

## **The complaint**

Mr H complains that HSBC UK Bank Plc closed his bank account and didn't treat him fairly when it asked him to repay money he owed after a failed chargeback claim.

## **What happened**

The detailed background of this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr H had a basic bank account with HSBC that he opened in January 2018.

Mr H raised a number of card disputes relating to payments made to a gambling website. In October 2020, HSBC temporarily credited the payments whilst it completed a charge back investigation. HSBC told Mr H that the payments would be re-debited if he was found liable for the transactions following its investigation.

HSBC wrote to Mr H in December 2020 and January 2021 to explain that the retailers bank had rejected Mr H's charge back claim. The retailer provided documentation to show Mr H deposited the funds to the merchant's website and used the money to successfully place bets. Therefore, the services were provided as described. So, on 8 January 2021, HSBC re-debited the temporary credits, amounting to £3,600, previously provided. This caused Mr H's account to go into an unarranged overdraft.

In May 2021, HSBC reviewed Mr H's account. Following this HSBC decided to close Mr H's account immediately and wrote to him to let him know he'd need to repay any money that he owed the bank. At the time Mr H's account was closed, his account was just over £2,500 overdrawn. Due to the outstanding balance the account couldn't close, but HSBC placed a block on the account.

On 14 June 2022, HSBC wrote to Mr H again asking him to repay the money he owed. The letter detailed ways Mr H could repay what he owed, which included calling HSBC to make a payment. Mr H called HSBC to try and make a payment, but because his account had closed, he wasn't able to make a payment. Instead, he was told that he'd need to visit a branch with cash or cheque to clear the balance. Mr H said he wasn't happy to do this – especially as he didn't have a cheque book and wasn't comfortable that he'd have to carry a large amount of cash to branch. On 22 June 2022, HSBC arranged for Mr H to repay what he owed via bank transfer and was able to clear the balance.

Mr H complained to HSBC. He said he hadn't done anything wrong and pointed out that HSBC hadn't spoken to him about any activity on his account that it wasn't happy with. So, he said HSBC shouldn't have closed his account. He also said HSBC hadn't treated him fairly when it asked him to repay what he owed.

HSBC apologised for telling Mr H he could make a payment over the phone in its letter of 14 June 2022 and offered him £50 compensation for any trouble and upset this had caused him. It said it hadn't done anything wrong in asking Mr H to repay the money he owed and

had clearly explained to him that it could re-debit the transactions following its charge back investigation. It also said it had closed the account in line with the terms and conditions.

Unhappy with this response, Mr H brought his complaint to our service where one of our investigators looked into what had happened. As part of his complaint Mr H said because he had a basic bank account HSBC should not have allowed the account to go overdrawn and place him in an unarranged overdraft. He said the letters HSBC sent to him told him that he had been placed in an overdraft which was misleading and against the terms of the account. Mr H also said that he was under the impression that he was free to repay what he owed as and when he could. But HSBC then told him he had to clear the debt immediately and threatened him with debt collection. Mr H says this meant he had to borrow money from family which caused him an immense amount of stress. So, he wants HSBC to pay him compensation.

The investigator didn't think HSBC had done anything wrong when it had closed Mr H's account and asked him to repay what he owed. He also said that HSBC's offer of compensation was fair. So, he didn't think HSBC needed to do anything more.

HSBC agreed. Mr H didn't. He said HSBC hasn't followed the right procedure in closing the account and overall had treated him unfairly.

As no agreement could be reached the matter came to me to decide. Before I issued my decision, I asked for some more information. I asked Mr H whether he had any other bank accounts at the time HSBC closed his account and to provide a copy of his credit file. I also asked Mr H if he asked HSBC for any support in relation to repaying the money he owed.

In response, Mr H said he didn't see why he should provide his credit file and wasn't willing to do so. He also said that HSBC placed him on a repayment plan. Mr H didn't confirm whether he had any other accounts at the time.

