

Complaint

Mr S has complained about the overdraft charges HSBC UK Plc ("HSBC") applied to his current account. He's effectively said that the overdraft was unaffordable and so he shouldn't have been provided with it. Therefore, the charges applied to his account were unfair as he could not afford them.

Background

Mr S has had an account with HSBC from as far back as 2006. It says that Mr S successfully applied for an overdraft at some point around this. However, HSBC has limited records Mr S' account prior to 2018. It has said that Mr S had a limit of £3,500.00 at this point.

In August 2024, Mr S complained¹ saying that HSBC applied overdraft charges to his account despite him struggling to keep afloat and being unable to afford them. HSBC did not uphold Mr S' complaint. It didn't think that it had done anything wrong in allowing Mr S to use his overdraft in the way that he did. Mr S remained dissatisfied at HSBC's response and referred his complaint to our service. When Mr S referred her complaint to us, HSBC told us that it considered Mr S' complaint was made too late.

One of our investigators reviewed what Mr S and HSBC had told us. He reached the conclusion that we could look at the entire period Mr S had his overdraft for. However, he wasn't persuaded that HSBC had acted unfairly by allowing Mr S to use his overdraft in a way that was unsustainable or otherwise harmful. So the investigator didn't recommend that Mr S' complaint be upheld.

Mr S 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. HSBC has argued that Mr S' complaint was made too late because he complained more than six years after some of the charges on the overdraft were applied, as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Having carefully considered everything, I've decided not to uphold Mr S' complaint. Given the reasons for this, I'm satisfied that whether Mr S' complaint about some of the specific charges applied was made in time or not has no impact on that outcome.

¹ Mr S had previously complained that he shouldn't have been given the overdraft in the first place in November 2019.

Having considered matters, I'm satisfied that it is reasonable to interpret Mr S' complaint as being one alleging that the lending relationship between Mr S and HSBC was unfair to Mr S as described in s140A of the Consumer Credit Act 1974 ("CCA"). I consider this to be the case as Mr S has not only complained about the circumstances behind the application of the individual charges, but also the fact HSBC's failure to act during the periods he alleges it ought to have seen he was experiencing difficulty caused ongoing hardship.

I'm therefore satisfied that Mr S' can therefore reasonably be interpreted as a complaint that the lending relationship between himself and HSBC was unfair to him. I acknowledge the possibility that HSBC may still disagree that we are able to look at the whole of Mr S' complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr S' case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr S' complaint can be reasonably interpreted as being about that his lending relationship with HSBC was unfair to him, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (HSBC) and the debtor (Mr S), 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. S140B 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 Mr S' complaint, I therefore need to think about whether HSBC's allowing Mr S to use his overdraft in the way that it did, resulted in the lending relationship between Mr S and HSBC being unfair to Mr S, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Mr S' relationship with HSBC is therefore likely to be unfair if it allowed Mr S to continue using his overdraft in circumstances where it ought reasonably to have realised that the facility had become unsustainable or otherwise harmful for him. And if this was the case, HSBC didn't then remove the unfairness this created somehow.

Did HSBC unfairly allow Mr S to continue using his overdraft in a way that was unsustainable or otherwise harmful for him?

Before I go any further, as this essentially boils down to a complaint that Mr S was unfairly charged as a result of 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. This is important as I note that Mr S has referred to the interest rate on his overdraft and ultimately,

how much a bank charges for its services is a commercial decision. This 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 S if it applied this interest, fees and charges to Mr S' account in circumstances where it was aware, or it ought fairly and reasonably to have been aware that there was a clear reason it would have been unfair to do so. I've therefore considered whether such a reason existed which would have resulted in HSBC charging Mr S unfairly.

Having looked through the earliest statements that I've been provided with, it's clear that Mr S has been using his overdraft. I'm therefore satisfied that there can be no dispute that Mr S was using his overdraft over the period of time he's had it. Mr S' arguments appear to suggest that this in itself means that his complaint should be upheld. However, Mr S' overdraft was arranged. This means that he had an agreement to use his overdraft and he was entitled to use it. Therefore, Mr S 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 automatically 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 S, in this light.

In considering this matter, the first thing for me to say is that after the regulator amended its rules in December 2019, since late 2020 lenders have been required to write to customers explaining that using an overdraft can be expensive and that there may be more suitable alternatives for borrowing over the longer term. Lenders have effectively been required to encourage borrowers to use other means in these circumstances.

Furthermore, should a customer fail to take notice of these letters and continue using their overdraft in this way, the rules in place since then have permitted lenders to take corrective action, this is even where a customer might be using their account in accordance with the terms and conditions.

That said, having considered Mr S' complaint, it appears as though his concerns are mostly focused on a period of time prior these requirements coming into force. That's not to say that there weren't any obligations in place upon lenders during this time. However, it's fair to say that in this period, where a customer didn't get in contact and ask for assistance and where a customer was using their overdraft within the terms and conditions, there were more limited circumstances where a lender could and would be expected to act.

One such instance where a lender would be expected to act is where it was clear that the customer was experiencing financial difficulty. Nonetheless, it would need to be objectively clear to the lender, rather than a matter open to interpretation, that the overdraft charges were clearly making things worse and they were harmful as a result.

