

The complaint

Mr and Mrs C complain that HSBC UK Bank Plc has unfairly reduced the borrowing limit of their HomeOwner Reserve (“HOR”) account (a form of mortgage current account) to zero and closed their account without notice.

What happened

Mr and Mrs C had a HOR account with HSBC which they say was sold to them in 2005. Due to the time that has passed since this product was sold, our service has not seen a copy of the original agreement. That said I do understand that the account was agreed on a revolving facility with a limit of £180,000, with any debt repayable secured against Mr and Mrs C’s property. This meant that Mr and Mrs C could draw down and pay back funds at any time within the agreed limit.

The mortgage was agreed on a capital repayment basis, meaning that each month Mr and Mrs C would have to pay interest on the amount of any outstanding borrowing, along with repaying some capital. There was no end term to the mortgage, it was expected that the balance would be paid at some point in the future. Mr and Mrs C say they believed that the account would run for their lifetime or until the property was sold.

Over the years Mr and Mrs C have been mostly using the facility – they’ve made several large deposits into the account and regular drawdowns. Mr and Mrs C have maintained their monthly repayments when due.

HSBC has sent Mr and Mrs C annual statements for the account. HSBC has provided our service with copies of the statements from 2017 onwards – as this is the earliest available. These statements set out the transaction history for the period along with a reminder of the account’s key terms. The statements reminded Mr and Mrs C about the remaining term of the mortgage. They say:

“Remaining Term

Your HomeOwner Reserve is an open-ended facility but it can be withdrawn on 30 days notice (or immediately in certain circumstances specified in the terms and conditions)”

In April 2020 Mr and Mrs C deposited £171,000 into the account. It was their intention to reuse the funds, so they wrote to HSBC to gain confirmation that they’d be able to draw down the funds again when required. HSBC responded to say:

“I have checked the facilities of your Home Owner Reserve and can see that this has a revolving facility. This means you can draw from the loan and pay back at any time within the agreed limit.”

Mr and Mrs C made several withdrawals throughout 2021 and 2022. They say they drew down these funds to invest in a property conversion which they sold in Spring 2022. £167,000 was paid into the account in March 2022 almost reducing the balance to zero. A

small debit balance was maintained in the account thereafter and by June 2024 the account balance was £7.33 in debit. Mr and Mrs C say that they deposited these funds with the intention of reinvesting once the interest rates reduced and they say that access to the funds formed part of their wider retirement planning.

On 22 July 2024 HSBC wrote to Mr and Mrs C to say that it had reduced their reserve limit to zero with immediate effect. HSBC said that it had stopped offering this type of account in 2005 and it had decided to close all remaining accounts once the outstanding balance had been repaid. The letter explained what this meant for Mr and Mrs C:

“What this means for you

From the date of this letter, you should be aware:

- *You’ll no longer be able to take out additional money from your HOR account from the date of this letter. You’ll no longer be able to increase your borrowing on the account or make any payments from it.*
- *We’ve reduced the interest rate to 0%, so any balance you already have is now interest free.*

We understand this may affect your future financial plans so if you still have any questions after reading this letter and the enclosed Frequently Asked Questions, please get in touch using the relevant number below.”

Mr and Mrs C’s regular payment was taken on 25 July 2024 which reduced their balance to zero. HSBC closed the account on 5 September 2024.

Unhappy with this, Mr and Mrs C complained to HSBC. Mr and Mrs C feel that HSBC has improperly reduced their borrowing facility limit without notice which they say is a breach of the account terms. Mr and Mrs C say the terms as they understood them did allow for HSBC to withdraw the account with 30 days’ notice in circumstances where the customer had breached the contract terms – which they’d not done.

Mr and Mrs C say that if they’d had an outstanding balance, HSBC would allow them to make their monthly repayments interest free until the balance was cleared. With notice, they would have drawn down the full amount and invested in an interest-bearing account to make a profit. Or at the very least they say that had the facility continued in its normal way they would have withdrawn the funds to invest in a buy-to-let property which they say on an interest rate that tracks 1% above the bank of England base rate, would generate a profit for them.

