

## **Complaint**

Mr L has complained about the overdraft charges HSBC UK Bank Plc (“HSBC”) applied to his current account. He’s said the charges were applied unfairly as he remained at the upper limit of his overdraft for a prolonged period.

Mr L is being represented in his complaint.

## **Background**

Mr L’s complaint was looked at by one of our investigators. He didn’t think that HSBC had done anything wrong and so didn’t uphold the complaint. The representative, on Mr L’s behalf, disagreed with the investigator and asked for an ombudsman’s decision.

## **My findings**

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having carefully considered everything provided, I’m not upholding Mr L’s complaint. I’ll explain why in a little more detail.

Before I go any further, as this essentially boils down to a complaint that Mr L was unfairly charged by being allowed to continue using his overdraft, I want to be clear in saying that I haven’t considered whether the various amounts HSBC charged were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately how much a bank charges for services is a commercial decision. And it isn’t something for me to get involved with.

That said, while I’m not looking at HSBC’s charging structure per se, it won’t have acted fairly and reasonably towards Mr L if it applied this interest, fees and charges to Mr L’s account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr L was experiencing financial difficulty. So I’ve considered whether there were instances where HSBC didn’t treat Mr L fairly and reasonably.

In other words, I’ve considered whether there were periods where HSBC continued charging Mr L even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew he was in financial difficulty or it ought to have realised this was the case. I’ve looked through Mr L’s account statements throughout the period concerned. And I can’t see that HSBC ought to have taken corrective measures in relation to Mr L’s overdraft.

It’s fair to say that Mr L used his overdraft and the representative appears to be suggesting that this in itself was an indication that HSBC ought to have taken action. But it is too simplistic to say that it automatically follows that someone was in financial difficulty simply because they were using a financial product that they were entitled to use.

I think it’s important to look at overall circumstances of a customer’s overdraft usage – particular in light of what this may suggest about their overall position. So, in this case, I’ve

considered Mr L's incomings and outgoings as well as any overdrawn balance and thought about whether it was possible for him to have stopped using his overdraft, based on this.

After all if Mr L was locked into paying charges because there was no prospect of him exiting his overdraft then his facility would have been unsustainable for him. So I've carefully considered whether this was the case.

The first thing for me to say is that Mr L's monthly salary far exceeded the amount of his overdraft limit. So this isn't a case where the borrower was permanently in their overdraft. There were periods each month where Mr L was in credit – although I do accept that there were times where Mr L would have met the criteria of someone who displayed a pattern of repeat use of their overdraft.

That said, even though this is the case, the question here is whether Mr L's use of his overdraft was causing him to incur high cumulative charges that were harmful to him. And having considered matters, I don't think that this is the case.

To explain, while I'm not seeking to make retrospective value judgements over Mr L expenditure, nonetheless there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mr L's account. Indeed, it's fair to say a significant proportion of Mr L's expenditure was discretionary and the credits going into his account suggested he could have cleared his overdraft within a reasonable period of time had he wished to do so.

Equally, I can't see anything to indicate that the charges he was incurring for what was on the whole discretionary spending was causing him harm. For example, I can't see that he was borrowing from unsustainable sources in order to meet the charges or that his borrowing was increasing exponentially.

I accept neither of these things in themselves (or when taken together) mean that Mr L wasn't experiencing difficulty. But I don't agree that Mr L was reliant on credit in the way that the representative is suggesting. He was quite comfortably able to make his commitments without using his overdraft. However, he was choosing to use his overdraft to make discretionary transactions. I don't think that the fact that Mr L had a loan with HSBC meant that he shouldn't have been allowed to use an overdraft either.

Indeed, if I take the representative's argument to its logical conclusion, this would mean that any customer who uses any form of credit would be reliant on it. And they should not be allowed to use an overdraft, or any other credit, in such circumstances. There is nothing in any of the regulators rules, guidance or good industry practice which indicates that it would be a matter of fact that a customer is struggling financially should they be using credit in the way that Mr L was. Crucially, I've not seen anything to dictate that HSBC ought to have realised that Mr L was struggling.

So overall and having considered everything, I don't think that it was unreasonable for HSBC to have proceeded adding the charges that it did. This is particularly bearing in mind the consequences of taking corrective action, in the way that it would have done had it acted in way that the representative is suggesting, in these circumstances would have been disproportionate. I don't think HSBC charged Mr L in circumstances where it ought to have realised that it was unfair to do so.

In reaching my conclusion I've noted that the representative's letter of complaint indicates that HSBC breached the duties it owed to Mr L under s140A of the Consumer Credit Act 1974 ("CCA"). It is unclear exactly what duties the representative believes HSBC breached. This is because s140A is concerned with a court's ability to make an order under s140B

should it determine that the relationship between a creditor and a debtor is unfair to the debtor, rather than any specific duties owed by a creditor to a debtor.

Nonetheless and for the sake of completeness, I wish to confirm that I'm satisfied HSBC did not act unfairly in allowing Mr L to use his overdraft in the way that he did. And I've not been presented with anything and neither have I seen anything else, which leads me to think that the facts and circumstances of this particular case mean it is likely that a court would conclude that the relationship between HSBC and Mr L was unfair to Mr L under s140A of the CCA.

As this is the case, I'm not upholding Mr L's complaint. I appreciate that this will be very disappointing for Mr L. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

### **My final decision**

For the reasons I've explained, I'm not upholding Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 6 May 2024.

Jeshen Narayanan  
**Ombudsman**