

The complaint and what happened

Mr W complains that HSBC UK Bank Plc, trading as first direct, lent to him irresponsibly via an overdraft over an extended period of time. He would like all the fees and charges associated with the overdraft refunded.

I've included relevant sections of my provisional decision from March 2025, which form part of this final decision. In my provisional decision I set out the reasons why I was planning to uphold this complaint in part. In brief that was because I thought the evidence ought to have led HSBC to conclude that this overdraft was unaffordable for Mr W from January 2020 onwards.

I asked both parties to let me have any more information they wanted me to consider. Mr W accepted my provisional findings. HSBC came back with some final points, which I will respond to, but which don't alter the outcome of the complaint.

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'm upholding it in part, and I'll reiterate why, but first I've included here the relevant sections of my provisional decision:

"what happened

In April 2015 HSBC approved an overdraft limit of £1,500 for Mr W, which was temporarily increased to £1,800 for 11 weeks at the end of 2016. However, for the vast majority of the last ten years, his overdraft limit has stood at £1,500.

Despite how long ago this happened, there is still evidence available of how HSBC assessed these applications, which suggests a fairly detailed conversation with Mr W at the time around his circumstances and expectations for his financial future. HSBC also carried out a credit check before approving the lending.

It appears that from April 2021 HSBC began writing to Mr W about his overdraft fairly regularly, and seems to have continued to do so until January 2023. It flagged that he was using the overdraft a lot; that it was an expensive way to borrow, and asked him to call to speak to someone.

In May 2023 Mr W contacted HSBC to discuss his situation and let it know of a period of unemployment he'd experienced, but which by that point had ended. HSBC refunded £100 of overdraft interest charges as a gesture of goodwill and gave him some "breathing space" in terms of writing to him about his overdraft.

Mr W complained in May 2024 that it was irresponsible of HSBC to have given him the overdraft facility. It didn't accept that, and so Mr W brought a complaint to this service.

The investigator looked at the evidence and thought that HSBC didn't do enough checks before agreeing to this overdraft, and ought to have effectively withdrawn Mr

W's overdraft by December 2017, and so should refund all interest and charges from that date. HSBC disagreed, and asked an ombudsman to look at the case.

my provisional findings

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'm currently planning to uphold it, but not from December 2017, and I'll explain why.

The investigator set out that he thought that Mr W's repeat and regular use of the overdraft demonstrated a reliance on it which suggested he was experiencing actual or potential financial difficulty. As a result, he concluded that HSBC ought to have essentially withdrawn the overdraft facility.

HSBC disagreed, saying that it had done what it needed to by repeatedly writing to Mr W about his overdraft use and asking him to contact it to discuss his situation and how it could be improved.

The key question in this case is whether or not, and when, Mr W was exhibiting signs of actual or potential financial difficulty under the relevant regulations. That will then enable me to determine when HSBC ought to have withdrawn the overdraft facility, or not.

Mr W's pattern of overdraft use

I have had the benefit of statements for the account in question from September 2017. And it is clear that Mr W used pretty much his full overdraft limit every month. And clearly much of that spending was on essential bills. However, not all of it was. So, arguably he could have chosen to try and gradually reduce his overdraft debt by reducing his discretionary spending.

This pattern remains consistent until March 2019, at which point Mr W starts to exceed his agreed limit on occasion. Sometimes that was only by about £50, but often it was by more than £100. Again, some of the overdraft is being spent on essential bills, and some on discretionary spending.

In January 2020, he exceeded his agreed limit by almost £250, which is almost 20%. In November 2020, he exceeded it by nearly £500, and in December 2020 by almost £1,000. This pattern continues through to 2023 at which point it would seem that Mr W was in touch with HSBC to try and work with it to address his situation.

Were there identifiable signs of actual or potential financial difficulty? And if so, when?

The relevant guidance (specifically CONC 1.3.1G) provides a helpful list of indicators of potential financial difficulty. I don't think there is evidence of any of them being present in Mr W's circumstances. And even beyond those indicators, I can see no evidence of financial difficulties via Mr W's bank statements during 2017.

However, the indicators in CONC 1.3.1G are not exhaustive and I think there are clear grounds to say that, by January 2020, the extent and regularity of Mr W exceeding his agreed overdraft limit was of real concern and strongly suggested at least potential financial difficulties on Mr W's part.

Did HSBC do everything it should have in response to the information it had?

As set out in the background to this decision, it appears that HSBC began writing to Mr W about his overdraft use in April 2021. It says that it therefore met its regulatory obligations, as per CONC 5D.3. I don't agree.

The CONC guidance in question came into force in December 2019. And I've already set out

that I think Mr W's use of the overdraft showed potential financial difficulties from January 2020. So, as per CONC 5D.3.2R, HSBC waiting more than a year to contact Mr W about his overdraft was not in line with the regulations at the time.