Mr and Mrs C say they’re happy for HSBC to agree to either of these options as a resolution to their complaint.

HSBC didn’t uphold the complaint. It said it no longer felt the account was an appropriate product for it to offer in the current economic climate and so it had made the commercial decision to withdraw these accounts using a phased approach. First by removing the reserve limit to prevent further borrowing, then once the existing balance was repaid, closing the account with 30 days’ notice. HSBC was satisfied this was in line with the Terms and Conditions (“T&C”) of the account, and that the annual statements sent to Mr and Mrs C were a regular reminder that it could close the account with notice.

Unhappy with HSBC’s response, Mr and Mrs C brought their complaint to the Financial Ombudsman Service. An investigator looked into things and explained that when

considering this case he needs to think about two key things. Firstly, whether HSBC has acted in line with the terms and conditions but also importantly whether HSBC's actions had resulted in unfairness when considering Mr and Mrs C's individual circumstances.

In doing so, he didn't recommend that the complaint be upheld. He said that HSBC was entitled to reduce the borrowing limit and close the account in the way that it did, and he didn't find that HSBC had acted unfairly or unreasonably in the circumstances of this case.

Mr and Mrs C didn't agree and asked for their case to be decided by an Ombudsman. They gave several reasons why they disagreed with the investigator's opinion. In summary Mr and Mrs C said:

- They were sold this account on the basis that the facility would run for their lifetime or until the property was sold, like an equity release facility except the interest did not accrue. There is enough equity in the property to repay the facility.
- They understood that the facility would only be withdrawn if they missed the monthly payments or defaulted in some way. They have always complied to the contractual terms of the mortgage. It wasn't made clear to them that those terms changed in 2017.
- It is inconceivable that HSBC suggest the account was not closed without notice when the sole purpose of the account was to loan money which was removed without notice.
- HSBC told them in its message dated 17 April 2020 that they had a rolling facility. Had they been told at that time the facility was not permanent they would have drawn it down and kept it in reserve.
- They received a letter just one month before the closure letter, there was no mention of any closure at that time.
- Whilst they've not tried obtaining alternative borrowing, they're virtually certain they would have difficulty matching the terms of the HOR account which they understood were contractual.
- HSBC decided to close the account without any consideration of their circumstances, and they question the exact date the account was closed after the balance reduced to zero on 25 July 2024.

The investigator considered Mr and Mrs C's comments but explained why his opinion remained unchanged. The case has now been passed to me to issue a 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.

Having done so, I don't think this complaint should be upheld. I realise this will be disappointing for Mr and Mrs C. But I hope the reasons I have set out below will help them to understand why I have come to this conclusion.

When deciding this case, I must first satisfy myself that HSBC has acted in accordance with the T&Cs of the mortgage by removing Mr and Mrs C's HOR account facility and

subsequently closing their account in the way that it did. I must then think about whether HSBC's exercise of its commercial judgement, even if in line with its policy and the terms and conditions, resulted in a fair outcome in the particular circumstances of Mr and Mrs C's case, taking into account the general principles of fairness.

Has HSBC acted in line with the terms and conditions?

The initial loan agreement for this account isn't available. Given that over 20 years has passed since Mr and Mrs C took the HOR account, I don't consider it unreasonable that HSBC has not been able to provide a copy of the original loan agreement. That said, HSBC has provided a copy of the account's T&Cs. The relevant terms say:

"2. The limit on the Account shown in Section 4 above is stated in the offer but we may at our discretion vary the limit..."

10. You may close the Account at any time by paying us the outstanding balance plus interest due. We may close the Account at any time by giving you 30 days prior written notice."

Mr and Mrs C say they agreed to this account on the understanding that it would run for their lifetime or until the property was sold. And they understood that HSBC could close the account by giving 30 days' notice but only in circumstances where they were in breach of contract.

