

The complaint

Mr and Mrs M complain that HSBC UK Bank Plc ("HSBC") acted unfairly by refusing to remove the default of their account from their credit records. They believe the default on their account was the direct result of irresponsible lending of other loans held with it.

What happened

Mr and Mrs M held a joint bank account with HSBC with an overdraft facility. The account was closed with an outstanding balance in November 2017 and the account defaulted.

Mr M complained that recording a default on the account was inappropriate. He says the current account they had defaulted as a direct result of not being able to pay back other loans he held with HSBC.

HSBC says Mr and Mrs M spent the majority of time overdrawn and based on the account activity it can't say the account wouldn't have defaulted regardless of the other lending.

One of our adjudicators looked into Mr and Mrs M's concerns and thought having looked at how the account was being operated didn't think the default of the account was a direct result of the loans. But they did think that HSBC should've stepped in earlier and had acted unfairly by continuing to charge overdraft fees when Mr and Mrs M hadn't seen or maintained a credit balance for an extended period of time. They thought to put things right HSBC should:

- rework Mr and Mrs M's account and remove all interest and charges added to the account from January 2017.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr and Mrs M to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr and Mrs M's credit file, it should backdate this to January 2017.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayment and returned to Mr and Mrs M, along with 8% simple interest on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then HSBC should remove any adverse information from Mr and Mrs M's credit file.

HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mr and Mrs M a certificate showing how much tax it's taken off if he asks for one.

As a gesture of goodwill HSBC agreed to follow the recommendations of our adjudicator and settle Mr and Mrs M's complaint. Mr and Mrs M declined the offer, so the complaint was passed to an ombudsman for a final 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.

My role is to look at the problems Mr and Mrs M has experienced and see if HSBC has done anything wrong. If it has, I would seek – if possible - to put Mr and Mrs M back in the position they would've been in if the mistakes hadn't happened. And I may award modest compensation that I think is fair and reasonable.

Mr and Mrs M's initial complaint point is regarding the account they held with HSBC and the registering of a default of this account on their credit files. So the question I have to ask is whether HSBC did anything wrong in closing Mr and Mrs M's account - in particular registering a default when they didn't pay back the outstanding balance of their overdraft in the required time.

I'm in agreement with our adjudicator here, in that I don't think that HSBC acted unfairly when it closed Mr and Mrs M's account and registered a default. As prior to this happening I can see that HSBC sent a number of letters to Mr and Mrs M notifying them that their account was in arrears and what was to happen to their account if no action was taken. And as HSBC gave the required notice and followed the correct procedures I can't say it did anything wrong in closing the account and recording the default.

Mr and Mrs M say that if it hadn't been for the irresponsible lending on two loans in Mr M's sole name they would've been able to repay the overdraft and the account wouldn't have been defaulted. But I don't agree because having reviewed the bank statements of Mr and Mrs M's account I can see that they spent the majority of time overdrawn even before the loans were taken out. So I can't say that the taking out of loans was directly related to them being unable to pay back their overdraft.

And I don't think HSBC did anything wrong in recording a default on Mr and Mrs M's credit file – HSBC has a duty to make sure the information it reports on its customers affairs to the credit reference agencies it subscribes to is factually accurate and this is an accurate reflection about what happened.

I'm also in agreement with our adjudicator that HSBC should've stepped in sooner than it did. Where a business continues to allow a consumer to use a credit facility which it should have realised was unsustainable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit. This means we'd normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised it was unsustainable.

And in this case after a detailed review of Mr and Mrs M's statements, our adjudicator thought that by January 2017 it was clear Mr and Mrs M's overdraft was unsustainable as their account hadn't seen or maintained a credit balance for a significant period of time and thought HSBC should refund the interest and charges added to the overdraft from this point.

As HSBC has offered to settle the complaint in-line with what our adjudicator recommended and I'd expect, I'm satisfied that what HSBC has already agreed to do to put things right for Mr and Mrs M is fair and reasonable in all the circumstances of this case and I'm not

requiring it to do anything more. As this is the case, it's up to Mr and Mrs M to decide whether to accept HSBC offer.

My final decision

For the reasons I've explained, satisfied that what HSBC UK Bank Plc has already agreed to do to put things right for Mr and Mrs M is fair and reasonable and I'm not requiring it to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 1 September 2022.

Caroline Davies
Ombudsman