DRN-5713242

Complaint

Mr E has complained about the overdraft charges HSBC UK Bank Plc ("HSBC") applied to his current account. He's said the charges were applied unfairly as he was allowed to use his overdraft for a prolonged period.

Mr E is being represented, by "the representative", in his complaint.

The representative has said the charges applied to Mr E's account were unfair as there was a failure to take account of his 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 him.

Background

HSBC initially provided Mr E with an overdraft which had a limit of £200 in April 2018. The overdraft limit was then incrementally increased until it reached £1,600.00 in May 2018.

Mr E's complaint was looked at by one of our investigators. He wasn't persuaded that HSBC had unfairly allowed Mr E to continue using the overdraft in a way that was unsustainable or otherwise harmful for him. So the investigator didn't recommend that Mr E's complaint be upheld.

Mr E disagreed with the investigator and asked for an ombudsman's decision.

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 not upholding Mr E's complaint. I'll explain why in a little more detail.

Before I go any further, as this complaint essentially boils down to an allegation that Mr E 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 or financial institution 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 E if it applied this interest, fees and charges to Mr E's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr E was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances where HSBC didn't treat Mr E fairly and reasonably.

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

I've looked through Mr E's account statements throughout the period concerned. Having done so, I don't agree that HSBC ought reasonably to have taken unilateral corrective measures in relation to Mr E's overdraft. I don't think that there was ever a time when it ought to have realised that the overdraft had become demonstrably unsustainable and I'll now explain why.

It's fair to say that Mr E used his overdraft and the representative appears to be suggesting that this in itself was an indication that HSBC ought to have taken action. But it is far too simplistic to say that it automatically follows that someone was in financial difficulty simply because they were using a financial product that they were entitled to use. I think it's important to look at overall circumstances of a customer's overdraft usage – particular in light of what this may suggest about their overall position.

Therefore, in this case, I've considered Mr E's incomings and outgoings as well as any overdrawn balance and thought about whether it was possible for him to have stopped using his overdraft, based on this. After all, if Mr E was locked into paying charges because there was no prospect of him exiting his overdraft then his facility would have been unsustainable for him. So I've carefully considered whether this was the case.

The first thing for me to say is that I'm satisfied that Mr E's 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 E would have met the criteria of someone who displayed a pattern of repeat use of their overdraft.

For reasons I'll go on to explain, I think that this was important. But for now, I think it's important to explain that even though this is the case, the question here is whether Mr E's use of his overdraft was causing him to incur high cumulative charges that were harmful to him. And having considered matters, I don't think that this is the case.

To explain, while I'm not seeking to make retrospective value judgements over Mr E expenditure, there are also significant amounts of non-committed, non-contractual and discretionary transactions going from Mr E's account. Equally, I can't see anything on the statements for this account indicating that the charges Mr E was incurring for this discretionary spending were causing him harm. For example, I can't see that he was borrowing from unsustainable sources in order to meet these charges.

In my view, Mr E was quite comfortably able to make any essential commitments without using his overdraft. However, he was choosing to use his overdraft to make discretionary transactions and in periods where he had increased funds his discretionary expenditure increased.

Given the repeat usage letters Mr E is likely to have been sent by HSBC, I think that he ought to have realised that how much he was paying to use the overdraft in the way he was. So I simply don't agree that Mr E was using his overdraft purely for essential spending, or because he had a reliance on credit to get by, as the representative has suggested.

I say all of this while mindful that I've seen no indication that any of the potential signs of financial difficulty contained in the regulator's guidance on financial difficulty (set out in CONC 1.3) – such as Mr E failing to meet consecutive payments to credit, or Mr E failing to meet his commitments out of his disposable income – were present in Mr E's circumstances.

I appreciate that there were instances where Mr E did have returned direct debit payments and unarranged overdraft fees. But Mr E has already had a refund of these payments. So I don't think that this in itself means that he should also be refunded all of the interest he paid for using his agreed overdraft facility.

Given the representative's reference to CONC 5D, I also wish to make it clear that it isn't simply the case that a customer should never be allowed to make discretionary payments from an overdraft. Indeed, its argument appears to be suggesting that a corrective action should be taken against a customer every time they meet the criteria for being sent a letter, irrespective of the circumstances. However, the rules and guidance aren't as blunt a tool as this. The position is far more nuanced.

The representative's interpretation runs contrary to the purpose of the rules and guidance which is to ensure that customers are protected from high cumulative charges where they are likely to cause harm. The rules and guidance aren't to prevent the use of overdraft in all circumstances where a repeat use letter has been sent in the way that the representative's argument suggests.

Even more importantly the representative's argument is at odds with the concept of proportionality – a firm should take action proportionate to the circumstances. This concept of proportionality runs right through CONC 5 as a whole. Given the amount of funds that Mr E was in receipt of, I'm not persuaded that HSBC ought reasonably to have realised that Mr E's overdraft usage was causing him harm.

Overall and having considered everything, 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 consequences of HSBC taking corrective action, in the way that it would have done had it acted in way that the representative is suggesting it should have, would have been disproportionate.

I say this because I don't think that it would have been proportionate for HSBC to demand that Mr E immediately repay his overdraft, in circumstances where there was a realistic prospect of Mr E clearing what he owed in a reasonable period of time. Indeed, I think that if HSBC had suggested that it would take such action, Mr E would have argued that it would been unfair, bearing in mind the consequences of such action, in circumstances where he could afford to use it in the way he was.

In reaching my conclusions, I've also considered whether the lending relationship between HSBC and Mr E might have been unfair to Mr E under s140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've already explained, I'm satisfied that HSBC did not act unfairly in allowing Mr E to use his overdraft in the way that he did bearing in mind all of the circumstances. And I haven't seen anything to suggest that s140A CCA would, given the facts of this complaint, lead to a different outcome here.

So overall I'm satisfied that it wasn't unfair for HSBC to provide the overdraft or the limit increases to Mr E. I'm also satisfied that HSBC did not charge Mr E in circumstances where it ought to have realised that it was unfair to do so. As this is the case, I'm not upholding Mr E's complaint. I appreciate that this will be very disappointing for Mr E. 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 not upholding Mr E's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 8 September 2025.

Jeshen Narayanan
Ombudsman