I'm satisfied that the T&Cs clearly set out that HSBC can, at its discretion, vary the reserve limit. The T&Cs also confirm HSBC may close the account at any time by giving Mr and Mrs C 30 days prior written notice. There is nothing written in the T&Cs that implies that the loan had no end date nor were there any limitations attached to HSBC's ability to close the account by giving 30-days' notice – as Mr and Mrs C suggest.

I've also gone on to consider the importance of the annual statements sent to Mr and Mrs C as these also provide a regular reminder that the account has always been open-ended but can be withdrawn at any time on 30 days' notice. The statements also say that the borrowing facility can be withdrawn immediately in certain circumstances specified in the T&Cs. This likely includes – but is not limited to – circumstances where the borrower has failed to meet the obligations of the agreement.

It's important to note that whilst HSBC has likely provided Mr and Mrs C with annual statements dating back to the start of the agreement, the earliest copy I've seen is dated 2017. I've relied on the evidence available to satisfy myself that the above reminder was included in the annual statements dating back to 2017 at least. This does not in any way suggest a change of the T&Cs at this time, it just means in the absence of any earlier statements I can't say for certain what detail was included before this date. That said the information in the statements I've seen is consistent with the original T&Cs of the agreement, so I'm satisfied there has been no change in the loan terms over the years as Mr and Mrs C imply.

Mr and Mrs C say that HSBC closed their account without notice. HSBC wrote to Mr and Mrs C on 22 July 2024 to say that it had used its discretion to remove the facility limit – which had the effect of preventing them taking further borrowing – and it gave notice that once the balance reduced to zero the account would close. The limit reduction and the closure are two separate things and are referred to separately in the terms and conditions. Reducing the limit to zero without notice doesn't mean the account was closed without notice. Mr and Mrs C's July 2024 payment reduced their balance to zero and HSBC has shown evidence that the account closed on 5 September 2024 – more than 30 days after it

gave notice of the intended closure in its 22 July 2024 letter and more than 30 days after the balance was actually reduced to zero.

Mr and Mrs C have said that they received no notice before July 2024 of the intended changes to the account. Mr and Mrs C say that they received their annual statement only a month before in July 2024 that made no mention of the closure. I don't think it was a requirement to mention to the closure in the annual statements – this is what the letter sent to Mr and Mrs C in July 2024 was intended for.

Mr and Mrs C also say that when they enquired about the terms of their mortgage in April 2020, HSBC specifically told them that they had a rolling facility which can be drawn and paid back at any time within the agreed limit.

I don't think HSBC's actions in 2024 are inconsistent with its April 2020 message. Mr and Mrs C were told that the account would operate "within the agreed limit". And as explained above, HSBC was entitled to reduce the limit. So, what HSBC told Mr and Mrs C in April 2020 was accurate at the time, and it gave no assurance that this would never change.

The fact remains that HSBC wrote to its customers once the decision had been made to reduce the agreed limit. There was no obligation for it to tell its customers about the closure before such decision was made – indeed, it could not have told them it had decided to reduce the limit before it had actually done so. That said, I'm satisfied for the reasons I've explained that Mr and Mrs C received sufficient reminders in their annual statements that the facility could be reduced at any time, so they were on notice that this was always a possibility.

So, taking everything into account, I'm satisfied that HSBC has acted in accordance with the account T&Cs that Mr and Mrs C agreed to at the outset. And I've not seen anything in HSBC's communication over the years that suggests the account would operate in any other way than as set out in the original T&Cs.

That said, it's also necessary for me to consider whether I think HSBC has acted fairly and reasonably in how it has exercised those terms. In doing so, I've considered the submissions made by both parties – including the reasons given by HSBC for why it took this action when it did and everything Mr and Mrs C have said about how they've been impacted as a result.

Did HSBC treat Mr and Mrs C fairly in reducing the limit?

Our investigator has accurately explained that since the HOR accounts were first offered, the rules and regulations have changed, placing a greater expectation on lenders to ensure they are lending responsibly. For example, lenders must carry out and evidence robust affordability assessments and understand customers' financial objectives before agreeing to lend. While I don't think that would apply to increased borrowing within a pre-agreed facility limit, it's also fair to note that it's many years since HSBC checked whether borrowing at that level was affordable for Mr and Mrs C.

