

complaint

Mr and Mrs J are unhappy HSBC Bank Plc allowed them to exceed their overdraft facility and incur additional charges.

background

Mr and Mrs J were long-standing customers of HSBC. Mr J says HSBC allowed the account to exceed the agreed overdraft on a number of occasions. He says the bank acted irresponsibly. It treated the additional spending as informal requests to increase the overdraft. But the transactions were being used for gambling purposes and should've been stopped by the bank. The terms and conditions don't allow loans for gambling. So Mr and Mrs J want the bank to write off the outstanding debt.

HSBC confirmed it'd allowed Mr and Mrs J to exceed the overdraft limit on a temporary basis. But it wasn't a loan from the bank. It was just a temporary extension of the overdraft. The bank said it'd spoken to Mr J in 2013 and 2014. It'd explained how the facility operated. And it'd advised him it was his responsibility to monitor the account.

HSBC said the charges were applied correctly and in line with the terms and conditions of the account. So it didn't think it'd done anything wrong. But it'd refunded £125 of charges as a gesture of goodwill.

Mr and Mrs J weren't satisfied with HSBC's response. So they contacted our service and our investigator looked into the matter. He didn't think HSBC had breached the agreement. The terms and conditions of the account clearly show the details and charges of any informal request or formal (arranged) overdraft. He couldn't find any evidence Mr J had asked HSBC to restrict the use of the account or help him manage his spending. So he didn't think the bank had done anything wrong.

Mr and Mrs J didn't agree. They felt HSBC had breached the agreement it had with them. So they've asked for an ombudsman's final 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.

I can understand Mr and Mrs J's frustration. They had a personal meeting with HSBC and agreed a £200 overdraft facility. And they didn't think the 'informal' overdraft facility was part of their discussion or arrangement. So I've looked carefully at everything they, and HSBC, have said.

The facility to temporarily exceed the agreed overdraft limit is stated in the terms and conditions. Mr and Mrs J say it wasn't discussed or requested during the meeting with HSBC. But it's a facility that's offered as part of the account. And HSBC says it reminded Mr J how the account operated when he discussed things with him in 2013 and 2014.

Of course customers don't have to make use of an overdraft facility if they don't want to. It's up to them how they manage their finances. And it's not unusual for banks to allow customers to exceed their agreed limit for a short period of time. It can help customers pay for unexpected bills or monthly payments while additional funds are added to the account.

I realise Mr and Mrs J say such situations should be reviewed properly rather than decided by the bank's internal systems. But HSBC has taken the decision not to automatically reject payments or direct debits if they exceed the overdraft limit. It's says it's done so to help customers manage their finances for a short period. And, as Mr J confirms, the overdraft reverted back to the agreed limit once the excess had been cleared.

Mr J says HSBC had a duty of care to stop him using the money to gamble. But I can't see any record of Mr J discussing his gambling with HSBC. Or asking it to help control or monitor his spending. So, in the circumstances, I can't really say it was HSBC's responsibility to review how Mr J was using his account.

I don't think it would be fair to ask HSBC to refund the spending or write off any existing amount. But I can see HSBC refunded £125 of the £200 charges applied to the account between March 2013 and August 2017. The bank did so as a gesture of goodwill. And I think that's a reasonable response.

But, based on what I've seen, I can't really say HSBC has done anything wrong. Mr and Mrs J agreed to the terms and conditions of the account. And the account received regular credits and debits and was used normally for long periods of time. When the agreed overdraft limit was exceeded it was on a temporary basis. And it was done so as part of the agreed terms and conditions of the account. It wouldn't be fair to say HSBC was providing loans to facilitate Mr J's gambling.

While this isn't the outcome Mr and Mrs J wanted I hope this shows I've fully investigated the complaint and the reasons behind my decision.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs J to accept or reject my decision before **23 April 2018**.

Andrew Mason
ombudsman