

## **complaint**

Mr L complains that HSBC Bank Plc charged him for the use of an overdraft facility he never agreed to, and didn't tell him that it would put markers on his credit file if he didn't repay his overdraft balance.

## **background**

When Mr L was a child, his father opened an account with him at HSBC. When Mr L turned 18, his child's account was converted to an adult's account. Since then he has incurred overdraft charges and returned direct debit charges. When he didn't repay his overdraft balance, HSBC reported this to a credit reference agency.

Mr L complains that he never agreed to have an overdraft facility, so he shouldn't be liable for the charges. He also says HSBC never told him when repayments were due by. So he says the charges should be refunded. He also says he was never told that failure to repay his overdraft would be reported on his credit file, so all references to this should be removed from his credit file.

HSBC said the charges had been applied in accordance with the terms and conditions of the account. When it had learned that Mr L was in financial difficulties it had tried to help him by offering to go through his income and expenditure with him, but he hadn't let it.

Our adjudicator did not uphold this complaint. He said that Mr L had known about the overdraft charges because HSBC had sent him the new terms and conditions when he turned 18. HSBC hadn't been unsympathetic to his financial troubles, but it had done what it could. It didn't have to refund any charges, or amend his credit file.

Mr L does not accept that opinion. He says that HSBC was supposed to send him daily text message alerts to notify him about his overdraft, but it didn't do this. It only sent him 14 alerts. He says it should have done more. He asked for an ombudsman's decision.

The original adjudicator has since left our service, but a second adjudicator told Mr L that what he'd said about the text alerts was a new complaint. So instead of considering it as part of this complaint, Mr L would have to raise it with HSBC. I have however considered it as part of this complaint, for reasons I explain below.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I do not uphold this complaint. I will explain why.

Mr L says that when the account was first opened, he was too young to agree to anything. He didn't sign anything when he turned 18, so that means he didn't agree to the terms and conditions on the adult account either. So he shouldn't be liable for the overdraft fees.

I don't agree. The terms and conditions were sent to him when he was 18, and so he had the opportunity to consider them (whether he actually did so or not). If he didn't want to be bound by them, then he could have closed his account. By continuing to use the account, he agreed by his conduct to be bound by the account conditions, whether he signed them or not – just as HSBC is bound by them too.

The terms and conditions explain how the overdraft facility works and how the charges are calculated. They also say that HSBC will share information about the account with credit reference agencies.

I also note that in November 2016 HSBC wrote to Mr L to tell him that if he should repay the outstanding overdraft balance "today." It went on to say that if he didn't, then "We may pass your details to a Credit Reference Agency (this could adversely affect your ability to obtain credit in the future)."

So I think HSBC did enough to notify Mr L about the charges, and the consequences for his credit file if he took no action. I don't think HSBC needed to do anything more.

Although what Mr L said about the text message alerts is a new argument, I don't think that this amounts to a new complaint. The texts are relevant to this complaint, because they were about the overdraft charges. If I were to uphold Mr L's complaint about the texts (which I do not), then I would have to consider whether I should order HSBC to refund all or some of the overdraft charges to make amends.

The terms and conditions don't say that a text message will be sent to a customer every day that the account is overdrawn. Mr L says he saw that promise on HSBC's website, but I can't see it there either. The website simply says:

"To try to help you avoid Overdraft fees, we will send you Overdraft text alerts if we've agreed an informal overdraft on your account. We will also send you a text alert if there isn't sufficient cleared funds available, in your account, to make a payment."

The terms and conditions say (in relation to formal overdrafts):

"We will only send each Overdraft Limit Alert once. We cannot send repeat Overdraft Limit Alerts."

HSBC says it sent Mr L 20 text alerts. Mr L says it only sent 14. I don't think I need to decide which figure is correct, because in either case I think HSBC did enough to tell Mr L his account was overdrawn. It didn't need to tell him every day.

So for these reasons I don't think it would be fair to require HSBC to amend Mr L's credit file, or refund any charges.

In March 2016 Mr L called HSBC to tell it he was in financial difficulty. HSBC gave him some debt management advice, and told him it would consider waiving charges after he reduced his gambling, but he hung up. HSBC put interest and charges on hold for one week. Two days later HSBC wrote to him and told him about free debt advice services he could use. I don't think it had to do more than that.

### **my final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 6 July 2017.

Richard Wood  
**ombudsman**