

The complaint

Mr and Mrs B's complaint is about HSBC UK Bank Plc's decision to decline their mortgage application because their income didn't meet its lending criteria. They are unhappy that HSBC refused to exercise discretion to vary its criteria so that their application could be accepted, and that it refused to explain why it would not do so.

What happened

In September 2023 Mr and Mrs B contacted HSBC about a mortgage on their unencumbered holiday/rental property. They wanted to raise funds to assist a family member to purchase a property. They were told that they couldn't have a mortgage for several reasons. As a repayment mortgage was not affordable, they wanted an interest-only mortgage. However, the maximum age at the end of the term of an interest-only mortgage was 75, which would mean a term of less than five years due to Mr B's age. HSBC confirmed that it didn't issue mortgages with terms of less than five years. Furthermore, even if a longer term had been possible, for an interest-only mortgage it required one of the borrowers to have an annual income of at least £75,000. Neither Mr nor Mrs B's pension incomes met that requirement. They complained and HSBC responded on 18 October 2023. It said that it was unable to agree the mortgage as it didn't fit within its lending criteria.

During subsequent discussions HSBC made a mistake regarding Mr and Mrs B being able to have a mortgage with it. It incorrectly moved forward on the basis that they could have borrowing over a term ending before Mr B attained the age of 80, rather than 75. Due to this mistake, the conversations moved on to discuss incomes and HSBC's requirement for one of the borrowers to have an income of at least £75,000 for an interest-only mortgage which neither Mr nor Mrs B had. Mr B provided contracts for his additional earned income, but they were not sufficient to meet HSBC's requirements for taking income from fixed term contracts into account. It explained that it required evidence of 12 months' employment up to that point, or a contract with 12 months remaining on it going forward. Mr B was unable to provide this as his employment was on short-term contracts working six months of the year. HSBC then stepped outside of its normal lending criteria said it would accept three years' worth of contracts and tax returns, evidencing sufficient income.

Mr B explained his employment had only started in 2022, and so he could not provide evidence of three years of contracting. Mr and Mrs B complained again. They considered HSBC's minimum income requirement for interest-only mortgages was absurd, illogical, unfair and totally unreasonable. Mr B considered that HSBC wanting three years of contracts and accounts struck him as it deliberately blocking the application because it was aware he didn't have more contracts than he had already provided. Mr and Mrs B said that they didn't think HSBC had taken into account the wider implications to them of selling the property they wanted to mortgage at that time.

HSBC confirmed in November 2023 that it would not consider the application further if Mr B didn't have three years of contracts. Mr and Mrs B again expressed their dissatisfaction with the decision and asked that someone at director level review it. HSBC confirmed the

relevant team had considered the appeal against the decision and said it could not assist them further as they didn't meet its lending criteria for the mortgage they wanted.

Mr and Mrs B were not happy with HSBC's responses and asked us to consider the complaint. They said that they appeared to have been refused a mortgage on the arbitrary threshold of Mr B's income falling just short of £75,000, based on his pension income alone and not taking into account that he had self-employed income too. Mr B also said that he feels he is being discriminated against due to his age.

HSBC responded to Mr and Mrs B's concerns on 6 December 2023. It confirmed that they didn't fulfil its normal lending criteria for an interest-only mortgage. While it had been willing to consider allowing the application outside of the normal criteria, Mr and Mrs B were unable to meet the alternative that HSBC was willing to accept. As such, it was unable to consider the matter further. That said, HSBC apologised for having misunderstood the situation in relation to Mr B's age and the term of borrowing, and it offered them £150 compensation.

One of our Investigators considered the complaint, but she didn't recommend that it be upheld, as the offer already made was appropriate in the circumstances.

Mr and Mrs B didn't accept the Investigator's conclusions and, following explaining why that was the case, they asked that the complaint be referred to an Ombudsman.

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.

