

## **The complaint**

Mr L complains HSBC UK Bank Plc trading as first direct (First Direct) conducted a hard credit search without his authority before assessing a lending request. Mr L has also complained about the level of service he received during the complaints process.

## **What happened**

In July 2023 Mr L contacted First Direct looking to temporarily increase his overdraft facility. The application was declined and Mr L complained when he became aware First Direct had completed a hard credit search as part of the application.

First Direct provided its final response letter in September 2023 not upholding Mr L's complaint. It said its representative had made it clear during the application call that a credit search would be conducted and recorded on Mr L's credit file, which could have an impact on future lending applications.

First Direct went on to issue two further final responses in October 2023 which provided the same outcome and referral rights to our service.

Unhappy with the outcome of the complaint and the level of service received during the complaint process, Mr L referred his complaint to our service for review.

Our investigator reviewed all of the available evidence and didn't uphold Mr L's complaint. He said First Direct hadn't acted unreasonably by not specifically telling Mr L that it would be completing a hard credit search as part of the application; because he considered it had reasonably made Mr L aware that the credit search would be recorded on his credit file, and could impact future lending decisions. Our investigator went on to say that complaint handling isn't a regulated activity and therefore he couldn't consider Mr L's concerns relating to the complaint process.

First Direct didn't respond to our investigator's outcome; Mr L disagreed. He reiterated his arguments that First Direct should have made it clear it would conduct a hard credit search which would be recorded on his credit file. Mr L also said First Direct had discriminated against him when not communicating with him in his preferred way, saying he has a health diagnosis which is classified as a disability and therefore a protected characteristic under The Equality Act 2010. Mr L says First Direct failed to make reasonable adjustments in how it communicated with him.

Mr L asked for an ombudsman's review, so the complaint's been passed to me to decide.

## **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.

I've considered the two concerns Mr L complains of under separate headings for ease.

### The credit search

Like our investigator I've listened to the call in July 2023 when Mr L's application to increase his overdraft was made.

Mr L made the First Direct representative aware that he needed temporary support with his finances – as he'd identified a shortfall over the following six months. The First Direct representative discussed the options available to Mr L for the financial support he was looking for. Mr L has later said he was confused by what was being presented to him during the call; but having listened to the call I consider the representative went back over the details to look to ensure Mr L understood. Mr L did confirm during the call that he understood what options were available to him; and agreed that proceeding to increase his overdraft limit would provide him with the financial support he needed at that time.

The First Direct representative said a credit search would be completed as part of the application, and that this would be recorded on Mr L's credit file, which could impact future lending decisions.

Mr L says it wasn't explicitly made clear to him that a hard credit search would be conducted as opposed to a soft search; and that had he known the credit search would be recorded on his credit file he wouldn't have proceeded. He's said this because he was aware there was adverse information on his credit file, which was in dispute with another credit provider, which may impact the outcome of this application.

I've carefully considered the arguments that have been presented, as well as how the credit search was presented to Mr L during the call. It's clear that the First Direct representative didn't explicitly say a hard credit search would be conducted. But the representative did say that the credit search would be recorded on Mr L's credit file, and could impact future lending requests Mr L made. So, it suggests First Direct's search and result would be available for other lenders to see, indicating this was a hard credit search.

During the call when the First Direct representative was reading through the details of the check, Mr L spoke and made a comment referencing whether the check would be a soft search. But having very carefully listened to this call on multiple occasions, I don't think the First Direct representative heard Mr L when he spoke and made this point – and I don't consider it was unreasonable that it went unnoticed and wasn't acknowledged in the circumstances.

I say this because the First Direct representative was going through information about the checks that would be conducted and was in full flow at the point Mr L made this comment. It is difficult to hear, and I had to listen to this part of the call on multiple occasions to understand exactly what Mr L said. I therefore don't consider it unreasonable that the First Direct representative didn't appear to hear Mr L making this point. And in any event Mr L didn't receive a response from the First Direct representative, who continued in their flow setting out the details of the checks. So, Mr L was aware he hadn't received an acknowledgement or answer to his point.

