

The complaint

Mr B complains HSBC UK Bank Plc provided him with an unaffordable overdraft facility.

Mr B has made his complaint via a professional representative, but for ease I'll refer to all submissions as though they are his own.

What happened

HSBC provided Mr B with an overdraft facility on his bank account. Mr B has said he's had an overdraft facility in place since 2013; HSBC has only been able to provide our service with information dating back to October 2017. It's said due to data retention policies it doesn't hold records dating back more than six years.

Our investigator asked Mr B for any information he may have prior to 2017. Mr B has provided a credit report, however this is recent and doesn't show historical information dating back prior to 2017.

As such I'm unable to identify what overdraft limit(s) would have been in place prior to 2017 and on what terms. However, the table below provides details of the changes to the facility from 2018 based on the information I do have:

Date	Existing Limit	Increase/Decrease	New Limit
October 2017	£4,500	-	-
April 2018	£4,500	-£500	£4,000
November 2018	£4,000	+£500	£4,500
December 2018	£4,500	+£500	£5,000
November 2019	£5,000	-£3,000	£2,000
February 2020	£2,000	+£1,000	£3,000
May 2020	£3,000	+£1,000	£4,000
August 2020	£4,000	+£1,000	£5,000
June 2022	£5,000	-£3,000	£2,000

Mr B complained to HSBC in November 2023. He said had it completed reasonable checks before providing him with the overdraft limits it would have identified they weren't affordable for him.

HSBC issued its final response letter in January 2024 not upholding Mr B's complaint. It said an overdraft facility was provided to Mr B in May 2020 and that it had made a fair lending decisions when providing this limit and further limits over the following years.

Unhappy with HSBC's response Mr B referred his complaint to our service for review.

Our investigator looked at the details of the case and didn't uphold it. Based on the information available to him he reviewed the credit limits provided from November 2018 onwards and was satisfied HSBC's checks were proportionate; and that it went on to make fair lending decisions when providing Mr B with the limits.

HSBC didn't respond to our investigator's view; Mr B responded and asked for an ombudsman's review, although provided no further comments or evidence. So, 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.

Initially I think it's helpful for me to set out that there are time limits for bringing a complaint to our service, and HSBC has said this is a complaint that was in part referred to us late. Our investigator set out within their view why he didn't think we could look at a complaint about the lending events HSBC made more than six years before the complaint was made. But he also went on to explain why it was reasonable to interpret Mr B's complaint as being about an unfair relationship as described in section 140A of the Consumer Credit Act 1974 (s.140), and why he therefore considered Mr B's complaint about an allegedly unfair lending relationship had been made to us in time.

I don't intend to go into the details our investigator already set out within my decision here. But for the avoidance of doubt, I agree with our investigator that I have the power to look at Mr B's complaint on this basis.

I say this because I consider Mr B's complaint can reasonably be considered as being about an unfair relationship, as he says the overdraft facility and further limits provided by HSBC were unaffordable for him, and reasonable checks ought to have led to it identifying this.

The overdraft facility may have made the relationship unfair as Mr B may have paid more in interest and charges than he could afford. I accept HSBC doesn't agree we can look at any events more than six years before the complaint was made, but as I don't intend to uphold this complaint, I won't be commenting on this further.

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

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 B), 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 the details of Mr B's complaint I need to consider whether HSBC's decision to lend to him, or other actions it may have taken, created an unfairness in the relationship between him and HSBC; and if it did whether HSBC took reasonable steps to remove that unfairness.

We've set out our approach to complaints about irresponsible and unaffordable lending as well as the key rules, regulations and what we consider to be good industry practice on our website. Both Mr B and HSBC have been made aware of this approach. But to summarise, at the time of the lending events HSBC was required to carry out reasonable checks. These checks needed to assess Mr B's ability to afford the overdraft limit being provided and repay it within a reasonable period of time, without causing him financial difficulties or harm.