Mr and Mrs B have said they think HSBC initially discriminated against them on the grounds of age, in particular because Mr B would be over the age of 75 at the end of the minimum term HSBC was willing to lend over.

We don't regulate financial businesses or set their policies. In the context of a particular business's policy, for example, it wouldn't be a matter for us to say that the policy of itself was wrong or breached the law or the business' regulatory obligations. However, we would look at how the business treated a complainant – which may include whether the policy led to a fair outcome in that case.

I would also confirm at this stage that no-one is entitled to borrow money and a lender is not obliged to lend whenever it is asked. In addition, a lender is able to determine what risks it is willing to accept and set its lending criteria based on that appetite for risk and its knowledge of the mortgage and wider financial markets.

In resolving complaints, we determine what's fair and reasonable in the individual circumstances of the case – taking into account relevant law and regulations, as well as regulatory rules and guidance and good industry practice. In this case, the relevant law is the Equality Act 2010. From October 2012, the Act outlawed discrimination on the grounds of age – but made an exception for providers of financial services. It's not a blanket exemption, however. Businesses can only rely on it if they can show they have carried out a risk assessment, and if they have, any risk assessment was done based on relevant information from reliable sources. However, even if a business can't rely on the exemption, it may still be able to show that its actions were a proportionate means of achieving a legitimate aim, and so not unlawful discrimination.

That said, ultimately, Mr B's age was not the reason HSBC said that it would not be able to lend to him and Mrs B. It was due to the income and affordability criteria it has in place for interest-only mortgages. Where the repayment strategy is a sale of the property, HSBC is entitled to apply a minimum income criteria, which Mr and Mrs B didn't meet. So even had the age restrictions not been in place, this assessment would still have meant any application they tried to make could not have progressed.

I note that Mr and Mrs B think that HSBC refused to exercise discretion to vary its criteria in this regard. I can't agree with them on this point. HSBC's standard requirements to take income into account where that income came about from fixed term contracts:

- Employed for a minimum of 12 months or more current continuous service in the same type of employment via contracts. or
- A minimum of 6 months or more continuous service via contracts in the same type of employment with at least 12 months remaining on their current contract.

Mr B was asked for evidence that he fell into one of these categories. He was unable to do so. HSBC then exercised its discretion to vary its criteria. As Mr B had explained that he would have several contracts each year for relatively short periods, HSBC asked him to evidence three years' worth of contracts and tax returns to go with them, to evidence his income exceeded its minimum requirement. So, HSBC made an exception to its criteria to try to help Mr and Mrs B. It is unfortunate that Mr B's contracting had started relatively recently when he and Mrs B approached HSBC and so he couldn't provide the information HSBC wanted, but that doesn't mean HSBC treated Mr and Mrs B unfairly.

The fact that HSBC was willing to accept alternative evidence of income doesn't mean that it had to make further concessions on the evidence it would accept when Mr B was unable to fulfil the altered requirements. As I have said above, no-one is entitled to borrow money. Ultimately, Mr and Mrs B's request for borrowing didn't fit with HSBC's lending criteria.

It is clear in this case that there were failings on the part of HSBC in this case. It initially told Mr and Mrs B that they could not have a mortgage on the property because it would need to either exceed its maximum age requirement for interest-only mortgages or be too short to meet the minimum term requirement. This was correct based on HSBC's lending criteria and so no further discussions were necessary and may well have raised Mr and Mrs B's expectations. HSBC acknowledged this and offered Mr and Mrs B £150 compensation for any inconvenience it caused. I have considered this offer and I find that it is appropriate and proportionate in the circumstances.

My final decision

HSBC UK Bank Plc has already made an offer to pay Mr and Mrs B £150 to settle the complaint and I am satisfied this offer is fair in all the circumstances. As such, my final decision is that HSBC UK Bank Plc should pay £150 in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs B to accept or reject my decision before 14 June 2024.

Derry Baxter
Ombudsman