Financial Ombudsman Service

complaint

Mr and Mrs P complain that HSBC UK Bank Plc unfairly refused their application for further borrowing on their mortgage. They say they wanted to use the borrowing to pay off unsecured debt.

background

Mr and Mrs P had an existing mortgage with HSBC. They reviewed their finances and decided to ask HSBC for further borrowing so that they could pay off some unsecured debt, reducing their outgoings overall.

They spoke to an HSBC mortgage adviser, who recommended further borrowing to them. But when the application was assessed, HSBC declined it. It said the further borrowing was unaffordable.

Mr and Mrs P complained. They said it wasn't fair. They thought HSBC had double-counted – by including their unsecured debt repayments into the affordability calculation even though they would be using the further borrowing to pay it off, and so would no longer be liable to make the payments. They said that in the end they'd had to move their mortgage to another lender to get the further borrowing. This had cost them a £7,000 early repayment charge (ERC).

HSBC said that its policy is to take into account unsecured debt repayments where the debt is with other lenders. It does that even if the purpose of the borrowing is to pay off the other debt, because it can't guarantee that the borrower will actually use the funds to repay the debt. If, for any reason, they don't, then the borrower will be liable for both the old debt payments and the new mortgage payments. HSBC referred our investigator to the rules of mortgage regulation (known as MCOB) – and in particular MCOB 11.6.16 R.

Our investigator didn't think HSBC had considered the application fairly. He said MCOB 11.6.16 R wasn't relevant to this case. He said HSBC should refund the ERC Mr and Mrs P paid to move to another lender, as well as the costs of moving their mortgage. But it could offset the savings they had made by getting a lower interest rate. And he said it should pay them £250 compensation.

HSBC didn't agree, and asked for an ombudsman to make a final decision. It said the application was automatically declined by its system, rather than by an underwriter. It said it was entitled to set its own criteria for affordability assessments and apply them. It followed its lending policy in this case. It recognised it acted more carefully than other lenders, but said it was entitled to do so. And it said it had concerns about how Mr and Mrs P handled their debt and borrowings, and wasn't prepared to lend to them further secured borrowing.

I issued a provisional decision setting out my thinking on the complaint. I said:

> Mr and Mrs P already had a mortgage of just under £290,000, and wanted a further £30,000. As the mortgage rules in the regulator's handbook – known as MCOB – require, HSBC carried out a full assessment of whether the further borrowing was affordable. This complaint is about whether it approached that assessment fairly.
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> There's a wide degree of latitude open to lenders. The regulator, the FCA, has set down a series of rules that it expects lenders to follow. The rules set out the sorts of

things a lender should take into account, but they don't prescribe the outcome of affordability assessments. In practice, different lenders have different policies. Some are prepared to take more risk with their lending than others. As a result, two different lenders might legitimately reach different decisions on the same application – and neither would be wrong. So the fact that Mr and Mrs P managed to get the further borrowing elsewhere doesn't mean that HSBC unfairly rejected their application.

I need to consider what the rules and HSBC's lending policy says, and then take those factors into account in deciding whether HSBC considered the application fairly.

It's unfortunate that HSBC didn't fully explain its lending decision when it first sent its evidence to our investigator. It told him that it was always its policy to include the payments for debt to be consolidated, and it told the investigator that it considered MCOB 11.6.16 R to be relevant to that policy. But it didn't explain in detail what it had done in this case.

As our investigator explained, MCOB 11.6.16 R says that where a lender is considering an application for debt consolidation from a credit impaired customer, it should either ensure the consolidated debts are to be repaid or should include them in the affordability assessment. Credit impaired customer has a specific meaning – which doesn't include Mr and Mrs P – and so HSBC isn't required to follow MCOB 11.6.16 R. It's not directly relevant to this complaint.

It was only after the investigator upheld the complaint that HSBC agreed MCOB 11.6.16 R wasn't relevant. It then gave him a more detailed explanation of the lending decision it had actually made.

HSBC said it was concerned about Mr and Mrs P's use of credit. It said they had repeatedly applied for additional credit in the months leading up to the application for further borrowing. It said based on their patterns of spending and borrowing it had concerns about their use of unsecured debt and wasn't persuaded that they intended to actually repay their unsecured debt with the further borrowing. It questioned why they had taken out a loan for £8,000 just a few weeks before applying for the further mortgage borrowing if they really wanted to reduce their debt and outgoings. And it said it wasn't its policy always to include the unsecured debt payments in the affordability assessment – but it wanted to be satisfied the debt would be paid off before it would not do so.

