

Complaint

Mrs H has complained about the overdraft charges HSBC UK Bank Plc (“HSBC”) applied to her account.

Mrs H is being represented, by the (“representative”), in her complaint.

Background

Mrs H has had an overdraft on her HSBC current account since at least September 2012. At this point, Mrs H was provided with an overdraft limit of £500. The limit has fluctuated since then with it being £800 at its highest and £100 at its lowest.

In February 2025, Mrs H complained saying that she was irresponsibly provided with an overdraft which she was then allowed to continue using in a way that was unsustainable and which caused her continued financial difficulty.

HSBC did not uphold Mrs H’s complaint. It didn’t think that it had done anything wrong or treated Mrs H unfairly in the period she had her overdraft. Mrs H was dissatisfied at HSBC’s response and referred her complaint to our service. When Mrs H’s complaint was referred to our service, HSBC told us that we couldn’t consider parts of it as it was made too late.

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

The representative, on Mrs H’s behalf, 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 part of Mrs H’s complaint was made too late because she complained more than six years after the decisions to provide her with an overdraft and some of the charges on it were applied, as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained Mrs H’s complaint was one alleging that the relationship between her and HSBC was unfair to her as described in s140A of the Consumer Credit Act 1974 (“CCA”). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

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

I'm also in agreement with the investigator that Mrs H's complaint should be considered more broadly than just the individual charges or lending decisions. I consider this to be the case as Mrs H 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 she alleges it ought to have seen she was experiencing difficulty caused ongoing hardship.

I'm therefore satisfied that Mrs H's complaint can be interpreted as one alleging that the lending relationship between herself and HSBC was unfair to her. I acknowledge the possibility that HSBC may still disagree that we are able to look at the whole of Mrs H'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 Mrs H's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mrs H's complaint can be reasonably interpreted as being about that her lending relationship with HSBC was unfair to her, 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 (Mrs H), 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 her 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 Mrs H's complaint, I therefore need to think about whether HSBC's allowing Mrs H to use her overdraft in the way that it did, resulted in the lending relationship between Mrs H and HSBC being unfair to Mrs H, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

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

I've therefore considered whether HSBC acted fairly and reasonably towards Mrs H in this light.

HSBC's decisions to provide Mrs H with an overdraft with limits of between £100 and £800

We've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when considering Mrs H's complaint.

HSBC needed to make sure that it didn't lend irresponsibly. In practice, what this means is HSBC needed to carry out proportionate checks to be able to understand whether Mrs H would be able to repay what she was being lent before providing any credit to her.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

HSBC says that it will have obtained some information on Mrs H's income and her expenditure before deciding to lend to her. It says that this will have been cross-referenced against information it obtained on the funds going into Mrs H's main account and her existing credit commitments which it obtained from credit reference agencies.

Mrs H's overdraft was an open-ended (running account) agreement (in other words, while HSBC was required to periodically review the facility, there was no fixed end date) where there was an expectation that she'd repay what she borrowed plus the interest due within a reasonable period of time. The rules at the time didn't (and CONC doesn't now) set out what a reasonable period of time was.

So I think it's important to note that a reasonable period of time will always be dependent on the circumstances of the individual case. Equally, it's fair to say that overdraft limits of between £100 and £800 will have required relatively low credits in order to clear the full amount that could have been owed within a reasonable period of time.

Taking into account the funds Mrs H was receiving as well as the amount that needed to be repaid should Mrs H owe the respective full amounts of between £100 and £800, I think that HSBC was entitled to conclude that Mrs H had sufficient funds to cover sustainable credits to her overdraft as well as also cover whatever regular monthly living costs she may have had.

Did HSBC unfairly allow Mrs H to continue using her overdraft in a way that was unsustainable or otherwise harmful for her?

Before I go any further, as this aspect of Mrs H's complaint essentially boils down to a complaint that she was unfairly charged as a result of being allowed to continue using her 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 its 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 Mrs H if it applied this interest, fees and charges to Mrs H's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mrs H was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where HSBC didn't treat Mrs H fairly and reasonably.

In other words, I've considered whether there were periods where HSBC continued charging Mrs H 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 she was in financial difficulty.

Having looked through Mrs H's account statements throughout the period concerned, I can't see that HSBC ought reasonably to have realised that Mrs H was experiencing financial difficulty to the extent that it would have been fair and reasonable for it to have unilaterally taken corrective measures in relation to Mrs H's overdraft. I'll explain why I think this is the case in a little more detail.

I accept that Mrs H used her overdraft regularly. I 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, this is not the same as saying that prolonged and repeated overdraft usage by a customer will always mean that they are, as a matter of fact, in financial difficulty.

The representative's letter of complaint states that its review of Mrs H's credit file leads it to believe that HSBC identified Mrs H as a repeat overdraft user. It's unclear to me how it has reached this conclusion bearing in mind that a lender isn't expected to report that it has identified a customer as a repeat overdraft user to credit reference agencies. Nonetheless, the key issue here isn't simply whether Mrs H was a repeat overdraft user. What is important to determine is whether Mrs H was incurring high overdraft charges which she clearly couldn't afford to repay.

I say this because if Mrs H was locked into paying charges in circumstances where there was no reasonable prospect of her exiting her overdraft, then her facility would have been unsustainable for her. With this in mind, I think it's important to look at overall circumstances of a customer's overdraft usage as part of considering their overall financial position, rather than simply looking at whether they met the definition of a repeat overdraft user.

So I've considered Mrs H's incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for her to have stopped using her overdraft, based on this. The first thing for me to say is that Mrs H's overdraft limit was relatively low and her account was always in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time.

There were some instances where Mrs H did have returned payments because HSBC wasn't prepared to lend her more. But I can't see how HSBC completely removing Mrs H's overdraft and/or defaulting the account would have helped at these times. I think that taking such action for such ad-hoc returned payments which are likely to have been as a result of an oversight, would more likely than not have caused greater harm bearing in mind the impact of such action.

I'd also add that while I'm not seeking to make retrospective value judgements over Mrs H expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mrs H's account. Given the repeat usage letters Mrs H is likely to have been sent by HSBC, I think that she ought to have realised that how much she was paying for this. So I simply don't agree that Mrs H was using her overdraft purely for essential spending, or because she had a reliance on credit to get by.

For the sake of completeness, I would also add that it seems to me that Mrs H did not ignore HSBC's repeat overdraft use letters as she regularly made changes to her overdraft limit. As I've explained, as times Mrs H was able to get to the point where she only had a limit of £100.

Mrs H actions in changing the limit as often as she did and in particular reduce it, do not support her being trapped in her overdraft with no prospect of existing it. So I don't agree that HSBC failed to take any corrective action in relation to Mrs H's overdraft usage, as the repeat use letters do appear to have prompted Mrs H to make changes.

Overall and having considered everything, I don't think that it was unreasonable for HSBC to have proceeded adding the charges that it did and hasn't refunded.

Therefore, I don't find that the relationship between Mrs H and HSBC was unfair to Mrs H. I've not been persuaded that HSBC created unfairness in its relationship with Mrs H by allowing her to use her overdraft in the way that she did. Based on what I've seen, I don't find HSBC treated Mrs H unfairly, in relation to this overdraft, in any other way either.

So overall and having considered everything, while I can understand Mrs H's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mrs H. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 5 January 2026.

Jeshen Narayanan
Ombudsman