

The complaint

Mr L, a sole trader, complains that HSBC UK Bank Plc should not have allowed him to have an arranged overdraft – and that it should not have allowed that overdraft to increase.

What happened

HSBC initially agreed an overdraft of £8,000 for Mr L on 21 August 2021. It then agreed to increase his overdraft to £10,000 (on 20 October 2021), then to £18,900 (on 8 March 2022), and finally to £30,000 (on 15 March 2022).

HSBC later made a formal demand for Mr L to repay the overdraft. He has not done so and says that he cannot afford to pay the debt in full.

Mr L asked HSBC to write off the debt. He said that it had lent to him irresponsibly, at a time when he had a severe gambling addiction. Although he'd told HSBC in 2021 and 2022 that he needed money for business purposes, in fact he transferred most of the funds to his personal account and then lost them through gambling. He told us that HSBC's failings have had a severe impact on his mental health.

One of our investigators looked at Mr L's complaint, and upheld it in part. Briefly, she said she didn't see any problems with the original overdraft or the first increase, but she thought the March 2022 increases should not have gone ahead. In more detail, she said:

- HSBC told us that before agreeing (or increasing) Mr L's overdraft, it undertook affordability checks based on the information he had provided. It said it also used information it had obtained from credit reference agencies.
- She could not review whether HSBC's assessments were reasonable and proportionate, because the bank said that it no longer held copies of those assessments. So, she considered what proportionate checks would have shown had they been done at the time.
- She took into account Mr L's tax returns, which showed that for the year ending April 2021 he had a turnover of £18,930 (with a net profit of £15,468, including the SEISS grant). For the year ending April 2022, his turnover was £23,200 (with a net profit of £14,548).
- She also took into account Mr L's credit reports, which showed no adverse information.
- Given that this was a business account, she thought the initial overdraft limit (of £8,000) and the first increase (to £10,000) were reasonable. She didn't think that there was anything in the information HSBC would have been aware of to suggest that it was irresponsible to provide the initial overdraft and the first increase.
- However, she didn't think HSBC should have agreed the two further overdraft increases, to £18,900 and £30,000. She didn't have copies of the assessments

HSBC had undertaken, but she said she thought the bank had enough evidence to know that Mr L was not using the overdraft for its intended purposes. Throughout the time the account was operational, Mr L had not seen or maintained a credit balance.

- She also said that by the time the overdraft limit was increased to £18,900, it ought to have been apparent to HSBC that Mr L's business was unable to sustain that limit. In addition, Mr L was exhibiting an increased reliance on credit, having requested increases over a short time.
- However, she didn't think anything had happened that ought to have put HSBC on notice that Mr L was using the funds to gamble.
- She thought a fair resolution to Mr L's complaint would be for HSBC to:
 - Re-work Mr L's current overdraft balance so that any additional interest, fees, and charges applied because of the overdraft limit increases from 8 March 2022 onwards are removed. This means that from 8 March 2022 onwards interest can only be charged on the first £10,000 of any overdrawn balance.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr L to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr L's credit file, it should backdate this to 8 March 2022.

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 L, 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 L's credit file.

Neither party accepted our investigator's conclusions.

Mr L said that whilst he accepted HSBC could not have known the full extent of his mental health struggles and gambling issues at the time of lending, in light of his vulnerability it should refund all the money used for gambling as well as the associated interest and fees. He also said that given HSBC's failure to carry out proper affordability checks the bank should refund all interest, fees and charges beyond the initial £8,000 overdraft limit.

HSBC said that it did not have any concerns about its processes or procedures, and that it made several assessments for borrowing on Mr L's business (many of which it turned down).

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, whilst I acknowledge that both HSBC and Mr L will disagree with me, I have reached the same conclusions as our investigator, for broadly the same reasons.

I know Mr L would like me to order HSBC to write off all of the debt except the initial £8,000 overdraft. But I don't think that would be a fair outcome in this case. I don't think HSBC did anything wrong when it gave Mr L the initial £8,000 overdraft, nor when it increased the overdraft by a relatively small amount in October 2021. At that stage, I don't think HSBC had seen anything to suggest that Mr L was using his overdraft for anything other than business purposes. As Mr L accepts, he had not told HSBC that he was struggling with gambling. As at October 2021, I don't think there is anything in the conduct of his business account that suggested a problem, and his personal account (from which he made the gambling transactions) was held elsewhere.

I also know that HSBC would like me to conclude that it didn't do anything wrong when it increased Mr L's overdraft limit in March 2022. I accept that it would have carried out assessments, but since it has not provided those assessments to the Financial Ombudsman Service, I cannot take them into account.

I told HSBC that I found it hard to understand why Mr L would need such a significant overdraft given the industry he works in. HSBC said that it does not discriminate against sectors, and that an example of why people in Mr L's industry might need to borrow would be for bulk purposes to obtain discounts. But the fact remains that both of the overdraft increases HSBC agreed in March 2022 were for more than Mr L's annual turnover (and the last increase was for almost twice his annual profit). Mr L's HSBC business account had not been in credit since August 2021. He had made several requests for overdraft increases over a short period (some of which HSBC had declined).

Overall, I don't think HSBC acted fairly when it increased Mr L's overdraft facility in March 2022. That means I don't think it is fair for HSBC to receive any interest or charges in respect of those overdraft increases (though I have no concerns about the interest and charges it applied in respect of Mr L's £8,000 and £10,000 overdraft limits).

I can see that Mr L has been through an extremely difficult time, and I thank him for his openness with our service. However, after considering all the evidence, I think it is reasonable for HSBC to ask Mr L to repay whole of the original amount that he borrowed. Mr L has told us that he cannot afford to repay that amount immediately, so I would encourage both parties to work together to agree a mutually acceptable repayment plan.

My final decision

My final decision is that HSBC UK Bank Plc should settle this complaint in the way our investigator recommended. That means the bank should:

- Re-work Mr L's current overdraft balance so that any additional interest, fees, and charges applied because of the overdraft limit increases from 8 March 2022 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr L to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr L's credit file, it should backdate this to 8 March 2022.

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 L, 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 L's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 10 July 2025.

Laura Colman
Ombudsman