

Complaint

Mr R has complained about the overdraft on his HSBC UK Bank Plc ("HSBC") bank account. He's said the charges for using the facility made his financial situation worse and he had to take further credit out, which in turn caused his debt to spiral out of control.

Background

In April 2020, Mr R complained about HSBC's actions in relation to his overdraft from November 2015 onwards. As far as I'm aware, during the period concerned Mr R's overdraft limit was increased by the following amounts at the following times:

Date	Amount of limit increase	New limit
15 December 2015	£300.00	£2,000.00
30 December 2015	£300.00	£2,300.00
8 January 2016	£700.00	£3,000.00
23 January 2016	£200.00	£3,200.00
17 February 2016	£200.00	£3,400.00
11 March 2016	£200.00	£3,600.00
23 March 2016	£400.00	£4,000.00
13 April 2016	£200.00	£4,200.00
13 April 2016	£300.00	£4,500.00
12 May 2016	£200.00	£4,700.00
18 May 2016	£100.00	£4,800.00
23 May 2016	£100.00	£4,900.00
3 June 2016	£50.00	£4,950.00

HSBC didn't think it had done anything wrong when it investigated Mr R's complaint. In its view the interest and charges on Mr R's account were applied correctly and in line with its policy.

Mr R's complaint was subsequently reviewed by one of our investigators. She thought that HSBC ought reasonably to have realised that Mr R was experiencing financial difficulty by February 2016 at the latest. And by this stage not only should HSBC not have agreed to increase Mr R's overdraft limit, it should have taken corrective action as the overdraft had become demonstrably unsustainable for him.

HSBC disagreed with our investigator. And in summary it said:

- Mr R had sufficient income to finance his overdraft as the credits going through his accounts suggested that he had a net monthly income of £1,640.00. Mr R's essential expenditure was also taken into account and by the time of the last increase his monthly disposable income calculated at around £550, which was enough for the requested £4,900.00 to be deemed affordable.

- Although Mr R did have a history of exceeding his overdraft limit in the latter part of 2015, it didn't see any evidence of missed payments on the other financial products shown on his credit file.
- While there was some gambling on Mr R's account this was not at a sufficient level to highlight any concerns, so gambling usage wouldn't have factored into any of the assessed increases before and after March 2016 and would be in line with the Financial Conduct Authority's ("FCA") Consumer Credit Sourcebook ("CONC") requirements.
- Mr R didn't use payday lending from the second half of 2015 onwards. And during the period of the agreed increases there is no evidence of any payments to payday lenders going through Mr R's accounts.
- A significant proportion of Mr R's spend was non-essential. And if he'd limited this spend he would have been able to operate comfortably within his agreed overdraft limit and significantly reduce charges that were applied according to the terms and conditions of the account. Mr R never reached out to say that he was struggling.
- It sent Mr R a number of letters asking him to make credits to his account. Mr R being sent further letters demonstrates that he didn't immediately make the required credits. But he did eventually increase his credits and the letters stopped. Mr R didn't respond to say he was in financial difficulty and corrective action wasn't taken because this would have resulted in adverse information being recorded on Mr R's credit file thus impacting his ability to obtain further credit.

The regulatory framework

HSBC provided Mr R with the overdraft limit increases in question after regulation of consumer credit activities had transferred from the previous regulator (the Office of Fair Trading) to the FCA on 1 April 2014. HSBC was authorised by the FCA at this time so it was subject to the FCA's rules in respect of consumer credit activities from 1 April 2014.

- *the FCA Principles for Business ("PRIN")*

The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principles here are PRIN 2.1.1 R (2) which says:

A firm must conduct its business with due skill, care and diligence.

And PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

- *the Consumer Credit sourcebook ("CONC")*

This sets out the rules which apply to firms specifically when carrying out credit related regulated activities. Bearing in mind the complaint before me, I think the most relevant sections of CONC here are CONC 1 which sets out guidance in relation to financial difficulties; CONC 5 which sets out a firm's obligations in relation to responsible lending; CONC 6 which sets out a firm's obligations after a consumer has entered into a regulated agreement; and finally CONC 7 sets out the rules and guidance in relation to Arrears, default and recovery (including repossessions).

CONC 1.3G provides guidance on financial difficulty. It says:

"In CONC (unless otherwise stated in or in relation to a rule), the following matters, among others, of which a firm is aware or ought reasonably to be aware, may indicate that a customer is in financial difficulties:

- (1) consecutively failing to meet minimum repayments in relation to a credit card or store card;*
- (2) adverse accurate entries on a credit file, which are not in dispute;*
- (3) outstanding county court judgments for non-payment of debt;*
- (4) inability to meet repayments out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the customer having to borrow further to repay existing debts, or the customer only being able to meet repayments of debts by the disposal of assets or security;*
- (5) consecutively failing to meet repayments when due;*
- (6) agreement to a debt management plan or other debt solution;*
- (7) evidence of discussions with a firm (including a not-for-profit debt advice body) with a view to entering into a debt management plan or other debt solution or to seeking debt counselling"*

CONC 5 sets out a firm's obligations in relation to responsible lending. These rules were updated in November 2018, but I refer below to the rules as they were at the time the lending decisions in question were made.

CONC 5.2.1R(2) sets out what a lender needs to do before agreeing to provide a consumer with credit, including entering into an agreement of this type. It says a firm must consider:

(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and

[Note: paragraph 4.1 of ILG]

(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

[Note: paragraph 4.3 of ILG]

CONC also includes guidance about 'proportionality of assessments'.

