

Complaint

Mr B has complained about the overdraft charges HSBC Bank UK Plc (“HSBC”) applied to his current account. He’s said the charges were applied unfairly as he was allowed to use his overdraft for a prolonged period.

Mr B is being represented in his complaint by a Claims Management Company who I’ll refer to as “the representative”.

The representative has said the charges applied to Mr B’s account were unfair as there was a failure to take account of his patterns of reliance on debt and hardcore borrowing. In the representative’s view, there was no proper consideration of the longer-term impact of the borrowing on him.

Background

HSBC initially provided Mr B with an overdraft by February 2008 at the latest. The overdraft limit was then increased to £10,000.00 in or around August 2009. Mr B’s overdraft limit was gradually reduced from April 2021 onwards.

Mr B’s complaint was looked at by one of our investigators. She wasn’t persuaded that HSBC had irresponsibly provided the overdraft or unfairly allowed Mr B to continue using it in a way that was unsustainable or otherwise harmful for him. So the investigator didn’t recommend that Mr B’s complaint be upheld.

Mr B 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 B’s complaint. I’ll explain why in a little more detail.

I’ve started by looking whether HSBC acted fairly and reasonably when providing the overdraft as well as the limit increases.

We’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. And I’ve used this approach to help me decide Mr B’s complaint.

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

HSBC needed to make sure it didn’t lend irresponsibly. In practice, what this means is HSBC needed to carry out proportionate checks to be able to understand whether Mr B could afford to repay any credit it provided.

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.

Did HSBC act fairly and reasonably when providing the overdraft in the first place and when increasing the limit?

I understand that HSBC will have agreed to Mr B's initial overdraft application and any limit increases after it obtained information on his income and carried out a credit search. And, in its view, the information obtained would have indicated that Mr B would be able to clear the balance that he could owe within a reasonable period of time.

On the other hand, Mr B says that HSBC failed to take into account his patterns of debt and lent to him in circumstances where it shouldn't have done so.

I've considered what the parties have said.

HSBC has been unable to provide the details of the credit checks that it carried out. Given the length of time that has passed, more than fifteen years, I don't consider this to be surprising and I've therefore not drawn any adverse conclusions as a result of this. What I've instead done is consider the earliest information, I've been able to see to get an idea of what any enquiries into Mr B's circumstances are likely to have shown.

Having considered the information provided, namely the bank statements, I am concerned at the fact that Mr B appears to have been making repayments to a debt collector. However, it's also fair to say that Mr B had significant credits into his accounts too. These credits were more than sufficient to support him being able to repay £10,000.00 within a reasonable period of time.

I fully accept it's possible that Mr B's position might have been worse than what it looks like on his HSBC bank statements. As I have said, I am concerned about the payments to a debt collection company. It's also possible that HSBC may have found out more if it had requested statements for his other accounts.

That said, it wouldn't be fair and reasonable for me to use hindsight here, or say that HSBC should have known about what was going on across all of Mr B's finances at the time it was making its lending decisions. This is especially as the facility was provided and the limit was increased prior to the OFT's irresponsible lending guidance; and there were a significant amount of funds going into the account too.

As this is the case, I've not been persuaded that HSBC acted unfairly or unreasonably when providing the overdraft or agreeing to any limit increase requests.

Did HSBC act unfairly in allowing Mr B to continue using the overdraft in the way that he did?

Even though I've not been persuaded that HSBC acted unfairly or unreasonably when providing Mr B with his overdraft, or when increasing his limit until it reached £10,000.00, HSBC still had an ongoing duty to review Mr B's overdraft and consider whether it was fair and reasonable for it to continue allowing him to use the facility in light of the way he was using it.

I've considered whether HSBC acted fairly and reasonably in this regard. HSBC as well as the representative 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.

Before I go any further, as this part of the complaint essentially boils down to an allegation that Mr B 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 or financial institution 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 B if it applied this interest, fees and charges to Mr B's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr B was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where HSBC didn't treat Mr B fairly and reasonably.

In other words, I've considered whether there were periods where HSBC continued charging Mr B even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew, or it ought to have realised, that he was in financial difficulty.

I've looked through Mr B's account statements throughout the period concerned. And I can't agree that HSBC ought reasonably to have taken unilateral corrective measures in relation to Mr B's overdraft. I don't think that there was ever a time when it ought to have realised that the overdraft had become demonstrably unsustainable and I'll now explain why.

It's fair to say that Mr B 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 far 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.