There isn't a set list of checks a lender needs to carry out, but they should be proportionate, taking into account things like the type, amount, duration and total cost of the credit, as well as the borrower's individual circumstances. And it isn't sufficient for HSBC to just complete proportionate checks – it must also consider the information it obtained from these checks to go on and make a fair lending decision.

The overdraft facility prior to April 2018

As I've set out above, HSBC hasn't been able to provide us with any information relating to Mr B's account dating back further than late October 2017. It's said it can't provide this information as it doesn't keep records for more than six years, and I don't consider that unreasonable given the data retention rules it must follow.

Mr B has told us that he thinks his overdraft facility has been in place since 2013. Given the earliest statement HSBC has been able to provide shows Mr B's account balance at around £5,000 overdrawn in late October 2017, I don't think it unreasonable to suggest an arranged overdraft facility was more likely than not in place earlier than October 2017.

Mr B hasn't been able to provide any financial evidence dating back prior to October 2017. So, in the absence of any information from both sides I'm unable to determine what limit(s) were in place, and on what terms, prior to 2017. It therefore follows I can't be satisfied HSBC completed reasonable checks prior to providing Mr B with lending before 2017; but that I also can't reasonably conclude any of this lending was provided unfairly.

I've therefore gone on to consider the earliest lending event I have information for from October 2017, and I've provided my findings below.

HSBC has said for all of the lending events from November 2018 onwards it verified Mr B's income by way of an online check, and that it reviewed Mr B's credit file. It's said it completed proportionate checks and made fair lending decisions in each instance.

The overdraft limit increases in November and December 2018

I've gone on to consider the first two lending events together as they happened within a month of each other.

The increase in November 2018 coincides with being around 12 months after the statements HSBC has been able to provide begin, which would have been a natural point for me to have reviewed the ongoing provision of the facility in any event.

While the overdraft facility limit wasn't modest, I consider HSBC's checks were proportionate to the terms of lending it was providing, and the information it had obtained from its checks.

I say this because Mr B's average income across these months was around £4,100. Mr B was making monthly payments to a mortgage, council tax and utility company; but Mr B appeared to have minimal other non-discretionary expenses. Mr B was also making monthly payments to existing credit commitments, but I consider HSBC reasonably concluded Mr B had a level of disposable income which could support an overdraft limit of £5,000, and could repay the facility within a reasonable period of time.

I'm therefore satisfied HSBC made fair lending decisions when increasing Mr B's overdraft limit to £4,500 in November and £5,000 in December 2018.

The renewal of the overdraft facility in around November 2019

Our service's approach is that a business should monitor a customer's overdraft facility regularly, to satisfy itself that it's still responsible to provide the facility on the same terms.

In November 2019 Mr B reduced his overdraft limit from £5,000 to £2,000. Given that this was around a year after HSBC's last lending event, I consider it reasonable that HSBC's review of the facility would have taken place around this time, and would therefore have been based on a limit of £2,000.

Having reviewed Mr B's management of the facility over the previous year I haven't seen anything which I consider ought to have caused HSBC concern, based on what it ought reasonably to have identified through its review.

I say this because Mr B's income through the account would have shown HSBC that he had an average of around £3,000 crediting his account each month from his employer. And Mr B received multiple other credits across the months from internal transfers between accounts, as well as from other individuals. Based on Mr B's income and his commitments to non-discretionary expenditure and existing credit, which remained relatively modest in comparison to his income, I consider Mr B was left with a reasonable level of disposable income for other living costs and discretionary spending.

I also consider HSBC would have taken some comfort from the fact that Mr B had sizeably reduced his overdraft limit, and as such appeared to be proactively managing the facility.

So, I think it would have been reasonable for HSBC to have concluded that Mr B had the available disposable income to repay the overdraft limit of £2,000 within a reasonable period of time.

The overdraft limit increases in February, May and August 2020

Mr B increased his limit from £2,000 to £5,000 across around a six-month period in 2020. Again, as these increases were within a relatively short space of time I've grouped them together.

