

The complaint

Mr P complains HSBC UK Bank Plc trading as first direct haven't treated him fairly regarding the overdraft on his current account.

A representative has supported Mr P in bringing this complaint, but for simplicity I'll just refer to him in this decision.

What happened

On 15 November 2023 Mr P complained to first direct saying, amongst other things, they'd not taken into account a pattern of reliance on his overdraft – leading to him incurring lots of charges. He also referred to section 140A of the Consumer Credit Act 1974.

first direct replied and, in brief, didn't uphold Mr P's complaint, saying they'd treated him fairly.

Unhappy with this, Mr P asked us to look into things.

One of our Investigators did so, he found:

- Overdrafts are meant to be for short term borrowing, and businesses like first direct are supposed to review them annually.
- On each annual review, first direct should have considered if there were any signs of financial difficulties (amongst other things)
- In Mr P's case, the only statements we had meant we could only see from November 2017, so first annual review we could see was from February 2018 to February 2019.
- Having done so, by February 2020 our Investigator felt Mr P was clearly showing signs of financial difficulties, and as such first direct should have stepped in and offered assistance.
- He set out redress which was to rework the account to remove any interest, fees and charges from 9 February 2020 onwards were removed.
- He added because he was upholding from February 2020, he didn't think section 140A of the Consumer Credit Act 1974 was relevant.

Mr P accepted this outcome, but HSBC didn't. They said:

- They can't monitor customers accounts for individual transactions, and within their terms and conditions customers are allowed to exceed their overdraft facility.
- If items were returned instead of allowing an unauthorised limit, then this could have a much more detrimental impact.
- The February 2020 review was an automated annual renewal of the overdraft, and no manual review took place.

first direct had also asked about some additional spending Mr P carried out in 2023 – which they said showed he wasn't being responsible with his spending.

Overall, as first direct didn't agree, the complaint's been passed to me to decide.

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.

Overdrafts are generally subject to an annual review from the date of the overdraft being granted – or the last increase.

In Mr P's case, his last overdraft increase was on 9 February 2003 to £2,000 – so it's reasonable to say that Mr P's overdraft would be reviewed every year in February.

To decide the outcome of the case, we've been provided with Mr P's statements – but they only go back to November 2017. So, I've reviewed his statements from February 2018 onwards to see how he was managing the account in the year before the renewal.

It's clear between February 2019 to February 2020 Mr P has developed a reliance on his overdraft – given he's overdrawn virtually the entire year.

At this point, I'd expect first direct to be aware of our approach – which is they're required to offer proactive support to their customers if someone is showing they're effectively trapped in their overdraft.

In first direct's response to our Investigators view, they said the process for renewing the overdraft was automated – not a manual one. I accept that's likely true, but they're responsible for designing the processes. So, I'm satisfied it's appropriate to say first direct should have stepped in to offer Mr P proactive support from February 2020.

I have noted first direct's comment about Mr P's spending in 2023 not being responsible – but I don't consider it relevant. I say that because the issue in this case occurred three years earlier – in February 2020.

Taking all of the above into account, I'm satisfied it's appropriate to partially uphold this complaint from February 2020 solely due to first direct not identifying Mr P's pattern of spending.

Putting things right

I require first direct to:

- Rework Mr P's account to remove any fees, interest and charges applied as a result of the overdraft from 9 February 2020 to date
- If an outstanding amount remains then first direct should contact Mr P to arrange a repayment plan. They can record negative information if a balance remains in line with the Information Commissioner's Office guidance.
- Alternatively – if removing all fees, interest and charges results in a credit balance, this credit balance should be refunded to Mr P with 8% interest* from the date of any overpayments to the date of settlement. Any negative information should also be removed from Mr P's credit file.

*HM Revenue and Customs requires first direct to deduct tax from the interest payment referred to above. first direct must give Mr P a certificate showing how much tax they've deducted if he asks them for one.

My final decision

I partially uphold this complaint and require HSBC UK Bank Plc trading as first direct to carry out the actions in the 'Putting things right' section of this decision.

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

Jon Pearce
Ombudsman