Therefore, in this case, I've considered Mr B'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 B 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.

I accept that Mr B was provided with an overdraft facility which had a limit that was substantially higher than that typically granted to customers. However, as I've explained, I'm mindful that Mr B's account received a significant amount of credits which had the ability to substantially reduce his overall indebtedness. So I don't think that this is a case where Mr B was marooned in his overdraft without any hope of being able to clear the balance.

Indeed, there were periods where Mr B received very significant influxes of funds, and he was also clearly transferring funds to another account. I understand that the representative has

said that these funds were to separate funds for a family holiday and therefore weren't available to repay this overdraft.

However, without wishing to appear blunt, it was Mr B's choice to go on a family holiday instead of taking steps to repay what he owed. I don't think that it was HSBC's responsibility to support such spending, especially in circumstances where Mr B had not said that there was a problem and this debt had already accrued. I'm not saying that Mr B wasn't entitled to go on a family holiday, but I don't agree that him doing so meant that the funds weren't available to repay the overdraft in the way the representative has argued.

Nonetheless, I do accept that there were times where Mr B would have met the criteria of someone who displayed a pattern of repeat use of their overdraft. For reasons I'll go on to explain, I think that this was important. But for now, I think it's important to explain that even though this is the case, the question here is whether Mr B'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 B expenditure, nonetheless I can't see much, at all, in the way of living expenses going out of his account, which suggests that he didn't have much in the way of this. Furthermore, there are also significant amounts of non-committed, non-contractual and discretionary transactions going from Mr B's account.

Equally, I can't see anything on the statements for this account indicating that the charges Mr B was incurring for this discretionary spending were causing him harm. For example, I can't see that he was borrowing from unsustainable sources in order to meet these charges.

I accept neither of these things in themselves (or when taken together) mean that Mr B wasn't experiencing difficulty. I've seen what the representative has said about a joint HSBC account which Mr B also had. But I'm looking at a complaint about this account not Mr B's joint account, which, in any event, I do not have all parties consent to look into.

And I wouldn't expect HSBC to have reviewed Mr B's entire finances in the way that the representative is suggesting it ought to have done either. Mr B did have credit commitments but the funds he was in receipt of appear to show that he could afford them and also take steps to clear his overdraft if he wished to do so.

I now return to the issue of Mr B meeting the criteria of a repeat use overdraft customer. I note that the representative has referred to a final decision which I issued on a different complaint. However, I would like to make it clear that this decision does not state that sending letters, in accordance with the requirements in CONC 5D, will never be sufficient for a lender to have acted fair and reasonably.

What the final decision the representative has provided said was that given the circumstances of that particular case, where I found (on the facts of the case) the lender ought to have realised that the customer was experiencing difficulty, it was unfair to simply send letters and hope any difficulty would pass. I think that this is particularly important here given the facts suggest that HSBC didn't simply hope for the best in this instance.

I say this because Mr B did not ignore HSBC's repeat overdraft use letters. From what I can see Mr B got in contact with HSBC in February 2021, after he'd been sent a repeat use letter in November 2020. At this point a plan was agreed with Mr B where his overdraft would be gradually reduced from April 2021 onwards. While it would be overstating matters to say that Mr B rigidly adhered to the terms of this plan, overall it had the effect of substantially reducing Mr B's overdrawn balance.

Indeed, Mr B had an overdrawn balance of less than £1,000.00 within 18 months of the plan beginning. So I don't agree that HSBC failed to take any corrective action in relation to Mr B's overdraft usage, although I do accept the possibility that it only did this because Mr B responded to one of its repeat use letters.

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 HSBC taking corrective action, in the way that it would have done had it acted in way that the representative is suggesting it should have, would have been disproportionate.

In reaching my conclusions, I've also considered whether the lending relationship between HSBC and Mr B might have been unfair to Mr B under s140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've already explained, I'm satisfied that HSBC did not lend irresponsibly or act unfairly in allowing Mr B to use his overdraft in the way that he did bearing in mind all of the circumstances. And I haven't seen anything to suggest that s140A CCA would, given the facts of this complaint, lead to a different outcome here.

So overall I'm satisfied that it wasn't unfair for HSBC to provide the overdraft or the limit increases to Mr B. I'm also satisfied that HSBC did not charge Mr B in circumstances where it ought to have realised that it was unfair to do so. As this is the case, I'm not upholding Mr B's complaint. I appreciate that this will be very disappointing for Mr B. 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 B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 April 2025.

Jeshen Narayanan
Ombudsman