After reviewing all the evidence, I issued a provisional decision in which I said the following:

*I appreciate Mr H was disappointed by the investigator's opinion and I can see that he has provided a detailed response to what he said about his complaint. I'd like to reassure Mr H that I've considered the whole file and what's he's said. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome. No discourtesy is intended by me in taking this approach. I do stress however that I've considered everything that Mr H and HSBC have said before reaching my decision.*

*I'll deal first with the closure of Mr H's account. HSBC closed Mr H's basic bank account with immediate effect. As our investigator explained to Mr H, a bank is generally under no obligation to continue offering an account to a consumer if it doesn't wish to do so. Typically, as long as it provides reasonable notice it has no obligation to share its reasons for that decision either. And it wouldn't be appropriate for me to require HSBC to do so. That being said, in this case, I can see that in its letter dated 31 May 2021, HSBC did give Mr H a reason – namely HSBC was unhappy with the conduct on Mr H's account.*

*HSBC is entitled to close an account just as a customer may close an account with it. But it must do so in line with the terms and conditions of the account. The terms and conditions of Mr H's account, which HSBC and Mr H had to comply with, say that it could close the account by giving him at least two months' notice. In certain circumstances HSBC can also close the account immediately.*

*Mr H had a basic bank account with HSBC, which he opened in January 2018. These types of current account are intended for people who don't have and don't qualify for standard current accounts. In order to be eligible for a payment account with basic features an individual shouldn't hold a payment account with any United Kingdom credit institution that has at least the features of a basic bank account.*

*When closing a basic account, along with the terms and conditions of the account, HSBC also has to consider the provisions of the Payment Accounts Regulations Act 2015 (PAR 2015). Amongst other things they set out when an account provider can close a basic bank account. Closure is only permitted in certain circumstances – one of them involves the conduct of the account and the way it is being run. Another reason is if the consumer has access to another payment account in the United Kingdom which allows the consumer to make use of services offered by a basic bank account and was opened after the payment account with basic features.*

*HSBC has provided this service with information about why it decided to close Mr H's basic bank account immediately. Whilst HSBC has told us and Mr H it wasn't happy with Mr H's conduct on the account, I don't think this conduct meets the definition of any of the criteria set out under the PAR's 2015, which allow immediate closure. So, it follows that I don't think HSBC should have closed Mr H's account in the way that it did.*

*Mr H has told this service that he didn't have any other bank account at the time which added to the distress and inconvenience he suffered when HSBC closed his basic bank account. Mr H has said that he was able to get another account with another bank sometime after HSBC closed his account. From looking at Mr H's basic account statement I can see that there are a number of transactions coming into the account from other accounts that Mr H appears to have had. I note too that Mr H said that he was able to use an existing account he already had after HSBC closed his account. So, despite what Mr H says about not having any other account, it appears to me, based on the information I've seen that Mr H did.*

*To find that Mr H didn't have any other bank account open in May 2022, which is when HSBC decided to close Mr H's basic account, I'd need to see evidence in the form of statements or a credit file report. Our investigator has asked Mr H for a copy of his credit file, but Mr H says he is unwilling to provide this. I can understand why Mr H feels like this, but to fairly conclude that HSBC shouldn't have closed Mr H's basic bank account, I'd need to be satisfied Mr H didn't have another current account open at the same time, or one that was opened after he opened his basic bank account.*

*So, although I'm satisfied HSBC shouldn't have closed Mr H's account, I can't fairly decide this point until I have enough information to say Mr H didn't have another account when he opened the account. If he did have another bank account, then the additional obligations placed on HSBC for when it can close a basic bank account would fall away. That's because as I've already said, basic bank accounts are a type of current account intended for people who don't have and don't qualify for standard current accounts. Both the terms and conditions of Mr H's account as well as the PARs 2015, permit HSBC to close Mr H's basic account if he subsequently went on to open another payment account.*

*If Mr H can show he didn't have another bank account, then it's most likely I will uphold this part of his complaint. That is HSBC were wrong to close his basic bank account. In terms of fair compensation, I wouldn't be minded to direct HSBC to reopen his account – that's because Mr H now has another account offering the features of a basic bank account. It's also clear that the relationship between Mr H and HSBC has now broken down. But I would have to compensate Mr H for the trouble and upset HSBC closing his account caused him. Weighing up the overall impact this had on Mr H I'm minded to award £250. But to be clear,*

*this is contingent on whether Mr H shows he didn't have another bank account at the time, I've already said what information I need to be able to determine that.*

*overdraft*

*Mr H raised a charge back dispute with HSBC regarding a number of payments he made to a gambling website. HSBC carried out an investigation which included contacting the retailer. Whilst it did this it temporarily re-credited the transactions to Mr H's account, however it explained that the transactions could be re-debited if the dispute was unsuccessful. The retailers bank rejected Mr H's claim, so the transactions were reapplied to Mr H's account in January 2021. This meant Mr H's account went overdrawn.*

