

Complaint

Miss F has essentially complained that HSBC UK Bank Plc (“HSBC”) unfairly provided her with an overdraft that was unaffordable.

She also says that it continued applying charges to her overdraft even after it should have realised that she couldn’t sustainably repay it. Miss F argues that by this stage she had been constantly in her overdraft and it was clear that she didn’t have the means to come out of it.

Background

Miss F was provided with an overdraft that had a limit of £350 in April 2017. Miss F’s overdraft limit was increased to £1,500.00 in July 2019, then £2,000.00 in July 2023 and finally £3,000.00 a few days later in July 2023.

One of our investigators looked at this complaint and thought HSBC should have realised that Miss F’s overdraft had become unsustainable for her by August 2021 and so it shouldn’t have added the charges it did from this point onwards.

HSBC didn’t agree with the investigator’s assessment of the complaint. And it asked for an ombudsman’s review.

My provisional decision of 3 June 2024

I issued a provisional decision – on 3 June 2024 - setting out why I was intending to uphold Miss F’s complaint and require HSBC to refund all the interest it added on Miss F’s overdraft from December 2021.

In summary, I was intending to uphold Miss F’s complaint because I was satisfied that HSBC ought to have realised that Miss F’s overdraft had become unsustainable for her by the time that it sent her a further repeat overdraft usage letter in December 2021.

Responses to my provisional decision

HSBC responded to confirm that it was prepared to settle the complaint along the lines that I’d proposed in my provisional decision.

Miss F didn’t respond to my provisional decision or provide anything further for me to consider.

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, including the responses to my provisional decision of 3 June 2024, I'm still partially upholding Miss F's complaint. I'll explain why in a little more detail.

HSBC's initial decision to provide Miss F with an overdraft and then increase the limit on it to £1,500.00

Although Miss F has referred to her usage of her overdraft from December 2020 onwards, as she has repeatedly referred to the affordability of the facility, I do think it's worth me setting out some brief thoughts on whether HSBC acted fairly and reasonably when providing her with an overdraft in the first place and then increasing the limit to £1,500.00 in July 2019.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when considering Miss F's complaint.

HSBC needed to make sure that it didn't lend irresponsibly. In practice, what this means is HSBC needed to carry out proportionate checks to be able to understand whether Miss F would be able to repay what she was being lent before providing any credit to her.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough - in terms of how much information it gathers and what it does to verify it - in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

HSBC says that it will have obtained some information on Miss F's income and her expenditure before deciding to lend to her. It says that this will have been cross-referenced against information it obtained on the funds going into Miss F's main account and her existing credit commitments which it obtained from credit reference agencies.

Miss F's overdraft was an open-ended (running account) agreement (in other words, while HSBC was required to periodically review the facility, there was no fixed end date) where there was an expectation that she'd repay what she borrowed plus the interest due within a reasonable period of time.

CONC didn't (and still doesn't) set out what a reasonable period of time was. So I think it's important to note that a reasonable period of time will always be dependent on the circumstances of the individual case.

It's fair to say that overdraft limits of £350 and £1,500.00 will not have required huge credits in order to clear the full amount that could have been owed within a reasonable period of time. Furthermore, HSBC's earliest records (which I accept are a little after the overdraft was initially provided) show that Miss F was earning around £1,500.00 a month.

I'm also mindful that the credit check carried out in July 2019 showed that Miss F had little in external debt and what she did have was being managed reasonably. I'm satisfied that there wasn't anything to indicate that Miss F was having financial difficulties or struggling with repayments to credit in April 2017 or July 2019.

Taking into account all of this information, in particular Miss F's salary as well as the amount that could be owed on limits of £350 and £1,500.00, I think that HSBC was entitled to conclude that Miss F had sufficient funds to cover sustainable credits to her overdraft in April 2017 and July 2019 and also cover whatever regular monthly living costs she may have had.

And as this is the case, I'm not upholding Miss F's complaint on the basis that HSBC should not have provided her with an overdraft or the limit increase in April 2017 and July 2019.

The position from December 2021 onwards

Even though I don't think that HSBC acted unfairly or unreasonably when providing Miss F with her overdraft, or when increasing her limit to £1,500.00 in July 2019, HSBC still had an ongoing duty to review Miss F's overdraft and consider whether it was fair and reasonable for it to continue allowing her to use the facility in light of the way she was using it.

I've considered whether HSBC acted fairly and reasonably in this regard.

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.

Having considered everything provided, I think HSBC acted unfairly when it continued adding interest and associated fees and charges to Miss F's overdraft from December 2021. By this point, it was evident that Miss F's overdraft had become unsustainable for her and that continuing to provide it was likely to cause significant adverse consequences.

Looking at Miss F's statements leading up to this period it is clear that Miss F was struggling to maintain a credit balance for any sort of meaningful period of time. For reasons, I'll explain further on by this stage it ought to have been apparent that Miss F's overall financial position was worsening. So it's difficult for me to see how she was in a position to clear her outstanding balance within a reasonable period of time.

All of this means that HSBC should have realised that Miss F wasn't using her overdraft as intended and as the account conduct had suggested it had become unsustainable shouldn't have continued offering it on the same terms.

