

complaint

Ms L complains that HSBC Bank plc gave her son, Mr L, an overdraft facility on his current account without first assessing whether he was able to repay the outstanding balance.

background

Mr L had a current account with HSBC. He was unemployed and in receipt of Jobseekers Allowance. He had no overdraft facility. His mother says that she asked the bank to confirm it would not grant an overdraft facility to him, but the bank says it has no record of that.

Her concern was that Mr L had a gambling habit, which is obvious from his management of the account. The account operated in credit with a very small balance until Mr L made a series of bets in July 2011 of just over £500. He was able to do so because the bank made an informal overdraft available to him, which Mr L is unable to repay.

our adjudicator's view

Our adjudicator concluded that Mr L's spending was entirely his responsibility and that HSBC was not at fault. Ms L responded to say that, if she had known an unauthorised overdraft was possible, the account would not have been opened.

my provisional decision

After considering all the evidence, I issued a provisional decision to Mr L and to HSBC on 27 June 2013. I summarise my findings:

- Ms L said this account was opened on the basis there would not be an overdraft, given her son's gambling habit. HSBC said the account was opened before Mr L was old enough to borrow money so it believed such a conversation was unlikely. I took the view that, given the points Ms L has made in this complaint, it was likely she did have such a conversation with the bank, even if it were in advance of Mr L's ability to borrow money. However, my view was that this was not significant to my decision.
- I considered the critical issue to consider was why, given Mr L had no formal overdraft facility, HSBC agreed to lend to him. HSBC said it did so because *"Wherever possible, we look to honour the payment a customer has made to avoid embarrassment that rejection transactions can cause. We do consider a number of factors including account turnover and previous account management. The final decision is based on the Banks discretion."* But I was not satisfied the bank assessed the affordability of this lending to Mr L. As an overdraft, it was repayable on demand. Mr L's income was £98 each fortnight which he spent. On the information available to me at that stage, I did not see what resources HSBC considered would have been available to Mr L to repay this debt.
- I took the view that, had any affordability assessment been carried out, given Mr L's low income and his management of his account, this borrowing was unaffordable for Mr L and would not have been made. Given the nature of the borrowing, Mr L had not bought an item which could be sold to repay part of the debt. I therefore considered that HSBC should not recover the debt which arose as a result of this overdraft, to include any subsequent interest or charges it applied and remove any adverse information it registered with the credit reference agencies.

- I noted that Ms L suffered distress and inconvenience but, as she was not the eligible complainant, I was unable to award her compensation. I did not consider that such an award should be made to Mr L as he had had the benefit of the overdraft.

My provisional decision was that I was minded to uphold this complaint and that I intended to order HSBC to write-off the debt owed to it by Mr L and amend any adverse credit registration recorded as a result of non payment of the overdraft.

Ms L responded to confirm Mr L accepted my provisional decision, but expressed concern that HSBC did not have anything in place to prevent this type of situation.

HSBC responded to say it rejected my provisional decision. It says it is not feasible for the bank to check every request for an informal overdraft; it was the consumer's responsibility to monitor his own spending and the bank was not aware that the consumer was incapable of managing his bank account. HSBC also points out that the Visa card payments are a guaranteed form of payment and will be automatically authorised, if the retailer does not refer the request to the bank.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

In my provisional decision I indicated that I was not satisfied HSBC had concluded an affordability assessment before deciding to lend the money to Mr L through an informal overdraft. HSBC's response is that it is not feasible to carry out an assessment in every case. This reinforces my view that such an assessment was not carried out in the case of Mr L. The bank's response does not address my provisional conclusion that, given his low income and the management of his account, this borrowing was unaffordable. Nor has HSBC indicated what resources it considered were available to Mr L to repay the debt.

As a result, I see no reason to depart from the conclusions I reached in my provisional decision. For the reasons summarised above I uphold this complaint.

my final decision

I uphold this complaint and, in full and final settlement of it, I order HSBC Bank plc to write off the debt owed to it by Mr L and amend any adverse credit registration recorded as a result of non-payment of this overdraft.

Gerard McManus
ombudsman