The position prior to November 2019

In the first instance, I can't see that Mr S directly told HSBC that he couldn't afford to pay these charges, prior to his initial complaint in November 2019. I've considered whether his account activity ought to have alerted it to this being the case. In considering this matter, I'm mindful that in order to help with determining whether it is objectively the case that a customer was experiencing financial hardship, the regulator has (since April 2014) set out guidance on what it considers to be potential indicators of financial difficulty.

While this guidance came into force in April 2014, it effectively incorporated Section 9 of the British Bankers' Association's (of which HSBC was a member of) Lending Code, which had already been in place for a number of years (including the period between 2011 and 2014). So I'm satisfied that the principle of this guidance, at the very least, is relevant to the entire period I'm looking at.

The '*Guidance on financial difficulties*' states that things such as a customer failing to meet consecutive payments to credit, being unable to meet their commitments out of their disposable income, having adverse credit or other insolvency information recorded against them, or being in a debt arrangement should be considered as potential signs of a customer being in financial difficulty.

However, having looked at the statements provided, I've seen no indication that any of the potential signs of financial difficulty contained in the guidance, were obviously present in his circumstances during the entire period I've looked at. Furthermore, I can't see anything in Mr S' account transactions or statements which suggests that he was borrowing from payday or other high-cost lenders, which although not contained in the regulator's guidance, is generally accepted to be an indication that a borrower could be struggling too.

I've also looked at Mr S' incomings and outgoings as well as his overdrawn balances and determined whether it was possible for him to have stopped using his overdraft, based on this. I think that if Mr S was locked into paying charges in circumstances where there was no reasonable prospect of him exiting his overdraft then his facility would have been unsustainable for him, even where the indicators of financial difficulties I've set out above weren't clearly present in his circumstances, when looking at the account transactions.

In reviewing this matter, I've noted that throughout the period of time I'm looking at, Mr S' account was in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time. Indeed, I'm satisfied that Mr S' case isn't one where a borrower was permanently in their overdraft. It is clear that there were times where Mr S returned to a credit balance. The fact that Mr S was receiving regular credits into his account is another reason why his overdraft doesn't appear to have been obviously unsustainable for him.

Furthermore, while I'm not seeking to make retrospective value judgements over Mr S expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mr S' account. Indeed, there was significant discretionary spend and Mr S also appears to have been transferring funds to and from another account of his at times.

I accept that Mr S did have other credit commitments at this time. But this in itself does not mean that he was reliant on credit to meet his essential expenditure. And it isn't immediately obvious to me that Mr S was borrowing from unsustainable sources – such as payday type lenders – in order to pay for the charges, or meet other committed expenditure either.

Of course, I accept neither of these things in themselves (or when taken together) mean that Mr S wasn't experiencing difficulty. But I don't think that Mr S' account conduct and overdraft usage obviously show that he was. And bearing in mind I'm satisfied that it is more likely

than not that Mr S did not directly tell HSBC that he was experiencing financial difficulty, that's what I'd need to be persuaded of in order to uphold his complaint.

Looking from the outside, it looks like Mr S had the funds to be able to reduce the amount that he used his overdraft. However, he was choosing not to do so. In these circumstances, HSBC was reasonably entitled to conclude that Mr S was choosing to use his overdraft rather than it being the case that he had become reliant on it.

Therefore, I don't think that Mr S was obviously locked into using his overdraft and paying the charges for doing so. In my view, there was a reasonable prospect of Mr S exiting his overdraft. And HSBC was reasonably entitled to believe that Mr S was choosing to use his overdraft in the way that he was, rather than a case that his financial circumstances meant that he had no choice other than to do so.

I appreciate that Mr S has said our assessment hasn't been on information from the entire time period. However, I do have to take into account that HSBC isn't required to have retained information covering the period of almost two decades that Mr S has had his account. Ultimately, it was Mr S that chose to make his complaint in August 2024. As this is the case, I have to decide the complaint on what I have before me.

It is only fair and reasonable for me to uphold a complaint in circumstances where I can clearly see that a lender ought to have taken action in relation to an overdraft. It's very difficult for me to uphold a complaint on the basis of uncorroborated arguments regarding an individual's circumstances. Bearing in mind the statements I've been able to see, I don't have enough to say that HSBC acted unfairly to Mr S prior to his complaint in 2019.

The position after Mr S' previous complaint

It's fair to say that HSBC ought to have become more alert to Mr S' overdraft usage and whether he needed any help after his complaint in 2019. It's unclear whether it did take any action in relation to this. Nonetheless, it's clear that Mr S' overdraft use did reduce after his previous complaint.

I say this because Mr S substantially reduced his limit and also used his overdraft far less after his earlier complaint. I note that Mr S has said that he was only able to reduce his overdraft usage after he received a tax rebate. But the important thing is that as Mr S did use his overdraft less, there wasn't anything for HSBC to correct. So I'm not persuaded that HSBC acted unfairly in relation to Mr S's overdraft usage, in the period after it responded to his previous complaint in 2020 either.

As this is the case, I don't think that it was unreasonable for HSBC to have proceeded adding the charges that it did. I've therefore not been persuaded that HSBC created unfairness in its relationship with Mr S by allowing him to use his overdraft in the way that he did. Based on what I've seen, I don't find HSBC treated Mr S unfairly in any other way either. In these circumstances, I don't find that the relationship between Mr S and HSBC was unfair to Mr S.

Overall and having considered everything, while I can understand Mr S' sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mr S. 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 S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 December 2025.

Jeshen Narayanan
Ombudsman