Having reviewed the information I consider HSBC reasonably concluded that the increased limit of up to £5,000 was affordable for Mr B, and could have been repaid within a reasonable period of time.

I say this because Mr B's income averaged around £3,500 across the months leading up to these limit increases. Mr B's non-discretionary expenditure hadn't significantly changed since it's last checks. Mr B continued to have a number of ad-hoc credits enter his account across the months, as well as debits to businesses and individuals. It appears money was being moved to manage the facility, and Mr B's balance swung into a credit position at times across this period.

While Mr B's external borrowing did appear to have increased there was no recent adverse information reported on his credit file.

So, I've not seen anything which I consider ought to have caused HSBC too much concern; and it therefore follows I don't think HSBC made unfair lending decisions when increasing Mr B's overdraft limit to a total of £5,000 by August 2020.

The renewal of the overdraft facility in August 2021 and onwards

Based on the information I've already set out above, HSBC had an obligation to monitor the facility to ensure it continued to provide it responsibly.

I've reviewed the management of Mr B's account over the 12 months from August 2020 to 2021, and I've not seen anything which I consider ought to have suggested to HSBC that it shouldn't continue to provide the facility on the same terms.

I say this because Mr B's average income across this period remained relatively stable at around £3,000. There were more internal transfers taking place across this period, as well as other credits from what appear to be businesses and individuals, inflating his income. There's also evidence that Mr B was taking further lending from other businesses, and consolidating some of his existing debts. There is evidence of a couple of occasions where Mr B's balance exceeds his agreed limit. But this never lasts more than a handful of days, and is generally for a couple of hundred pounds at most.

While Mr B's pattern of use has changed and more transactions credit and debit the account, I haven't seen anything that I consider should have reasonably caused HSBC to be overly concerned, or think that it shouldn't have continued to provide the facility on the same terms at this point. But I do consider HSBC ought reasonably to have been on notice of the higher utilisation of the facility, and that the balance had on occasion exceeded the agreed limit.

Before the next review point Mr B reduced his overdraft limit to £2,000, in June 2022, and it's remained at this level since. So, HSBC's review of the facility in 2022 and in each subsequent year would have been based on an overdraft limit of £2,000.

While Mr B's behaviours and management of his overdraft remained largely the same up to June 2022, at this point he took a loan to further consolidate his lending, and I consider appear to take control of his financial situation. It was around this point that his overdraft limit was reduced to £2,000. So, it appears Mr B was taking some proactive steps to manage the high overdraft utilisation that had been present over the previous year.

In the years that followed Mr B generally maintained the overdraft facility well. The balance generally swung into a credit position upon receipt of his income, and he continued to have a reasonable level of disposable income to be able to repay the facility over a reasonable period of time.

Mr B's credit file continued to show his other credit commitments were being maintained well and there was no recent adverse information that I consider would have caused HSBC concern. Mr B continued to receive ad-hoc credits into the account on a monthly basis, as well as making payments to individuals and businesses. But overall Mr B was managing the overdraft facility well, and I don't consider HSBC's monitoring of the facility would have suggested Mr B couldn't maintain an overdraft limit of £2,000; or that he wouldn't be able to repay it within a reasonable period of time.

So, I think HSBC fairly continued to provide the overdraft facility on the same terms from June 2022 onwards.

Taking all of the above into account, I don't consider Mr B's relationship with HSBC was unfair. I say this because I've not found HSBC created an unfairness by providing Mr B with lending which was irresponsible or unaffordable; or created an unfairness in any other way based on the evidence I've seen.

It therefore follows I'm not upholding Mr B's complaint and HSBC doesn't need to take any further action in resolution of this complaint.

My final decision

For the reasons set out above I'm not upholding Mr B's complaint about HSBC UK Bank Plc.

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

Richard Turner
Ombudsman