Having reviewed the further information HSBC has provided, I think it acted fairly.

I can't say for sure what Mr and Mrs P would have done if they had taken the HSBC further advance. They may have paid off their unsecured debt, or they may not. On balance, I think it was reasonable for HSBC to be concerned about it.

I've seen copies of Mr and Mrs P's credit records. Before making this application they had also taken out further borrowing with other lenders, as well as with HSBC. And it says Mr and Mrs P had made several other applications for unsecured borrowing from HSBC in the months leading up to the mortgage further advance application.

When Mr and Mrs P's application was refused by HSBC, they moved their mortgage to another lender. While their credit records show they did pay off some unsecured debt around this time, they also went on, in the months afterwards, to take out further debt.

Their new mortgage completed in October 2018. Since then, I can see both Mr and Mrs P have taken out substantial further borrowing, as well as making use of other existing borrowing facilities.

Of course, none of this could have been known to HSBC at the time it refused their application. But I think their use of credit in the run up to the further borrowing mortgage application gave HSBC reasonable concerns about whether to lend them the mortgage further advance – and their use of credit since taking out the new mortgage shows those concerns were well-founded.

As I said above, each lender is entitled to its own lending criteria, and to make its own lending decisions – and two different lenders can legitimately reach different results. I think HSBC had reasonable concerns about how Mr and Mrs P were using credit. Money borrowed on a mortgage is secured on their home. It has to be paid back over a much longer period. As a result, the consequences if something goes wrong are higher than for unsecured lending. So the lending criteria to be applied are stricter. In all the circumstances, I think HSBC acted fairly in declining Mr and Mrs P's further borrowing application, and so I don't think it would be fair to uphold this complaint.

the responses to my provisional decision

HSBC accepted my provisional decision. But Mr and Mrs P didn't. Mrs P said they'd had a discussion with one of HSBC's mortgage advisers, who recommended they make the application and had advised them it was suitable. She said that if the application was going to be refused, the adviser shouldn't have recommended it to them, so the adviser must have given the wrong advice. If they'd known their application would fail, they would never have applied. And they say they were told the application was automatically declined – which means HSBC couldn't have had the concerns I set out above. And they did intend to consolidate the debt.

my findings

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

I'm aware this was an advised application, and an HSBC adviser recommended they apply for the mortgage. It's unfortunate that a positive recommendation was made and then the application refused. But I don't think this is evidence that either the mortgage adviser, or HSBC's underwriting process, was at fault.

In recent years, it's become compulsory – with some limited exceptions which don't apply here – for advice to be given before a mortgage application is made. Advice is different to the lending decision. The adviser would have considered Mr and Mrs P's circumstances, and what they wanted to happen, and recommended a mortgage he or she thought was suitable for them. As part of that process, the adviser would have to consider whether it was likely Mr and Mrs P would satisfy HSBC's lending criteria. But the adviser doesn't make the lending decision – that's a separate decision made by the underwriting department.

Different considerations apply to an adviser making a suitable recommendation, and a lender considering whether it can responsibly lend – or whether it wants to – in a particular case. A mortgage adviser doesn't underwrite the loan, and I don't think the fact a recommendation was made but the application refused means that either the advice or the lending decision was unreasonable. Nor would I expect an adviser to be able to assess with certainty whether or not an application would be granted – there's always a risk it won't be.

HSBC's lending decision was automatically declined by its system. It's legitimate for lenders to use automated decision making, as long as that results in fair treatment. It's true that Mr and Mrs P's application wasn't considered and assessed by a human underwriter before it was rejected. But HSBC's application system refused the application because of the factors I've set out above, and HSBC has since explained why it was rejected by the system because of those factors. I explained in my provisional decision that there's no obligation for a mortgage lender to lend – as long as it considers an application fairly. I understand why Mr and Mrs P don't agree with HSBC's concerns, but I think they were reasonable ones. Having considered all the evidence, I'm satisfied HSBC considered their application fairly.

my final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 21 December 2019.

Simon Pugh
ombudsman