

Complaint

Mr T is unhappy with what HSBC UK Bank Plc (“HSBC”) has agreed to do to put things right for him after he complained about the charges on his overdraft.

Background

One of our investigators looked at Mr T’s complaint and he told HSBC that it should refund all the interest, fees and charges added to his account from March 2018 onwards as it ought to have been aware that Mr T’s overdraft had become unsustainable for him.

HSBC accepted our investigator’s view. Mr T didn’t disagree with the fact that HSBC ought to have taken corrective action against his facility in March 2018. But he also thought that HSBC needed to refund any charges that it applied prior to this date too. HSBC said that it didn’t have any further information on what the position was prior to March 2018 therefore it wasn’t able to do this.

Mr T remained dissatisfied at matters and asked for an ombudsman to consider his complaint.

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, I think that what HSBC has already agreed to do to put things right for Mr T is fair and reasonable in all the circumstances of his complaint. I’ll explain why I think this is the case.

HSBC has said that it only retains bank statements going back six years. As Mr T complained in March 2024, it only had bank statements for him going back to March 2018. It also agrees that it ought to have realised that Mr T’s overdraft had become unsustainable for him at that point and that it shouldn’t have added any interest, fees and charges to his account from March 2018 onwards. So it has agreed to reduce what Mr T still owes by the amount of all the interest, fees and charges added to Mr T’s account from March 2018 in order to put things right.

I’ve considered what HSBC has agreed to do and whether this is fair and reasonable in the circumstances.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we’d expect the business to put the consumer in the position they would be in if that wrong hadn’t taken place. And in an ideal world, we’d tell a business to put a consumer in the position they’d now be in if they hadn’t been given the credit they shouldn’t have. However, that’s not possible in cases where funds that shouldn’t have been advanced were advanced because typically those funds will have already been spent.

So we have to look at a way of asking a business to put things right in a fair and reasonable way. And where a business provided, or continued to allow a consumer to use, a credit facility which it should have realised was unsustainable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit.

This means we'd normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised it was unsustainable. And if those interest and charges were paid also add 8% simple interest per year. That's what HSBC has agreed to do, for the period that it has information for. So it has agreed to do what I'd typically expect a firm to do in these circumstances.

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where it continued to provide credit it shouldn't have (such as here), we can and will tell it to do something different and/or something more if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

Mr T believes that HSBC should do more. As I've explained, he wants HSBC to refund any charges that were added to his account prior to March 2018.

I've carefully thought about what Mr T has said. However, HSBC has said that while it is able to confirm that Mr T had an overdraft facility with a limit of £300 from March 2011 onwards, it has no information at all on how Mr T was using his account prior to March 2018. So it's not in a position to even assess whether it acted fairly and reasonably prior to March 2018.

Our investigator asked Mr T whether he was in a position to provide us with bank statements or other information to show how he was using his account prior to March 2018. However, Mr T has confirmed that he doesn't have any information that he is able to provide to us. In these circumstances, given the overdraft limit was extremely low and this wasn't Mr T's main account, I'm not in a position to reach the finding that the overdraft was demonstrably unsustainable for Mr T prior to March 2018.

I appreciate that Mr T may believe that it is unreasonable and unfair to expect him to provide information, to prove that the facility was unsustainable, which he doesn't have and cannot reasonably be expected to have. But I also have to take into account that HSBC isn't required to have this information at this stage either. And it was Mr T that chose to make his complaint in March 2024. As this is the case, I have to decide the complaint on what I have before me. And without anything to show how the account was used and what Mr T was charged, I can't reasonably direct HSBC to make a refund.

Finally, I've noted what Mr T has said about the amount he's lost gambling on his HSBC account. I'm sorry to hear about what has happened and the difficult time that Mr T has had. However, the complaint he's made to us is regarding his overdraft usage and the charges he incurred as a result.

Given his overdraft limit was only £300, I can't reasonably make the finding that HSBC allowing Mr T to use his overdraft, despite the way he was using it, is responsible for Mr T losing £350,000. If Mr T is unhappy with the transactions being processed, this is a different to whether he should have been charged for using his overdraft when he was and Mr T will need to complain to HSBC about this distinct and separate matter in the first instance.

Bearing in mind all of this, I'm satisfied that what HSBC has already agreed to do to put things right for Mr T – reworking the outstanding balance on his account so that all the interest, fees and charges added since March 2018 are removed – is fair and reasonable in

the circumstances of this case.

In reaching this conclusion I've also considered whether the lending relationship between HSBC and Mr T might have been unfair to Mr T under section 140A of the Consumer Credit Act 1974 ("CCA").

However, I'm satisfied that what HSBC has already agreed to do to put things right for Mr T's complaint as a whole, is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything further. I'm also not persuaded that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome in respect of this.

I'm therefore not requiring HSBC to do anything more and I leave it up to Mr T to decide whether he wishes to accept its offer in settlement of his complaint.

My final decision

For the reasons I've explained, I'm satisfied that what HSBC UK Bank Plc has already agreed to do to put things right for Mr T is fair and reasonable in the circumstances of his complaint. I'm therefore not requiring it to do anything more or anything further and I leave it up to Mr T to decide whether he wishes to accept HSBC's offer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 9 April 2025.

Jeshen Narayanan
Ombudsman