In reaching my conclusion, I've considered what HSBC has said about having sent Miss F a number of letters telling her that she was using an overdraft in the way that she was expensive and that she should get in contact if she was experiencing difficulty. HSBC says that Miss F should have reached out if she was struggling and it was limited in what it could do because she didn't get in contact. Furthermore, I've also given careful thought to the fact that our investigator thought that HSBC acted unfairly in allowing Miss F to continue using her overdraft from August 2021, rather than December 2021.

I've also seen what HSBC has said about Miss F's savings account balances and that it is unfair not to take this into account in any determination of her ability to continue using her overdraft sustainably. I do accept that Miss F doesn't appear to have been using her current account any differently in December 2021, than she had been using it in August 2021.

However, having looked at Miss F's main savings account statements, it is clear that she had been transferring funds between her current account and savings accounts. And in August 2021 the headline balance on Miss F's main savings account shows that she did have the funds, at the time at least, to clear her overdraft completely and potentially stop

using it – her savings balance was well in excess of her overdraft balance. So I don't agree that it was clear Miss F didn't have the means to come out of her overdraft at this stage.

In these circumstances – where Miss F did have the required funds – I don't think that it would have been fair and reasonable for HSBC to have taken unilateral action in relation to Miss F's overdraft, on the basis that she couldn't repay it. This is especially bearing in mind the implications of HSBC taking corrective action unilaterally in this way and the fact that this would have been disproportionate as Miss F almost certainly would have repaid the overdraft from her savings, if told that her facility would be withdrawn if it wasn't repaid, given she'd been transferring funds from it to her current account.

I've also thought about what HSBC has said about sending Miss F repeat overdraft use letters. I think that it's worth me starting by saying that the fact that HSBC felt the need to send Miss F so many letters means that it recognised there was a problem with the way that Miss F was using her overdraft.

Indeed, if I take HSBC's argument to its logical conclusion here, I see it as being that it acted fairly and reasonably towards Miss F because it sent her letters as it had identified that her overdraft usage had become a problem. But because Miss F didn't respond to the letters it was reasonable to continue allowing her to use her overdraft in the same way, notwithstanding that it had identified her use of her overdraft as being problematic.

In my view, this 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 in circumstances where they simply cannot do so.

While Miss F didn't contact HSBC, most likely because she 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 her problematic overdraft usage would correct itself.

I also think that Miss F didn't necessarily completely ignore the letters that she was sent. She may not have contacted HSBC about these letters but account statements clearly show that she was transferring funds from her main savings to her current account. And this is likely to have been done in order to reduce what she owed on her overdraft.

HSBC sent Miss F a further repeat overdraft usage letter in December 2021. This letter stated that it had noted Miss F had been using her overdraft for over 85% of the previous three months. Furthermore, HSBC also ought to have noted that this had happened despite Miss F having transferred a significant proportion of the funds from her main savings account to her current account during this period. Indeed, she had pretty much depleted the funds in the account by December 2021.

I've explained why I think that HSBC could quite reasonably have concluded that Miss F did have the funds to clear the balance on her overdraft in August 2021. However, given the vast majority of these funds had been used by December 2021 and Miss F was still using her overdraft for over 85% of the time in this period, I don't think that it would have been fair and reasonable for HSBC to have reached this same conclusion in December 2021. By this stage Miss F no longer had the funds to clear the overdraft balance. Most of the funds had been transferred over and she was still regularly overdrawn.

In these circumstances, I'm satisfied that HSBC should have stopped providing the overdraft on the same terms and treated Miss F with forbearance by December 2021. As HSBC did not react to Miss F's problematic overdraft usage and instead continued charging her in the

same way, while allowing her to continue using the facility in an unsustainable way, I think that HSBC failed to act fairly and reasonably towards Miss F.

Miss F ended up paying additional interest, fees and charges on her overdraft at a time when her usage indicates it had become unsustainable for her. So I'm satisfied that Miss F lost out because of what HSBC did wrong and that it should put things right.

Given Miss F has complained about the further limit increases on her facility, I would ordinarily go on to consider whether HSBC acted fairly and reasonably when agreeing to increase Miss F's overdraft limit in July 2023.

However, as I've found that HSBC should already have taken corrective action in December 2021, which is well in advance of July 2023, and my direction on how HSBC should put things right already addresses any consequences of these increases, I do not consider it necessary to reach a finding on whether it was fair and reasonable for HSBC to increase Miss F's overdraft limit in July 2023.

I note that HSBC has referred to what it is doing to put things right on a separate complaint which Miss F has made about a personal loan that HSBC provided her. However, for the avoidance of doubt, I wish to make it clear that while HSBC has referred to the compensation on Miss F's loan, I make no finding on this matter and I am not including a direction on how any compensation on how any compensation for that complaint should be used in this final decision which is solely about Miss F's overdraft.

Fair compensation – what HSBC should do to put things right for Miss F

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

- Reworking Miss F's current overdraft balance so that all interest, fees and charges applied to it from December 2021 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Miss F to arrange a suitable repayment plan, Miss F 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 Miss F'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 December 2021. HSBC can also reduce Miss F's overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave her over her 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 Miss F 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 Miss F's credit file. HSBC can also reduce Miss F'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 Miss F a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained above and in my provisional decision of 3 June 2024, I'm partially upholding Miss F's complaint. HSBC UK Bank Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 16 July 2024.

Jeshen Narayanan
Ombudsman