

The complaint

With the help of a professional representative (PR), Mr S complains that HSBC UK Bank Plc lent to him irresponsibly. For ease, I'll refer mainly to the actions of the PR as being those of Mr S.

What happened

Mr S opened a current account with HSBC in February 2004. At some stage he applied for an overdraft and we have evidence to say that by 2008 his limit was £1,500. It was increased to £2,200 in October 2012 and then to £3,000 in September 2013. Despite an application in March 2020 for an increase to £5,000 which was declined, Mr S's overdraft limit has remained at £3,000 since.

On 19 September 2023, Mr S complained to HSBC. He said it had failed to conduct an appropriate assessment of his account and overdraft facility. He said his reliance on the overdraft had led to hardcore borrowing. Mr S said he had *"remained at the upper limit of [his] overdraft for a prolonged period and has incurred significant charges of interest"* and as a result, his credit relationship with the bank had become unfair as described by Section 140A of the Consumer Credit Act 1974 (section 140).

HSBC looked into Mr S's complaint and issued a final response letter. It said Mr S's complaint (as submitted by his PR) was generic and didn't provide any specific details such as time periods he was concerned about. HSBC said it no longer had details of when the overdraft was first agreed, but said it had monitored his usage and had *"written to him several times offering support"*. HSBC said Mr S's income was sufficient to support the overdraft limit of £3,000 and it was satisfied it had *"complied with its obligations"*. It didn't uphold the complaint.

Mr S was unhappy with HSBC's response, so he referred his complaint to our service. One of our investigators looked into it. HSBC told him that it felt the complaint had been brought too late for us to consider under the complaint handling rules of the Financial Conduct Authority (FCA).

Our investigator didn't agree with HSBC about the time limits, so went on to consider the complaint. However, he didn't think the complaint should be upheld.

Mr S didn't agree with our investigator's view of the complaint. As there was no agreement, the complaint has been passed to me for a 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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and HSBC thinks this complaint was referred to us too late. Our investigator explained why he didn't, as a starting point, think we could look at a complaint about the lending decisions that

happened more than six years before the complaint was made. But he explained that this complaint is also about an unfair relationship as described in section 140, and why this meant the complaint had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. I acknowledge HSBC still doesn't agree we can look at this complaint, but as I don't think it should be upheld, I don't intend to comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr S's complaint is about the fairness of his relationship with HSBC, relevant law in this case includes section 140A, section 140B and section 140C.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (HSBC) and the debtor (Mr S), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship.

S.140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given what Mr S has complained about, I need to consider whether HSBC's decisions to lend to him and increase his overdraft limit, or its later actions, created unfairness in the relationship between him and HSBC such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr S's relationship with HSBC is therefore likely to be unfair if it didn't carry out proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow. I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did HSBC carry out reasonable and proportionate checks to satisfy itself that Mr S was in a position to sustainably repay the overdraft?
- If not, what would reasonable and proportionate checks have shown at the time?
- Did HSBC make a fair lending decision?
- Did HSBC act unfairly or unreasonably towards Mr S in some other way?

HSBC had to carry out reasonable and proportionate checks to satisfy itself that Mr S would be able to repay the credit sustainably. It's not about HSBC assessing the likelihood of it being repaid, but it had to consider the impact on him of doing so.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of any monthly repayments and the overall circumstances of the borrower.

Understandably, due to the time elapsed, neither HSBC nor Mr S have any information about the initial agreement of the overdraft at some point between 2004 and 2008. And there is no information available about the credit assessments which took place to agree the increases either, but given that they were granted over a decade before the complaint was raised, I don't find that surprising.

HSBC has been able to provide bank statements going back six years before this complaint was raised – from October 2017 – but says it doesn't have anything older than that. Mr S has told us he doesn't have any older statements either.

Given a lack of evidence on both sides, I can't reasonably conclude that HSBC did anything wrong by agreeing to lend to Mr S or that it should have done more to assist him with any potential financial issues he may or may not have had in that period. I've seen nothing to suggest that Mr S's credit relationship may have been unfair prior to 2017.

I have however, been able to look at what happened since October 2017. The opening statement I have, shows Mr S's account was almost £20,000 in credit. I can see that Mr S was a high earner – he received a monthly salary in excess of £5,500. There are a number of high value transfers into the account from others in his name too.

The first time Mr S uses the overdraft on the statements I have is March 2018. His account balance reached just under £2,000 overdrawn against the £3,000 limit. The account returned to credit on receipt of his March salary, and a further large credit was received in April 2018. The account remained several thousand pounds in credit until November that year when he used around £2,000 of the overdraft for a few days.

This pattern continues throughout 2019 with some short-term overdraft use – within the limit – and returning to substantial credit after salary and other receipts. There is no sign of financial difficulties or that Mr S is struggling to meet his day-to-day expenses or commitments.

In January 2020, Mr S spent around three weeks in his overdraft and exceeded his limit towards the end of that period. But what appears to be a salary payment of just over £7,000 comfortably cleared it and returned the account to credit. There was a similar pattern in February 2020 with incoming payments of almost £10,000 clearing the overdraft.

In March 2020 however, HSBC returned unpaid a number of payments which would have taken Mr S's account back over the overdraft limit. This coincides with his application to increase his limit to £5,000 which was refused. He was able to bring his account back to credit before the end of the month, following a £5,000 payment from a recruitment company. From then onwards, Mr S's account has continued to return to credit every month and there are regular substantial payments into the account.

I can see that in January 2021, Mr S again had items returned unpaid due to exceeding his overdraft limit. This position was corrected by a transfer from another account in his name and, a few days later, what appears to be a salary payment of just over £11,000. He continued to use his overdraft for much of 2021 to 2023 – albeit returning to credit each month – and HSBC wrote to him several times from August 2021 to August 2023 about his overdraft usage. In September 2023, it spoke to Mr S who confirmed he had been using the overdraft to help with changes in his employment and that he had now repaid it. He confirmed he was not in financial difficulties.

While there have been spells where Mr S used the overdraft significantly and items were occasionally returned unpaid, I don't think I can reasonably say that his relationship with

HSBC was unfair at any stage. Mr S was a high earner and a high spender. But he returned his account to credit each month and if he felt he wanted or he was called upon to do so, I'm confident he could have repaid the overdraft in a short period of time.

Mr S has explained to HSBC why he used the overdraft as consistently as he did between 2020 and 2023, and I can see that his income came from different companies over that period. I don't think however that his account performance demonstrated he was in financial difficulties such as HSBC ought to have stepped in any more than it did.

Overall, and based on the available evidence I don't find that Mr S's relationship with HSBC is or was unfair. It's not clear enough to me that HSBC created unfairness in its relationship with Mr S by lending to him irresponsibly initially, or in respect of it continuing to allow him use of the overdraft facility. I don't find that HSBC treated Mr S unfairly in any other way either based on what I've seen.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 April 2025.

Richard Hale
Ombudsman