Moreover, as I have concluded that there were signs of potential financial difficulty by this point, I think HSBC needed to do more than just contact Mr W. As per CONC 5D.3.2R(5)(b), I think it needed at that point to let him know that it would have to consider suspending or removing the overdraft facility, or reducing the credit limit.

HSBC says that it didn't do that as it could not be certain that such action would not cause hardship. Those considerations are also a crucial aspect of the regulations, but I don't agree that HSBC could not have taken any action without causing Mr W hardship. It is clear that he was using a large proportion of his overdraft for essential spending. So the immediate withdrawal of the facility would not have been reasonable or in line with the rules.

But I think it would have been perfectly achievable for HSBC to begin to gradually reduce Mr W's overdraft limit from January 2020 onwards. There was scope for that, taking into account some of his discretionary spending. And that would have been proportionate to the signs of potential financial difficulties already mentioned.

In saying that, I acknowledge that Mr W appears to have ignored almost two years' worth of contact from HSBC about his overdraft. However, had HSBC let him know it was going to take action in reducing his limit, I think it likely he would have at that point responded and been forced to address the situation."

HSBC has raised several points in response, essentially agreeing to my findings, but questioning next steps.

It says that Mr W is well aware of the overdraft and his pattern of use. Which I accept. It says it would therefore have expected him to use some additional income in March 2025 to reduce his overdraft balance, but that he hasn't. That does appear to be the case, but my provisional decision concluded that HSBC needed to take action in January 2020. So the reasons why Mr W didn't act in March 2025 are not only unknown but irrelevant to the outcome of this complaint seeing as all of this occurred more than five years after I think that HSBC ought to have taken action.

HSBC says it does not think it would be, "...appropriate to waive any interest going forward, as...[Mr W]... has a clear awareness of the overdraft use, and it remains his responsibility to manage, and ultimately reduce this."

It says that Mr W's, "...overdraft limit will be reduced in line with any refunded amount..." and wants him to be made aware of that. Clearly it is a matter for HSBC whether it continues to offer Mr W an overdraft or not, and a matter for it to let him know what that limit will be.

I am slightly puzzled by HSBC's submissions, which do not run counter to the proposed redress I set out in my provisional decision. I have already said that HSBC needs to arrange a suitable repayment plan with Mr W, and that it can reduce his overdraft limit. I've also not suggested that HSBC should offer Mr W an overdraft going forward, or the terms that any overdraft should be offered on in the future.

Therefore I have seen nothing which alters my findings as set out in my provisional decision, or how I think this should be put right. And so it follows that I uphold this complaint in part.

Putting things right

As I explained in my provisional decision, finding the fair and reasonable way to put things right in this situation is not straightforward. What HSBC ought to have done is begin to

reduce Mr W's overdraft limit from January 2020. And so, the amount of interest he was paying ought also to have gradually reduced. However, reconstructing the pace and trajectory of those reductions more than five years later is nigh on impossible.

Nonetheless, I proposed a method of putting things that took into account my role to resolve complaints quickly and with the minimum of formality, and also my ability under Section 229 (2) (b) of the Financial Services and Markets Act 2000 to award what I consider to be fair compensation.

HSBC's response to my provisional decision, didn't really address this matter or proposed its own alternative on how things should instead be resolved. Therefore, I've not been persuaded that it would be fair and reasonable to put things right in a different way. And as this is the case, I remain satisfied that the fairest outcome here will be for HSBC to:

- Rework Mr W's current overdraft balance so that all interest, fees and charges applied to it from January 2020 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr W to arrange a suitable repayment plan. Mr W is encouraged to get in contact with and cooperate with HSBC to reach a suitable agreement for this. If it considers it appropriate to record negative information from Mr W's credit file, it should reflect what would have been recorded if HSBC had begun to reduce Mr W's overdraft limit from January 2020. HSBC can also reduce Mr W's overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over his limit.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr W along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then HSBC should remove any adverse information from Mr W's credit file. HSBC can also reduce Mr W's overdraft limit by the amount of refund if it considers it appropriate to do so.

In response to my provisional decision, HSBC has provided recent bank statements for Mr W. These in fact suggest that his financial situation has deteriorated, as they now show reasonably large payments to a debt collection entity. And so I would underline HSBC's responsibility to treat Mr W with forbearance and provide support to him in reducing his financial difficulties should a balance remain on the overdraft after it makes the adjustments I've directed it to make. However, it may be that those adjustments in fact clear the balance.

My final decision

For the reasons I've explained, I uphold this complaint in part and direct HSBC UK Bank Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 6 May 2025.

Siobhan McBride
Ombudsman