

Complaint

Mr and Mrs D have complained about the overdraft charges HSBC UK Bank Plc ("HSBC") applied to their current account.

Mr and Mrs D are being represented, by the ("representative"), in their complaint.

The representative has said the charges applied to Mr and Mrs D's account were unfair as there was a failure to take account of their patterns of reliance on debt and hardcore borrowing. In the representative's view, there was no proper consideration of the longer-term impact of the borrowing on them.

Background

HSBC agreed to increase the overdraft limit on Mr and Mrs D's current account to £2,700.00 in February 2020. In March 2023, the limit was increased to £4,000.00 before it was finally increased to £5,000.00 in August 2023.

In November 2023, Mr and Mrs D complained saying that they were allowed to continue using the overdraft in a way that was unsustainable and which caused them continued financial difficulty.

HSBC did not uphold Mr and Mrs D's complaint. It did not think that it had done anything wrong or treated Mr and Mrs D unfairly in the period they used their overdraft. Mr and Mrs D was dissatisfied at HSBC's response and referred their complaint to our service.

When Mr and Mrs D's complaint was referred to our service, HSBC said that it was prepared to refund all of the charges added to the account in the period between September 2019 and December 2022. It proposed to reduce Mr and Mrs D's overdraft limit from £5,000.00 to £3,000.00 as a result.

One of our investigators looked into Mr and Mrs D's concerns and thought that what HSBC had agreed to do was fair and reasonable in all the circumstances of the complaint. Mr and Mrs D doesn't dispute that HSBC should have stopped them from using the overdraft in the way they did in the period between September 2019 to December 2022 and the associated refund.

However, they are unhappy at what HSBC says it will do in relation to the overdraft going forward. As Mr and Mrs D remained unhappy the complaint was passed to an ombudsman for a final decision.

As the parties appear to accept that Mr and Mrs D shouldn't have been allowed to continue using the overdraft in the same way in the period between September 2019 to December 2022 and now simply disagree on what should be done to put things right, I have solely focused on what fair compensation should be in this complaint.

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 in principle satisfied that what HSBC has already agreed to do to put things right is fair and reasonable in the circumstances of Mr and Mrs D's complaint. I'm therefore not requiring it to do anything more or anything further and I leave it up to Mr and Mrs D to decide whether they wish to accept HSBC's offer. I'll explain why I think this is the case in a little more detail.

HSBC has accepted that it shouldn't have allowed Mr and Mrs D to continue using their overdraft in the same way in the period between September 2019 to December 2022 as it was unsustainable for them.

Where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have. However, that's not possible in cases where funds that shouldn't have been advanced because typically those funds will have already been spent.

So we have to look at a way of asking a lender to put things right in some other fair and reasonable way. And where a business provided credit which it should have realised was unaffordable or unsustainable for a customer, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit.

This means we'd normally expect a lender to refund the interest and charges added as a result of any credit that it should not have provided. And if those interest and charges were paid also add 8% simple interest per year. HSBC has agreed to do this and it's fair to say that this part of the settlement is no longer the subject of any dispute between the parties.

However, as I understand it, HSBC proposes to reduce Mr and Mrs D's overdraft as all parties agree that an overdraft with a limit of £2,700.00 (as it was at the time) was unsustainable. Mr and Mrs D are dissatisfied at this proposed action. I can to some extent understand why Mr and Mrs D may be unhappy at their overdraft being reduced and why they may see this as them being penalised for having made a successful complaint. And I've thought about what they've said.

That said, it may help to explain that it is effectively HSBC's argument that it is proposes to reduce Mr and Mrs D's overdraft because it has a legitimate reason to cease providing them with a limit of £5,000.00 – namely that an overdraft with a limit of a lower amount was and remains - by Mr and Mrs D's own admission - unsustainable for them.

In the first instance, I think it's probably worth me saying that I cannot direct a firm to lend to an individual in circumstances where it legitimately decides that it is not prepared to do so. Mr and Mrs D may say (as they appear to be arguing) that there isn't a legitimate reason for HSBC to cease providing them with an overdraft.

However, I am mindful of the circumstances in this case. And I cannot ignore the fact that the entire premise of Mr and Mrs D's complaint has been that HSBC should not have continued allowing them to use their overdraft in circumstances where they were in difficulty and they couldn't afford to do so. HSBC has accepted this and that is the reason why their complaint has been partially upheld.

In my view, it would be unfair to HSBC and Mr and Mrs D, as well as being unreasonable in its logic if I were to say that these conclusions should be reflected in what HSBC should do up until this point; direct HSBC to pay compensation as result and yet in that same direction also take no account of these conclusions, in the position going forward, by also requiring HSBC to continue making an overdraft, with a limit of £5,000.00, available to Mr and Mrs D.

I would in effect be saying that HSBC didn't act fairly and reasonably towards Mr and Mrs D (which is the argument that the representative made) by failing to take corrective action in relation to the overdraft and as part of it putting things right going forward, it should now ignore this as well as what Mr and Mrs D told it as part of their complaint.

Furthermore, while I'm sorry to learn that Mr and Mrs D's circumstances have changed and that Mr D is now out of work as a result of ill health, it's difficult for me to reasonably conclude that HSBC is wrong to reduce the overdraft when the potential for the harm that Mr and Mrs D could experience from the continued use of an overdraft limit (higher than that previously deemed to be unsustainable for them) is even greater than it was previously.

I'm satisfied that directing HSBC to continue providing Mr and Mrs D with an overdraft in circumstances where all parties accept that it is unaffordable for them and it is likely to cause them significant adverse consequences, would be counterproductive and arguably not in Mr and Mrs D's best interests, or those of HSBC as a lender.

I'm also satisfied that HSBC's response and proposed course of action is not only legitimate but also proportionate to what it now unquestionably knows about Mr and Mrs D's circumstances, as a result of what it has learnt; and what Mr and Mrs D have said through the course of (and in the time since) their complaint.

That said, HSBC should ensure that it acts fairly and reasonably in the process of removing Mr and Mrs D's overdraft. What this means is that HSBC can use the amount of any refund to reduce Mr and Mrs D's overdraft balance. However, if an amount (over the amount of the limit it now believes to be sustainable) remains after this, HSBC must set up an affordable payment plan with Mr and Mrs D to repay the remainder of what they owe.

Any failure to take such action and leaving Mr and Mrs D in an unarranged overdraft for an extended period of time, may result in it failing to act fairly and reasonably.

Finally, I've also considered whether the lending relationship between HSBC and Mr and Mrs D might have been unfair to Mr and Mrs D under section 140A of the Consumer Credit Act 1974 ("CCA").

However, I'm satisfied that what HSBC has already agreed to do to put things right for Mr and Mrs D'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.

Overall and having considered everything, I'm satisfied that what HSBC has already agreed to do to put things right for Mr and Mrs D is fair and reasonable in all the circumstances of this complaint. I'm therefore not directing HSBC to do anything more or anything further and I leave it up to Mr and Mrs D to decide whether they wish to accept HSBC's offer. I appreciate this may prove disappointing for Mr and Mrs D. But I hope they'll understand the reasons for my decision and that they'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 agreed to do to put things right is fair and reasonable in the circumstances of Mr and Mrs D's complaint. I'm therefore not requiring it to do anything more or do anything further and leave it up to Mr and Mrs D to decide whether they wish to accept the offer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 11 August 2025.

Jeshen Narayanan
Ombudsman