

The complaint

Mrs T complains that HSBC UK Bank Plc ("HSBC") acted irresponsibly by increasing her overdraft limit when she was in financial difficulty. She is also unhappy that HSBC continued to allow her to spend on her overdraft after she'd made it aware of her circumstances and financial difficulties in September 2019.

What happened

Mrs T held an account with an overdraft facility with HSBC. In October 2016 Mrs T's overdraft limit was increased to £4,700 and in December it was increased to £4,950.

In September 2019 Mrs T informed HSBC of her financial difficulties and that she had made it aware that she suffered from mental health conditions and that she had a problem with spending.

In response to this HSBC stopped all interest and charges on Mrs T's overdraft and set Mrs T up with a basic bank account. HSBC offered Mrs T a loan at 0% interest to pay back her overdraft which Mrs T declined and her overdraft account was left open in order that she could repay the overdraft.

Mrs T started to make payments on her overdraft but on discovering she was able to transfer funds from her overdraft to her new basic account she continued spending and once again found herself at the top of her overdraft limit.

Mrs T complained to HSBC about this. HSBC then inhibited Mrs T's account so she could no longer access the account or transfer funds. It acknowledged it could have done more to support Mrs T and compensated her £300 for the distress and inconvenience.

Mrs T was dissatisfied with this and brought her complaint to this service.

Mrs T's complaint was considered by one of our adjudicators. They thought that HSBC shouldn't have approved the overdraft limit increase to £4,700 in October 2016 as they didn't think her monthly salary of around £1,200 supported this level of borrowing and that her bank statements show that before this limit increase, she'd already appeared to be struggling to manage her existing limit.

HSBC disagreed. It says at the time of the increase there was a low percentage of unarranged overdraft usage, the account was receiving regular credits and that gambling utilisation as a percentage of credit turnover was low.

Mrs T wants a review of the account for the five years before her limit was increased and wants the debt written off. So the complaint has been progressed for an ombudsman's decision.

Why I can only look at Mrs T's overdraft from August 2016

I can't look at all the complaints referred to me. The rules applying to this service say that, where a business doesn't agree, I can't look at a complaint made more than six years after the event being complained about – or (if later) more than three years after the complainant was aware, or ought reasonably to have been aware, of cause for complaint. This is Dispute Resolution rule 2.8.2R(2) – which can be found online in the Financial Conduct Authority's handbook.

And in this case HSBC hasn't provided consent. Mrs T's complaint was made in August 2022 in relation to her overdraft dating back to 2011. Six years before she raised her complaint is August 2016. So under the six year rule we can only look at increases in her overdraft limit and the charges applied – the events complained about – from August 2016. So I need to think about whether the complaint was made within three years of when Mrs T should reasonably have been aware she had cause to complain.

I can see that Mrs T contacted HSBC in September 2019 about suffering financial difficulties. Following this contact, Mrs T was offered a loan to repay her overdraft and it stopped applying overdraft interest on her account. So I think Mrs T ought to have known enough when she made contact with Lloyds whether her overdraft was affordable for her and that HSBC did something wrong by increasing her limit over the years. I think Mrs T should reasonably have been aware she had reason to complain about the affordability of her overdraft at this time.

Three years from this is September 2022. As this doesn't provide with Mrs T with a longer period of time to complain about the affordability of her overdraft and the charges applied it means we can only look at the affordability of Mrs T's overdraft from August 2016 (6 years prior to Mrs T raising her complaint).

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.

HSBC will be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So I don't consider it necessary to set all of this out in this decision.

Having carefully considered everything provided, I think HSBC acted unfairly when it continued charging overdraft interest and associated fees from 19 October 2016 when Mrs T's limit was increased. By this point, it ought to have been clear that Mrs T was in no position to sustainably repay what she owed within a reasonable period of time.

By this point, HSBC ought to have realised that Mrs T's use of her overdraft was unsustainable. Mrs T's statements show that she was consistently overdrawn and near the top of her limit. Although regular credits were paid into her account that may have reduced her overdraft balance, due to constant spending she got further into her overdraft, and it was not reducing. In November 2015 Mrs T's account was £2,000 in debit and this crept up to £3,000 by February 2016 and £4,000 by July 2016.

I accept that a lot of the transactions on Mrs T's account were discretionary, non-committed transactions. But this doesn't mean that HSBC should continue to allow the use of what should be short term lending to continue with no apparent review. HSBC ought to have realised that Mrs T was at a significant risk of being unable to repay what she owed and shouldn't have increased her overdraft limit further.

So I think if HSBC had done a review of Mrs T's statements it would've realised Mrs T wasn't using the overdraft as intended. HSBC should have stopped providing the overdraft on the same terms and treated Mrs T with forbearance rather than charge even more interest, fees and charges on the overdraft.

Mrs T ended up paying additional interest, fees and charges on her overdraft and this ended up exacerbating difficulties she already had in trying to clear it. So I currently think that HSBC didn't treat Mrs T fairly and she lost out because of what HSBC did wrong. And this means that it should put things right.

Mrs T is also unhappy that HSBC failed to inhibit her account when it was aware of her circumstances and this resulted in her continuing to spend. HSBC have acknowledged that it could've done more to support her following the contact she had with it in September 2019 and have now inhibited her account and compensated her £300 reducing the balance of her overdraft.

I agree that HSBC should've inhibited Mrs T's account when she contacted it in September 2019. But sometimes mistakes do happen. HSBC have compensated Mrs T for this by reducing her balance by £300 which I think is fair in the circumstances. Throughout this period HSBC wasn't charging for the use of the overdraft facility and I think Mrs T's has to take some responsibility for her actions – rather than take advantage of something that clearly wasn't intended.

Mrs T is now left with an overdraft balance and is unhappy with this. But what she has been left with are the funds which she used and benefitted from, and I don't agree that she shouldn't have to pay this back and I'm not persuaded anymore compensation is warranted here.

But I do think that HSBC shouldn't have agreed to increase Mrs T's overdraft limit in October 2016 and instead should've stopped providing the overdraft on the same terms and that it should put things right as outlined below.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mrs T's complaint for HSBC to put things right by:

- Reworking Mrs T's current overdraft balance so that any additional interest, fees and charges applied as a result of the overdraft limit increases from October 2016 onwards are removed. This means that from October 2016 onwards, interest can only be charged on the limit before this of any overdrawn balance.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mrs T to arrange a suitable repayment plan, Mrs T is encouraged to get in contact with and cooperate with HSBC to reach a suitable agreement. If it considers it appropriate to record negative information on Mrs T's credit file, HSBC should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in October 2016. HSBC can also reduce overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave Mrs T over her limit.
- 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 overpayments and returned to Mrs T 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 Mrs T's credit file.

† HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mrs T a certificate showing how much tax it has taken off if they ask for one.

My final decision

For the reasons I've explained, I uphold Mrs T's complaint against HSBC UK Bank Plc, and direct it pay the fair compensation I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 14 June 2023.

Caroline Davies
Ombudsman