*Mr H says because he had a basic bank account HSBC shouldn't have allowed him to go into an unarranged overdraft. So, he says HSBC hasn't followed the terms of the account which was misleading and has pointed to letters HSBC sent him in support of what he's said. But according to the terms and conditions of Mr H's account a basic bank account can have a debit balance, it can't have an arranged overdraft - but can go overdrawn, which is what happened with Mr H's account. It's also important to note that with all bank accounts where there a debit balance present and where there is no arranged overdraft it is referred to as an unarranged overdraft. So, I'm satisfied that HSBC has acted in line with the terms of Mr H's account. I'm also satisfied that HSBC clearly explained to Mr H at the time he raised the charge backs that if it was unsuccessful the transactions would be re-debited to his account, and he understood why his account was overdrawn. Given that Mr H wasn't charged any interest or charges for going overdrawn, I can't say he has lost out financially because HSBC re-debited the disputed transactions.*

*Mr H says HSBC treated him unfairly by asking him to repay what he owed immediately and has said that he had to borrow money to repay it. HSBC was entitled to ask Mr H to repay what he owed, simply by giving notice to him. At the point HSBC closed Mr H's account he was overdrawn, and he owed money he'd spent. When the account was closed the debt became due HSBC wrote to him on 14 June 2022 saying he'd need to repay the money by 5 July 2022.*

*I can appreciate receiving the letter would no doubt have caused Mr H upset and worry. But HSBC also said that if Mr H couldn't repay the money, it would try and come to an arrangement with him, but he'd need to complete an income and expenditure form. HSBC also provided information about organisations he could contact to seek independent advice about his financial situation. I haven't seen any evidence that Mr H went through an income expenditure exercise with HSBC. I can also see from looking at Mr H's account statements that in November 2021 he made two payments towards his balance, of just over £200, but then made no payments until he cleared the balance in June 2022, which from looking at the contact notes, Mr H decided to do in order to avoid the account being defaulted. I haven't seen anything to suggest that HSBC applied pressure to Mr H to repay what he owed. I'm satisfied HSBC took appropriate steps to help Mr H and did what I'd expect them to do when it asked Mr H to repay the debt.*

*Finally, Mr H says HSBC wrote to him in June 2022, and told him that he could repay what he owed by calling the bank. Mr H says when he tried to do this, he was told this wasn't possible because his account was being closed. And that he was told he'd have to go into branch with cash or pay by cheque. Mr H says he didn't have a cheque book and wasn't happy about walking around with that much cash. And he was upset that he'd been given wrong information. HSBC accepted it made a mistake and offered Mr H £50 compensation for any trouble and upset he was caused. It also arranged for Mr H to clear what he owed by making a bank transfer. I think this is a fair and reasonable way to resolve this aspect of Mr H's complaint, so I won't be asking HSBC to do anything more.*

*My provisional decision was that I intended to partly uphold Mr H's complaint. But this was contingent on whether Mr H shows he didn't have another bank account at the time.*

HSBC accepted my provisional decision. Mr H also accepted my provisional decision and responded with a number of points. In summary he said:

- when HSBC closed his account, he didn't have any other payment account which offered the same features as his HSBC basic account, which is why he fought so hard to keep the account with HSBC open
- at the time his HSBC account was closed he had prepaid card accounts which are now closed. So, he can't provide bank statements or any information about them. This is because the accounts were based on mobile apps, he now has a new mobile phone, new mobile number, and new email address
- prepaid card accounts don't appear on credit files which is why he is refusing to provide a copy of his credit file in response to the provisional decision
- it's unfair to ask him to provide evidence of something there is no longer evidence of
- he did have two other accounts with another bank and financial services provider at the time, which explain some of the transfers on his HSBC account statement, but these were not current accounts
- he has a right to use his account for gambling and raise disputes. In doing so he didn't breach the terms of the account and it would be unfair if HSBC has closed his account for these reasons
- he wants to know why HSBC closed his account

Now both sides have had an opportunity to comment I can go ahead and issue my 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.

In response to the provisional decision, which is repeated above and forms part of this decision, Mr H has raised a number of points which I'll now address below.

