on the individual circumstances of an application.

In this case, first direct has not put forward any compelling or persuasive arguments why it could not consider Ms B and Mr H's application further even though it was outside its policy. The reasons given in its underwriting notes for declining the application were that it could not accept Mr H's post-retirement income and the pension income was not sufficient to support the mortgage payments.

First direct later added that it would have likely needed more evidence to understand the nature of the partnership agreement. But first direct did not do that – it declined the application. And I do not think it has shown that it understood there were two elements to the evidence it had about Mr H's position post-retirement – he was not only receiving an ongoing

income that would make the mortgage affordable but he would also receive the return of his capital investment.

If first direct had reviewed the application further I can see it might have been reasonable for it to ask for additional evidence to support the post-retirement income. But bearing in mind the amount borrowed, the length of time that the mortgage ran into Mr H's retirement and the evidence it had of Ms B and Mr H's income pre-retirement (taking into account that Ms B was not planning to retire during the term of the mortgage) I could see how a responsible lender acting reasonably could accept the information it had as sufficiently robust to verify the post-retirement income. And it was likely sufficient to be able to support a clear and proportionate rationale for the decision to lend.

In other words, I think that it was unreasonable in the individual circumstances of this case for first direct to rigidly apply its policy in the way it did. It ought reasonably to have explored whether Ms B and Mr H could afford the mortgage after Mr H retired, taking into account the evidence Mr H had given of his post-retirement income. I think it would likely have been reasonable for a responsible lender to accept the letter was sufficient evidence to show affordability post-retirement.

But even if first direct did require further evidence, it seems more likely than not that Mr H would have been able to provide such evidence – there is no suggestion that the information in the letter was incorrect or did not reflect the partnership agreement that was in place. Therefore, Mr H was likely to receive sufficient income to support the mortgage, in addition to Ms B's ongoing income. She was not planning to retire during the term of the mortgage.

I consider that first direct did not treat Ms B and Mr H fairly when it assessed their mortgage application. If it had done so, I think it is more likely than not that it would have approved the application for the reasons set out above. Therefore first direct should pay the difference in interest between what Ms B and Mr H will pay over the two year fixed rate of 5.3% and the interest rate first direct offered of 4.9%. Interest should be paid on the refund at 8% simple per year from the date each payment of interest was made until date of settlement.

Ms B and Mr H have been caused some avoidable distress and inconvenience as a result of this matter. I don't think first direct has always shown that it fully understood their circumstances or explained what it needed in a clear, fair and not misleading way. That meant they have had to repeat themselves. And they had the inconvenience and stress of a fruitless mortgage application. In all the circumstances I consider that £300 is a fair amount to reflect that.

I accept many of the points that Ms B and Mr H have made and any upset caused is reflected in my award. But I do not agree that first direct told Ms B to provide misleading information on the application. After listening to the phone call in question I think that first direct was confused about their circumstances. It did not understand how Mr H could retire but still receive income. It was reasonable for first direct to carry out security checks before supplying the SAR.

### **My final decision**

My final decision is that HSBC UK Bank Plc should:

- Pay Ms B and Mr H the difference in interest between 5.3% and 4.9% over the period of the two-year fixed rate.

- Pay interest at 8% simple per year from the date each payment was made until the date the complaint is settled. If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms B and Mr H how much it's taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.
- Pay Ms B and Mr H £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B and Mr H to accept or reject my decision before 6 November 2025.

Ken Rose  
**Ombudsman**