Since the loan was first agreed, Mr and Mrs C have been able to borrow up to a limit of £180,000 by way of a secured loan against their residential property, without HSBC understanding their current financial situation and objectives. The only information HSBC had to rely on about Mr and Mrs C's ability to repay the loan was obtained over 20 years ago and it's likely that their circumstances have changed during that time. That's not to say that Mr and Mrs C couldn't afford to repay the loan, but I also don't think it's unreasonable for HSBC to be concerned about the possibility for detriment of allowing such large borrowing to be taken so long after there was last an assessment of affordability.

That is not uncommon with what I know about the wider financial market – lenders have generally moved away from flexible drawdown products like the HOR account for much the same reasons given by HSBC. Mr and Mrs C have said that they've not yet tried obtaining alternative borrowing, but they do accept that they'll unlikely find lending that matches the terms of the HOR account. If that's so, I think the fact that they would be unlikely to obtain equivalent lending in today's market, applying today's lending standards, reinforces my view that it wasn't unreasonable for HSBC to be concerned whether the continued existence of such a large borrowing facility without checks risked causing customer detriment.

So having considered everything I don't think it's unreasonable for HSBC to review a product it created under a different regulatory environment and wider market conditions, to see if it was still right for its customers in 2024. And I don't think it acted unfairly when it took the action it did.

Whilst this may be the case, I also recognise that once the reserve limit was reduced and their balance cleared, there was little Mr and Mrs C could do with the HOR account anyway. Mr and Mrs C say that removing the facility and closing the account amount to the same thing as the sole purpose of the account was to loan money which was removed without notice. In reducing the limit without notice, effectively the account was closed without notice too.

So, I've gone on to think about whether the lack of notice resulted in unfairness. This means considering Mr and Mrs C's situation and how they were affected when HSBC lowered their borrowing limit without warning. Instead of focusing on the account closing after the balance hit zero, I'll focus on the core issue – the borrowing limit being removed without notice. Since they couldn't borrow, the account closing was just a natural result of that decision.

Did HSBC not giving Mr and Mrs C notice their limit was withdrawn result in unfairness?

The account's T&Cs allow HSBC to change the reserve limit without giving notice. That said, whilst not a requirement, HSBC could still exercise its discretion to give its customers notice. Even though HSBC was entitled to change the reserve limit without giving notice, I can still consider whether it's decision to act in this way has resulted in unfairness for Mr and Mrs C in their particular circumstances, and if so, what it would need to do to put things right.

Given the nature of the account, it's likely that how the account was being used varied amongst its customer group and so the impact of HSBC removing the limit without notice would very much differ for each customer. It's possible some customers would be utilising the flexibility of the HOR account and by having access to the funds disrupted, this could in some cases, cause financial difficulty or other detriment. And so, it's possible that HSBC deciding not to give notice that it was withdrawing the reserve limit, could result in unfairness in some situations. But whether it did for Mr and Mrs C, will depend on their own individual circumstances.

With that in mind, it might have been fair and reasonable to expect HSBC to have given some notice of its intention to reduce the limit – even though it wasn't required to do so - because of the potential impact doing so might have on individual customers. But, for reasons I'll go on to explain, I'm not persuaded that failing to do so resulted in unfairness to Mr and Mrs C in their particular circumstances.

Having reviewed the account transactions I can see that over the years Mr and Mrs C have actively used their HOR account and have on occasions deposited and withdrawn large amounts. Mr and Mrs C say that the withdrawn funds were used to fund property investments and the amounts paid in were from proceeds of sale. A withdrawal of £3,600 was made each month and repaid in at the time the monthly repayments were due which

meant their balance largely remained the same outside of the ad hoc payments and withdrawals.

The last significant payment made to the account was on 30 March 2022 for £167,000 taking Mr and Mrs C's balance to £575.81. Other ad hoc withdrawals and deposits happened thereafter but in close proximity. A small debit balance was largely maintained in the account thereafter and for at least a year before the limit was removed the account balance was less than £10 in debit.

