

The complaint

Mr K complains that HSBC UK Bank Plc failed to identify his reliance on his overdraft and that it had become hardcore debt. He says HSBC didn't conduct appropriate assessments of his overdraft facility resulting in him incurring significant interest charges.

Mr K is represented by a third party but for ease of reference I have referred to Mr K throughout this decision.

What happened

Mr K says that he wasn't using his overdraft for short term / emergency borrowing and instead it was hardcore borrowing that he was reliant on for his essential spending. He says that HSBC didn't carry out assessments of his overdraft usage and that he incurred significant interest charges.

HSBC issued a final response letter dated 8 August 2023. It said that prior to overdraft lending being provided it carried out detailed credit worthiness and affordability checks. It said that it reviewed overdrafts regularly to ensure they were meeting a customer's short-term borrowing needs and that it will contact customers where an overdraft is being used repeatedly. HSBC said that it sent letters to Mr K dated 8 March 2023, 13 March 2023 and 2 June 2023 inviting him to speak with it about his overdraft. It said it also sent Mr K emails in October, November and December 2022 and March and May 2023 offering support during the cost of living crisis. Based on this HSBC didn't uphold Mr K's complaint.

Mr K's complaint was referred to this service.

Our investigator didn't uphold this complaint. She initially considered the limit increase and thought that the checks undertaken before this was provided were reasonable. She said the checks didn't show evidence of Mr K being in financial difficulty and so there was nothing to suggest the lending was irresponsible. She then reviewed the interest and charges applied to Mr K's account and his overdraft usage. She said Mr K's account didn't show signs of financial difficulty that should have prompted HSBC to do anything differently based on his financial circumstances.

Mr K didn't agree with our investigator's view.

My provisional conclusions

I issued a provisional decision upholding this complaint from July 2022. The content of my decision is set out below.

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.

Mr K was provided with a £1,000 overdraft in November 2017. Banks are expected to review an account on an ongoing basis, and it is generally accepted that a bank should review a

customer's overdraft usage on an annual basis. I haven't seen any evidence of reviews being undertaken and so I have looked at Mr K's account statements for the period being assessed to identify what HSBC would have seen in a review.

On the basis that it would have been reasonable to expect a review to take place in or around November 2018, and then annually thereafter (alongside ongoing monitoring of the account), I have looked at the statements leading up to November 2018 and then through to November 2021 (the anniversary before the overdraft limit increase). These show that Mr K was making regular use of his overdraft. He tended to spend the majority of the month overdrawn (and in certain months he only spent a few days in credit) but he was also clearing the overdraft every month and would then remain in credit for a period of time. He was earning a regular income, and this was enough to clear the overdraft each month. So, while I think that Mr K's use of his overdraft was for more than emergency spend, I do not find that I have enough to say that his usage showed he had hardcore debt or that HSBC should have taken further action.

HSBC agreed to increase Mr K's overdraft limit to £1,500 in July 2022. I can see that at the time of the application, Mr K's income was recorded as £30,000 and he was working fulltime. Mr K had a credit card with HSBC with a credit limit of £9,500. HSBC recorded credit data being used in the decision to lend. I have looked at Mr K's credit report and this shows that at the time of his application he had several other credit cards. He wasn't using his credit cards to their limits, and he appeared to be maintaining his repayments but his balances on the credit cards at that time totalled around £11,500. In the three months prior to Mr K's limit increase application, he had only spent a few days in credit and while he was receiving a regular income this wasn't clearing his overdraft.

As a review of Mr K's credit commitments took place in July 2022 and I think it reasonable that HSBC would also have reviewed his account behaviour and overdraft usage at this point, I find that the information available to HSBC at that time suggested Mr K's overdraft had become hardcore borrowing and that he was no longer using it for short term purposes. I also find that as Mr K's income was no longer clearing the overdraft - and he had other credit commitments he needed to maintain - the overdraft he had at the time had become unsustainable.

All of this means that not only should HSBC not have increased Mr K's overdraft limit at this time, but it shouldn't have continued offering the existing overdraft on the same terms. It should have instead treated Mr K with forbearance, even if this meant taking corrective action in relation to the facility. As HSBC didn't react to Mr K's overdraft and instead continued charging in the same way, I think it failed to act fairly and reasonably. Because of this I uphold this complaint from July 2022.

HSBC confirmed that it had no further points to raise in response to my provisional decision and referred back to the evidence already supplied. Mr K provided copies of his account statements from 2018 and requested that the refund be considered to take place from an earlier date.

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.

Mr K was provided with an overdraft of £1,000 in November 2017. At the time the information gathered showed he was employed full time with an annual income of £27,000. His complaint is that he became reliant on the overdraft and that HSBC didn't monitor his account adequately to identify that he was using the overdraft as hardcore borrowing. In my

provisional decision I upheld Mr K's complaint from July 2022, when a limit increase was applied to his overdraft facility. In response to my provisional decision Mr K said that he had been reliant on his overdraft from 2018.

I have considered Mr K's comment and looked again at the bank statements provided for the period from 2018, but having done so, my conclusions haven't changed. As I set out in my provisional decision, I thought it reasonable that HSBC would have reviewed Mr K's overdraft usage in November 2018 (being a year after the overdraft was provided). Having looked at his account statements from this date up to the time the limit was increased, I find that Mr K was making regular use of his overdraft and spent significant portions of the month overdrawn. However, during this period, he was earning a regular income, and this was enough to clear the overdraft each month. So, while I think that Mr K's use of his overdraft was for more than emergency spend, I do not find that I have enough to say that his usage showed he had hardcore debt or that HSBC should have taken further action at that time.

However, for the reasons I set out in my provisional decision, I do not find that it was reasonable that HSBC increased Mr K's overdraft limit in July 2022 and instead I think it should have realised that Mr K's overdraft had become hardcore borrowing and that he was no longer using it for short term purposes. Mr K's income was no longer clearing the overdraft - and he had other credit commitments he needed to maintain – meaning the overdraft had become unsustainable. So, following a review in July 2022, I think HSBC shouldn't have continued offering the existing overdraft on the same terms. It should have instead treated Mr K with forbearance, even if this meant taking corrective action in relation to the facility.

In conclusion, while I note Mr K's comments in response to my provisional decision, I find that the complaint should be upheld from July 2022.

Putting things right

HSBC should:

- Rework Mr K's current overdraft balance so that all interest, fees and charges applied to it from July 2022 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr K to arrange a suitable repayment plan, Mr K is encouraged to get in contact with and cooperate with HSBC to reach a suitable agreement for this. If HSBC considers it appropriate to record negative information on Mr K's credit file, it should reflect what would have been recorded if it had started the process of taking corrective action on the overdraft in July 2022.

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 K 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 K's credit file.

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

My final decision

My final decision is that HSBC UK Bank Plc should take the action set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 19 April 2024.

Jane Archer
Ombudsman