

Complaint

Mr M has complained that HSBC UK Bank Plc (“HSBC”) unfairly continued allowing him to use an overdraft even when he was trapped into continually using the facility.

Background

One of our investigators looked at Mr M’s complaint and he thought that HSBC hadn’t acted unfairly in relation to Mr M’s overdraft. So he didn’t think that the complaint should be upheld.

Mr M disagreed with the investigator’s assessment and asked for an ombudsman’s review.

My provisional decision of 30 October 2023

I issued a provisional decision – on 30 October 2023 - setting out why I was intending to partially uphold Mr M’s complaint.

In summary, I thought that Mr M’s complaint should be partially upheld because HSBC ought reasonably to have realised that Mr M’s overdraft had become demonstrably unsustainable for him by July 2018 and therefore should not have continued offering the facility on the same terms.

HSBC continuing to offer the overdraft to Mr M in this way, was a reason why it failed to act fairly and reasonably towards Mr M.

I then set out a method of putting things right which I considered addressed HSBC’s shortcomings and Mr M’s resulting loss.

Responses to my provisional decision

Mr M confirmed that he accepted my provisional decision and didn’t provide anything further to me to consider.

HSBC disagreed with my provisional decision stating:

- There was evidence to suggest that much of Mr M’s spending was non-essential.
- On review of the transactions, it did not believe that Mr M was a hardcore borrower but rather that he was spending in a manner that prevented him from repaying his overdraft.
- It referred to another ombudsman decision where a similar complaint had been rejected.
- HSBC has no control over how a customer chooses to use their overdraft facility, it advises customers that an overdraft is a short-term facility and its multiple attempts to contact Mr M indicate that it recognised his usage. And as Mr M didn’t get in touch despite the letters, HSBC should not be held responsible for his spending choices.

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've considered HSBC's response to my provisional decision. But having done so, as well as considering everything else provided from the outset, I've not been persuaded to depart from the conclusions I reached in my provisional decision and I'm still partially upholding Mr M's complaint. I'll explain why in a little more detail.

HSBC will be familiar with all the rules, regulations and industry codes of 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'm satisfied that HSBC acted unfairly when it continued charging overdraft interest and associated fees from July 2018 onwards. While Mr M might not have got in touch to confirm this, nonetheless his overdraft usage by this point made it evident that the facility had become demonstrably unsustainable for him.

A cursory look at his statements leading up to this period shows that Mr M had been hardcore borrowing for an extended period. And the transactions taking place on Mr M's account indicated that there was little prospect of him being able to repay what he owed without undue difficulty or borrowing further.

I primarily say this because he barely spent any time in a credit balance even after he'd received his salary. And his pattern of borrowing showed that Mr M had no strategy to exit using his overdraft, which was meant to be for short-term use, over the longer term.

HSBC has now referred to particular transactions on Mr M's accounts. I've reviewed transactions in question. The first of which was already three months after I think HSBC should have stepped in and corrected Mr M's overdraft. The next time was some two years after this and following this the rest of the transactions are in 2021 and 2022. So even if it could be argued that when taken individually and in isolation some of the transactions HSBC has referred to can be questioned this all happened after the period in question.

And notwithstanding the fact that I don't agree with HSBC's arguments, in my view, the sporadic nature of the transactions referred to suggest that they are unlikely to be the problem here given just how long Mr M had stayed overdrawn, I nonetheless fail to see how and why these transactions make a difference to what happened before then.

I've also seen that HSBC is relying on having sent Mr M a number of letters telling him that he was using an overdraft in a way that was expensive and that he should get in contact if he was experiencing difficulty. As I understand it, it then sent further letters and communications from 2020 onwards as a result of the regulator's repeat overdraft use rules. HSBC says that Mr M should have reached out if he was struggling.

I've thought about what HSBC has said. But the mere fact that it felt the need to send Mr M so many letters within such a period means that it recognised that there was a problem with Mr M's overdraft usage. Since my provisional decision HSBC has confirmed that this is the case.

If I take HSBC's argument to its logical conclusion here, I see it as being that it acted fairly and reasonably towards Mr M because it sent him letters as it had identified that his overdraft usage had become a problem. But because Mr M didn't respond to the letters it

was reasonable to continue allowing him to use his overdraft in the same way, notwithstanding that it had identified his use of his overdraft as being problematic.

Indeed, HSBC goes even further than that in its response to my provisional decision. It says Mr M wasn't a hardcore borrower, he was merely spending in a way that prevented him from repaying his overdraft. I'm not sure I necessarily agree with HSBC on this matter. But even leaving my concern to one side, HSBC accepts that Mr M was providing unable to repay his overdraft. And given that this had gone on for some time, it's clear that he was failing to repay his overdraft within a reasonable period of time, which is what he was required to do under the regulator's rules.

Simply continuing to send letters in the same way, regardless of the unfolding circumstances, ignores the fact that there comes a point where a lender cannot continue simply relying on a borrower not wanting to discuss the situation. After all there are many reasons why a consumer might not want to get into discussions about their finances even though they're in a situation where they're struggling, or they may even go further and say they can and will make payment when the reality is they can't.

While Mr M didn't contact HSBC, most likely because he didn't realise the impact failing to deal with the matter at hand was having, I don't think it was reasonable for HSBC to conclude that he'd be able to clear the unsustainable debt he appeared to be in. And in these circumstances, as a responsible lender, while HSBC couldn't control what Mr M was spending the money on, as it was HSBC's money that Mr M was spending, which he was then proving unable to repay within a reasonable period of time as required to, it was incumbent upon HSBC to take action.

I've seen what HSBC has said about receiving a contradictory decision from a different ombudsman on another case. I don't know whether the decision contradicts the final decision I have reached on this case. But in any event, each case is considered individually and on its own merits. And I'm satisfied that the outcome I have reached on this case is compatible with the rules, guidance and good industry practice in place at the time Mr M was borrowing from HSBC.

So notwithstanding what HSBC might have been told on another case, I'm satisfied that this should not and does not change my mind on this particular case which has been brought by Mr M.

Overall and having considered HSBC's further arguments, I remain satisfied that it failed to act fairly and reasonably towards Mr M by not taking corrective action in relation to his overdraft, when it ought to have realised he was struggling to repay what had become a problem debt by July 2018 at the latest.

Mr M ended up paying interest, fees and charges at a time when his overdraft was already unsustainable. So I'm satisfied that Mr M lost out because of what HSBC did wrong and therefore HSBC needs to put things right.

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

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Mr M's complaint for HSBC to put things right by:

- Reworking Mr M's current overdraft balance so that all interest, fees and charges applied to it from July 2018 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr M to arrange a suitable repayment plan, Mr M is encouraged to get in contact with and cooperate with HSBC to reach a suitable agreement for this. If it considers it appropriate to record negative information on Mr M's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in July 2018. HSBC can also reduce Mr M's overdraft limit by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over his limit.

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 overpayments and returned to Mr 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 M's credit file. HSBC can also reduce Mr M's overdraft limit by the amount of refund if it considers it appropriate to do so.

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

My final decision

Your text here

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 December 2023.

Jeshen Narayanan
Ombudsman