Later in the call the First Direct representative again goes through the details of the credit search that would be conducted, and how the information would be recorded on Mr L's credit file, which could impact any future lending applications. Mr L acknowledged the information and confirmed he was happy to proceed.

So, taking all of the above into account I consider the First Direct representative provided Mr L with enough information to reasonably make him aware that a hard credit search would be conducted.

It therefore follows I don't consider First Direct acted unreasonably when conducting a hard credit search as part of its checks when looking to increase Mr L's overdraft limit; and as such I'm not directing it to take any action in relation to this part of Mr L's complaint.

Having listened to all calls between July and October 2023 I understand First Direct was able to assist Mr L with a temporary overdraft limit increase when its financial support team became involved. So, First Direct was able to tailor its services to Mr L's individual situation and support him in achieving his financial objectives through alternative means.

#### The level of service provided by First Direct during the complaints process

Our investigator said he couldn't consider this part of Mr L's complaint, as complaint handling itself isn't a regulated activity. While that is correct, Mr L raised his concerns about First Direct's handling of his complaint as part of the ongoing issue he'd experienced with First Direct's lending decision, which is therefore connected to an underlying regulated activity which is still disputed. As his concerns about its handling of his complaint are ancillary to the complaint our service can consider, it therefore follows I can consider Mr L's concerns about the handling of his complaint.

Mr L has said he feels First Direct discriminated against him because it failed to make reasonable adjustments when he declared a health diagnosis, which is a disability and a protected characteristic under the Equality Act 2010.

While I'd like to assure Mr L I've taken the Equality Act 2010 into account when deciding this complaint – given it's relevant law – I've ultimately decided this complaint based on what's fair and reasonable in the circumstances. If Mr L wants a decision about whether First Direct has breached the Equality Act 2010, then he'd need to go to Court to receive this.

I acknowledge Mr L feels First Direct didn't make reasonable adjustments; and considers it provided him with a level of service below what he ought reasonably to have expected or received. But having reviewed all the evidence I don't consider First Direct has acted unreasonably in the individual circumstances.

I say this because I consider First Direct did make reasonable adjustments when dealing with Mr L. It provided Mr L with a more tailored service via its customer care team during ongoing discussions about his financial situation and during the complaints process. And although a formal overdraft wasn't agreed, First Direct's financial support team were able to conduct an overall review of Mr L's financial circumstances and agree a temporary overdraft arrangement to meet his short-term financial needs. Having listened to all of the calls between July and October 2023 it's clear First Direct did provide Mr L with a more tailored service and provided reasonable adjustments in order to look to support him.

I accept Mr L made First Direct aware that he wanted to speak with the complaint handler, and latterly their manager, to discuss the outcome reached. I note the complaint handler did attempt to call Mr L to discuss his complaint, however this call was unsuccessful, so a second final response letter was issued stating the same outcome.

Mr L has said he was working and couldn't take the call; and that a call ought to have been scheduled for a mutually convenient time. While Mr L may have preferred to have discussed the outcome on the phone with the complaint handler, he had already been provided with First Direct's outcome and the rationale for the decision it had reached in writing, which is the communication method he'd agreed to in an earlier call. Mr L was also made aware on multiple occasions that a call back from the complaint team couldn't be guaranteed; and that if he was unhappy with First Direct's outcome then the next step would be to refer his

complaint to our service for review, as per the referral rights provided within the final response letters.

So, while I can understand the reasons Mr L wanted to discuss the outcome over the phone with First Direct, I don't find it unreasonable that after an unsuccessful attempt to call was made First Direct explained to Mr L that he needed to refer his complaint to our service if he remained unhappy.

I am sorry to disappoint Mr L. It's clear how strongly he feels First Direct have unfairly impacted his credit file; and provided him with an unreasonable level of service when dealing with his complaint. But as I've set out above, I don't consider First Direct made an error when setting out details of the credit search it would complete; or that it acted unreasonably when dealing with his complaint. So, it therefore follows I'm not directing First Direct to take any action in resolution of the complaint.

### **My final decision**

For the reasons set out above my final decision is that I'm not upholding Mr L's complaint about HSBC UK Bank Plc trading as first direct.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 6 January 2025.

Richard Turner  
**Ombudsman**