As I set out in my provisional decision when closing a basic account, along with the terms and conditions of the account, HSBC also has to consider the provisions of the Payment Accounts Regulations Act 2015 (PAR 2015). Amongst other things they set out when an account provider can close a basic bank account. Closure is only permitted in certain circumstances – one of them involves the conduct of the account and the way it is being run. Another reason is if the consumer has access to another payment account in the United Kingdom which allows the consumer to make use of services offered by a basic bank account and was opened after the payment account with basic features.

Mr H says it would be unfair for HSBC to close his account because he used the account for gambling and raised a dispute about some transactions that he had made – in other words the conduct of the account. I haven't seen any evidence that HSBC closed his account for these reasons – on the contrary I am satisfied that HSBC did what I'd expect them to do when Mr H raised his dispute.

As I set out in my provisional decision, HSBC provided this service with information about why it decided to close Mr H's basic bank account immediately. Whilst HSBC has told us and Mr H it wasn't happy with Mr H's conduct on the account, having looked at how Mr H was operating his account, I didn't think this conduct met the definition of any of the criteria set out under the PAR's 2015, which allowed HSBC to immediately close Mr H's account.

However, as I set out above, HSBC could close Mr H's account if he had access to another payment account in the United Kingdom which allows the consumer to make use of services offered by a basic bank account and was opened after the payment account with basic features. From looking at Mr H's bank statement I noticed there were a number of transactions relating to other accounts Mr H appeared to have. So, in my provisional decision I asked Mr H to provide evidence that he didn't have another payment account – I asked him to provide me copies of bank statements or a copy of his credit file.

In response Mr H maintained that he never had another account that offered him the same services as his account with HSBC. He said he did have prepaid accounts but no longer has access to any of the information relating to these. And he won't provide his credit file report because these types of account don't appear on a credit file. He also said that he did have at least two other accounts, but again he says they didn't offer him the same services as his basic account so wouldn't be classed as a current account. So, he says it's unfair of me to ask him to provide evidence, and I should just accept his word.

I can understand why Mr H feels like this, but to fairly conclude that HSBC shouldn't have closed Mr H's basic bank account, I'd need to be satisfied Mr H didn't have another current account open at the same time, or one that was opened after he opened his basic bank account. Mr H hasn't provided me with any evidence to support what he has said. So, in the absence of any evidence to the contrary, based on Mr H's HSBC account statements, I can't fairly conclude that Mr H didn't have another account either at the time he opened his basic account or subsequently went on to open another payment account. So, the additional obligations placed on HSBC for when it can close a basic bank account under the PAR's 2015 fall away. This means I'm not satisfied that HSBC treated Mr H unfairly when it closed his account. So, I won't be asking HSBC to pay Mr H any compensation for the trouble and upset this caused him.

#### *overdraft*

Mr H raised a dispute about some payments he'd made to a gambling website. HSBC investigated and contacted the retailer. Mr H's dispute was unsuccessful, so the transactions were re-debited to Mr H's account, which meant Mr H's account went overdrawn. As I said in my provisional decision, going by the terms and conditions of the account, it does seem that the basic account can on occasion, still enter an unarranged overdraft. However, given that Mr H has not been charged for any interest or charges for going overdrawn, I can't say he has lost out financially because HSBC re-debited the payments in question. As such, in the circumstances, I can't say that HSBC has done anything wrong. And given that the account only entered into an unarranged overdraft due to payments that Mr H authorised, I see no reason why HSBC should pay Mr H compensation in the circumstances.

Finally, Mr H says HSBC wrote to him in June 2022, and told him that he could repay what he owed by calling the bank. Mr H says when he tried to do this, he was told this wasn't possible because his account was being closed. HSBC has accepted it made a mistake and offered Mr H £50 compensation for any trouble and upset this caused him. It also arranged for Mr H to clear what he owed by making a bank transfer. I think this is a fair and reasonable way to resolve this aspect of Mr H's complaint, so I won't be asking HSBC to do anything more.

In summary, I appreciate that Mr H will be disappointed by my decision, but Mr H hasn't provided me with sufficient information so that I can be satisfied that he did not have another bank account offering the same features as the account which HSBC closed. This means I am unable to conclude that HSBC treated Mr H unfairly when it closed his account. I'm also satisfied that HSBC treated Mr H fairly when his account went overdrawn and it's done enough to put things right when it wrongly told Mr H, he wasn't able to repay what he owed over the phone.

### **My final decision**

For the reasons I've explained above, my final decision is that I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 29 December 2023.

Sharon Kerrison  
**Ombudsman**