So, Mr and Mrs C hadn't paid in recent money they were denied the opportunity to withdraw due to being given insufficient notice, rather they were just making their regular monthly payments as they always had, and they continued to withdraw the same amount each month – to likely maintain a minimal debit balance on the account for it to remain live. They had borrowed a large lump sum then repaid it in 2022 but hadn't used the account in a significant way for two years.

Mr and Mrs C have explained that they were intending on using the funds in the HOR account to fund the purchase of a buy-to-let property in the future. They say that they were waiting for the interest rates to reduce before investing.

Our investigator asked Mr and Mrs C about how far along their plans were and they've confirmed they'd only just started looking for a suitable property at the time of the limit reduction. So, I've not seen enough to suggest that any immediate plans were disrupted or that they were committed financially to a purchase that would cause them a direct financial loss by not being able to complete. For example, they'd not exchanged on a property relying on access to the HOR limit to fund completion. Rather, they simply wanted to retain the ability to borrow in future if they chose to do so.

Mr and Mrs C's intention for the funds was for future investment for personal financial gain. Mr and Mrs C say that if they'd had an outstanding balance, HSBC would allow them to make their monthly repayments interest free until the balance was cleared. With notice, they would have drawn down the full amount and invested in an interest-bearing account to make a profit. Or at the very least they say that had the facility continued in its normal way they would have withdrawn the funds to invest in a buy-to-let property which they say on an interest rate that tracks 1% above the bank of England base rate, would generate a profit for them. Mr and Mrs C have also said that they have other funds in high interest-bearing bonds, relying on the flexibility of the HOR for instant access to funds should they need it.

So based on what Mr and Mrs C have said, it's not the case here that they were in immediate need of the funds or that they had immediate plans disrupted. Instead, they wanted access to the funds to help profit maximisation which I understand they say was part of their wider retirement planning.

Whilst I can accept this may have been their intention, our service can only hold HSBC responsible for direct and foreseeable financial loss and while I accept it may well have been Mr and Mrs C's plan to use the reserve limit in this way at some point in the future, I've not seen anything to suggest they had immediate plans to do so, or that they were restricted from accessing funds that they'd recently deposited into the account for the purpose of a property purchase, or for any other reason. Mr and Mrs C's intentions to rely on the funds to reinvest once the interest rates reduced is quite speculative and I can't reasonably hold HSBC responsible for a perceived loss arising from a somewhat hypothetical situation. I must also bear in mind that any borrowing for this purpose would be secured over their home and require regular payments into their retirement.

It's also important to note that secured lending is considered priority debt. As I've explained this loan was always open-ended and it had to be paid at some point in the future. In line with the T&Cs, this could happen because of HSBC using its discretion to reduce the limit or close the account at any time by giving 30 days' notice. That's something Mr and Mrs C were aware of from the outset and reminded of in their annual statements. Mr and Mrs C had practically paid off the loan by April 2023 – over a year before the limit had been reduced.

When considering complaints, our service must think about what's fair and reasonable for both sides involved. I don't think I can reasonably uphold this particular complaint and expect HSBC to allow Mr and Mrs C to borrow their full limit interest free at a cost to HSBC or expect HSBC to reinstate the account on its pre-existing terms when it has made the decision to withdraw this account from the market and close all accounts held by its customers.

To conclude, I don't think HSBC not giving Mr and Mrs C notice of the limit reduction, has resulted in unfairness for them, given the circumstances. HSBC had always made it clear that while this was an open-ended facility, it could be removed at any time. And while doing so without notice might not be fair in some circumstances, for the reasons I've explained I don't think it caused unfairness in this particular case. Whilst I can understand that Mr and Mrs C are disappointed that they can no longer use this account for future borrowing, at most they have lost a potential future opportunity to borrow money in this particular way – but they have not been caused any identifiable financial loss, or disruption to any current plans or commitments and they do have the option of exploring other potential borrowing options elsewhere.

My final decision

My final decision is that I don't uphold Mr and Mrs C's complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 25 March 2025.

Arazu Eid
Ombudsman