

Complaint

Mr C has complained about the overdraft charges HSBC UK Bank Plc (“HSBC”) applied to his current account. He’s said the charges, in particularly the ones from 2017 onwards, were applied when he was in an unsustainable financial position and he should instead have been provided with help.

Background

Mr C’s complaint was looked at by one of our investigators. He thought that HSBC shouldn’t have increased Mr C’s existing overdraft limit from £2,500.00 in December 2018. So he thought that all interest, fees and charges that HSBC added on balances over £2,500.00, from December 2018 onwards, needed to be refunded.

HSBC accepted the investigator’s assessment. However, Mr C disagreed with the investigator and so the case was passed to an ombudsman for a final decision.

Bearing in mind the parties’ responses to the investigator’s assessment, I’m satisfied that this complaint now distils down to considering whether HSBC ought to have taken corrective action in relation to the overdraft on Mr C’s account.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having carefully considered everything provided, I’m satisfied that what HSBC has already agreed to do to put things right for Mr C is fair and reasonable in all the circumstances of this complaint and I’m not requiring it to do anything more, or anything further. I therefore leave it to Mr C to decide whether he wishes to accept HSBC’s offer. I’ll explain why I consider this to be the case in a bit more detail.

Before I go any further, as this essentially boils down to a complaint that Mr C was unfairly charged by being allowed to continue using his overdraft, I want to be clear in saying that I haven’t considered whether the various amounts HSBC charged were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately how much a bank charges for services is a commercial decision. And it isn’t something for me to get involved with.

That said, while I’m not looking at HSBC’s charging structure per se, it won’t have acted fairly and reasonably towards Mr C if it applied this interest, fees and charges to Mr C’s account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr C was experiencing financial difficulty. So I’ve considered whether there were instances where HSBC didn’t treat Mr C fairly and reasonably.

In other words, I’ve considered whether there were periods where HSBC continued charging Mr C even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew he was in financial difficulty or it ought to have realised this was the

case. I've looked through Mr C's account statements throughout the period concerned. And I can't see that HSBC ought to have taken corrective measures in relation to Mr C's overdraft.

It's fair to say that Mr C used his overdraft regularly even before the period that HSBC accepts it shouldn't have increased the limit. However, Mr C's overdraft was arranged. This means that he had an agreement to use his overdraft and he was entitled to do so. Therefore, Mr C using his overdraft in the period that he had it doesn't automatically mean that his complaint should be upheld.

That said, I do accept that the rules, guidance and industry codes of practice all suggest that prolonged and repeated overdraft usage can sometimes be an indication of financial difficulty. However, it isn't always the case that prolonged and repeated overdraft usage by a customer will always mean that they are, as a matter of fact, in financial difficulty.

Indeed, if that were the case, there would be an outright prohibition on revolving credit accounts being open ended, rather than there being a requirement for a lender to review how the facility is being used. I've therefore considered whether HSBC acted fairly and reasonably towards Mr C, in this light.

The first thing for me to say is that while there has been talk of Mr C's salary, I'm satisfied that his account was in receipt of sufficient credits to clear the overdraft within a reasonable period of time. So this isn't a case where the borrower was marooned in their overdraft with no hope of exiting it. Although I do accept that there were times where Mr C would have met the criteria of someone who displayed a pattern of repeat use of their overdraft.

That said, even though this is the case, the question here is whether Mr C's use of his overdraft was causing him to incur high cumulative charges that were harmful to him – such that HSBC should have taken formal action with a view to correcting matters. And having considered matters, I don't think that this is the case here.

Before I get on to Mr C's account usage itself, I've noted that Mr C had other credit commitments. I can also see that there are periods where some of these commitments were to lenders whom I would consider to be in the non-prime sector. Where a customer is borrowing from such lenders, it can suggest that they were becoming reliant on credit to meet their essential expenditure. But it won't always be the case that someone is reliant on credit simply because that are using credit from such lenders.

Furthermore and more importantly given the complaint that's before me, there isn't a prohibition on providing a customer with an overdraft in such circumstances and it could be fair for a lender to do so should there be other indications that the customer is able to manage and it choosing to borrow from such providers.

Having considered everything, I think that such circumstances existed here. I say this because while I'm not seeking to make retrospective value judgements over Mr C expenditure, nonetheless there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mr C's account.

Indeed, given the amount and nature of Mr C's spending it's fair to say that this was what was causing his additional borrowing, rather than Mr C's overdraft charges or any expenditure he was absolutely committed to making. It's fair to say a significant proportion of Mr C's expenditure was discretionary and the credits going into his account suggested he could have cleared his overdraft within a reasonable period of time had he wished to do so.

Equally, I can't see anything to indicate that the charges he was incurring were causing him any other significant harm. For example, from Mr C's HSBC account statements at least, I

can't see anything to indicate that Mr C began to default on credit, had any accounts with debt collectors or had county court judgments recorded against him.

I can see that Mr C has referred missing successive payments on his existing HSBC loan. But as these payments were made up and Mr C didn't end up consecutive payments behind, I don't think that this in itself meant that HSBC should have taken unilateral measures to remove Mr C's overdraft. Or that these late payments, rather than missed payments, incontrovertibly show that HSBC ought to have taken action on this overdraft here.

I accept neither of these things in themselves (or when taken together) mean that Mr C wasn't experiencing difficulty. But I don't agree that it is objectively clear that he was. He was quite comfortably able to make his commitments without using his overdraft. However, he was choosing to use his overdraft to make discretionary transactions. Furthermore, while Mr C has referred to what was happening on his account with another bank, I can't see how HSBC could have known about the activity on an account that it had no access to.

I also think that it would be wrong to say that HSBC ignored Mr C's overdraft usage completely. I say this because HSBC sent Mr C a number of repeat overdraft use letters telling him that it had noticed his overdraft usage was high and that it was reviewing matters. The letters also warned Mr C that more formal action could be taken if he didn't reduce his usage.

From what I can see Mr C did generally reduce his overdraft usage after he was sent these letters. As this is the case and while I've noted what Mr C has said about the cost to his other account, nonetheless Mr C's reduction in the use of his overdraft does support the argument that he could have taken this option had he wished to do so.

Bearing all of this in mind, I don't think that it was unreasonable for HSBC to have proceeded adding the charges that it did. This is particularly bearing in mind the significant consequences of taking corrective action, in the way that it would have done had it acted in way that Mr C is suggesting, in these circumstances would have been disproportionate. As this is the case, other than the periods where it accepts it acted unfairly and has agreed to refund the charges for, I don't think HSBC charged Mr C in circumstances where it ought to have realised that it was unfair to do so.

In reaching my conclusions, I've also considered whether the lending relationship between HSBC and Mr C might have been unfair to Mr C under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what HSBC has already agreed to do to put things right for Mr C's complaint as a whole, is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything further. I'm also not persuaded that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome in respect of this.

So overall and having considered everything, while I can understand Mr C's sentiments and appreciate why he is unhappy, I'm nonetheless satisfied that what HSBC has already agreed to do to put things right for Mr C is fair and reasonable in all the circumstances of this complaint.

I'm therefore not requiring it to do anything more or anything further and I leave it to Mr C to decide whether he wishes to accept HSBC's offer. I appreciate this will be very disappointing for Mr C. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm satisfied that what HSBC UK Bank Plc has already agreed to do to put things right for Mr C is fair and reasonable in all the circumstances of his complaint. I'm therefore not requiring it to do anything more or anything further. And I leave it to Mr C to decide whether he wishes to accept this offer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 August 2025.

Jeshen Narayanan
Ombudsman