

Complaint

Mr B says HSBC UK Bank plc ("HSBC") irresponsibly provided him with an overdraft and allowed him to continue using it after it had already been made aware he was vulnerable and struggled to manage money.

Mr B is being assisted and represented in his complaint by his mother Mrs B.

Background

Mr B's complaint was considered by a couple of investigators. And they thought that HSBC had irresponsibly provided the overdraft to Mr B and they said that the outstanding balance should be written off as a result. HSBC didn't properly respond to the investigator's assessment. In any event, Mrs B, on Mr B's behalf, disagreed so the case was passed to an ombudsman.

At this point I should make it clear that while I've seen that Mrs B has referred to Mr B having difficulties obtaining a debit card correctly issued in his name. But as the second investigator has explained, this didn't form part of Mrs B's original complaint and as this is a separate event – albeit in relation to the same current account – I'm satisfied that Mrs B has to direct these concerns to HSBC in the first instance, before we can involve ourselves in these matters. So this decision is only looking at the complaint about Mr B's overdraft.

My findings

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

We've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr B's complaint.

HSBC needed to make sure that it didn't lend irresponsibly. In practice, what this means is HSBC needed to carry out proportionate checks to be able to understand whether Mr B would be able to repay what he was being lent before providing any credit to him. Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly. I've kept this all in mind when having looked at Mr B's complaint and having done so I'm upholding it.

HSBC says that Mr B passed its affordability checks which were based on declared income, information about his existing credit commitments obtained from a credit reference agency and an estimation of his essential spend. I've thought about what HSBC has said and as this was an interest free student overdraft there is an argument for saying that a lighter touch affordability assessment would be proportionate – especially as there's no expectation for the borrower to repay the facility until after he enters the workplace.

That said, it isn't in dispute that Mr B visited a HSBC branch with his mother in December 2018. During the review which took place it was made clear to HSBC that Mr B was vulnerable because he was unable to manage his money or check his account balance prior to making spending decisions. HSBC's later notes appear to show that Mrs B was set up as a third-party on Mr B's account so she could help him monitor things and a nil marker was recorded on the account too.

I can't know for sure what exactly happened afterwards. Although it appears as though Mr B asked HSBC to remove his mother as a third-party for his financial affairs, as he was permitted to do, and then went on to have a student account with an overdraft when he went to university. I think that HSBC had to respect Mr B's wishes as he was entitled to make such a decision.

However, even though HSBC was entitled to respect Mr B's wishes in relation to removing any third-party and consider any applications for financial services products, I nonetheless think that it ought to have kept in mind that Mr B still remained vulnerable and take additional steps to ensure that he was better able to manage his finances than he had been previously before deciding to lend to him. And HSBC needed to factor this into any decision to grant credit to Mr B.

Despite having been provided with plenty of opportunity to do so, HSBC has provided nothing at all to show that it took reasonable steps to factor in what it had already been told about Mr B previously into its decision making. So it seems clear to me that there was a significant risk that Mr B would struggle to repay an overdraft, or credit, of any description and HSBC took no steps at all to mitigate the risks here. In these circumstances, and having been told of Mr B's circumstances, I have to question how and why HSBC thought it was appropriate to grant him an overdraft facility.

I would normally expect a lender to refund the interest and charges added to any credit it provided irresponsibly – such as HSBC did here. And if those interest and charges were paid also add 8% simple interest per year. But I can't ignore the fact that by granting Mr B an overdraft, even though he may have requested it and it was interest free, HSBC ran the risk a vulnerable customer (as it identified Mr B was) could run up a debt he wouldn't be able to pay and which could cause significant hardship.

That risk has now materialised and Mr B has been left with a debt that he won't be able to repay without experiencing significant hardship. Given the circumstances and what I understand to be Mr B's current financial position, I think that the fair and reasonable thing for HSBC to do here would be to write off the entire outstanding balance remaining on the overdraft.

I turn now to Mr B's credit file. We'd typically expect a lender to remove any adverse information on a loan, from the borrower's credit file, where a complaint is upheld for irresponsible lending. However, I don't think that doing this would be the fair and reasonable thing to do here given what I'm asking HSBC to do in terms of Mr B's overdraft balance.

To explain, the basis for Mr B's complaint was and is that he's a vulnerable consumer who can't manage credit and his difficulties were made worse by HSBC's decision to give him an

overdraft in October 2020. I've accepted that this is the case and this is the very reason why I'm upholding Mr B's complaint. I know Mrs B is worried about the potential impact adverse information being recorded on Mr B's credit file might have. However, it would be unfair and unreasonable in its logic for me to reach the finding that Mr B's overdraft balance should be written off, but then depart from it in terms of Mr B's credit file going forward.

Indeed, I'm mindful that Mr B was able to obtain credit from HSBC despite it having information about his inability to manage his finances which other lenders simply won't have. In these circumstances, it seems to me that removing adverse information from Mr B's credit file, which would in effect record that he repaid this overdraft in full and on time when this didn't happen, would increase the chances of him borrowing more. In my view, this would be counterproductive and arguably not in his best interests, or those of any potential lender.

So while I've thought about what Mrs B has said and accept she won't agree, I think it's fair and reasonable for HSBC to reflect what I'm telling it to do in relation to the outstanding balance and record it wrote off a balance on Mr B's overdraft on his credit file. Mr B may even find that this will result in him only being offered Basic bank accounts which may be more appropriate as he won't be able to have borrowing facilities on such an account.

Fair compensation – what HSBC needs to do to put things right for Mr B

Having carefully considered everything, I think that HSBC should do the following to put things right:

- Write off the outstanding balance on Mr B's overdraft; and
- HSBC can and should record that it wrote off an outstanding balance on this overdraft on Mr B's credit file but this should be backdated to January 2021, which is roughly around the first point that it would have been able to take corrective action in relation to Mr B's overdraft.

My final decision

For the reasons explained, I'm upholding Mr B's complaint. HSBC UK Bank Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 December 2022.

Jeshen Narayanan
Ombudsman