CONC 5.2.3G says:

The extent and scope of the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), in a given case, should be dependent upon and proportionate to factors which may include one or more of the following:

- (1) the type of credit;*
- (2) the amount of the credit;*
- (3) the cost of the credit;*
- (4) the financial position of the customer at the time of seeking the credit;*
- (5) the customer's credit history, including any indications that the customer is experiencing or has experienced financial difficulties;*
- (6) the customer's existing financial commitments including any repayments due in respect of other credit agreements, consumer hire agreements, regulated mortgage contracts, payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the firm;*
- (7) any future financial commitments of the customer;*
- (8) any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer;*
- (9) the vulnerability of the customer, in particular where the firm understands the customer has some form of mental capacity limitation or reasonably suspects this to be so because the customer displays indications of some form of mental capacity limitation (see CONC 2.10).*

[Note: paragraph 4.10 of ILG]

CONC 5.2.4G(2) says: *A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.*

[Note: paragraph 4.11 and part of 4.16 of ILG]

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1G(1) says: *In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.*

[Note: paragraph 4.2 of ILG]

CONC 5.3.1G(2) then says: *The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*

[Note: paragraph 4.1 (box) and 4.2 of ILG]

CONC 5.3.1G(6) goes on to say:

For the purposes of CONC “sustainable” means the repayments under the regulated credit agreement can be made by the customer:

(a) without undue difficulties, in particular:

(i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and

(ii) without having to borrow to meet the repayments;

(b) over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and

(c) out of income and savings without having to realise security or assets; and “unsustainable” has the opposite meaning.

[Note: paragraph 4.3 and 4.4 of ILG]

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) states: *(a) it is not generally sufficient for a firm to rely solely for its assessment of the customer’s income and expenditure on a statement of those matters made by the customer.*

And CONC 5.3.7R says that: *A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).*

[Note: paragraph 4.31 of ILG]

As explained, CONC 6 sets out a firm’s post-contractual obligations.

CONC 6.7.2 R states:

“A firm must monitor a customer’s repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.”

[Note: paragraph 6.2 of ILG]

CONC 6.7.3 G states:

The action referred to in CONC 6.7.2 R should generally include:

(1) notifying the customer of the risk of escalating debt, additional interest or charges and of potential financial difficulties; and

[Note: paragraph 6.16 of ILG]

(2) providing contact details for not-for-profit debt advice bodies.

[Note: paragraph 6.2 (box) of ILG]

Although it refers to credit and store cards specifically, CONC 6.7.7 R does offer some useful insight on the circumstances where it would be inappropriate to increase the credit limit on a revolving credit account.

CONC 6.7.7 R says:

A firm must not increase, nor offer to increase, the customer's credit limit on a credit card or store card where:

- *(2) a customer is at risk of financial difficulties.*

CONC 7 provides guidance to lenders about how to deal with consumers in arrears, this time making reference to the Office of Fair Trading's Debt Collection Guidance (DCG).

CONC 7.3.2G states:

When dealing with customers in default or in arrears difficulties a firm should pay due regard to its obligations under Principle 6 (Customers' interests) to treat its customers fairly.

[Note: paragraphs 7.12 of ILG and 2.2 of DCG]

CONC 7.3.4R states that:

A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.

[Note: paragraphs 7.3 and 7.4 of ILG and 2.2 of DCG]

CONC 7.3.5G lists some examples of forbearance and due consideration and states:

Examples of treating a customer with forbearance would include the firm doing one or more of the following, as may be relevant in the circumstances:

- (1) considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a customer provides evidence of financial difficulties and is unable to meet repayments as they fall due or is only able to make token repayments, where in either case the level of debt would continue to rise if interest and charges continue to be applied);*

[Note: paragraph 7.4 (box) of ILG]

- (2) allowing deferment of payment of arrears:*

- (a) where immediate payment of arrears may increase the customer's repayments to an unsustainable level; or*

- (b) provided that doing so does not make the term for the repayments unreasonably excessive;*

- (3) accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock, from a customer who demonstrates that meeting the customer's existing debts would mean not being able to meet*

the customer's priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills).

Other relevant publications

CONC sets out the regulatory framework that firms carrying out consumer credit activities have to adhere to. But they represent a minimum standard for firms. I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

HSBC was a subscriber to the Lending Standard Board's Lending Code and currently subscribes to the Standards of Lending Practice which replaced it in July 2016.

The Lending Code

Section 4 of the Lending Code is concerned with Credit Assessments. It says:

Personal customers

50. Before lending any money, granting or increasing an overdraft or other borrowing, subscribers should assess whether the customer will be able to repay it in a sustainable manner. They should do this by considering information from CRAs, including existing financial commitments where provided, as well as the following, as appropriate:

- The type and amount of credit being sought;*
- How the customer has handled their finances in the past;*
- Internal credit scoring techniques (if used by the subscriber);*
- The customer's declared income;*
- Why the customer wants to borrow the money and for how long; and*
- Any security provided.*

51. Subscribers should take a view on which of the above factors it is appropriate to consider in any particular circumstance dependent on, for example, the type and amount of credit being sought and the potential risks to the borrower.

52. Assessment may also include other checks that have not been listed above.

53. The requirement to consider information from CRAs does not apply in specialist customer segments such as private banking where use of CRA data may not be appropriate.

54. Where income is one of the factors considered when assessing ability to repay a personal loan and the loan is agreed only if the income of another person is taken into account, normally the loan should be provided on a joint and several basis. However there may be circumstances when it is appropriate to provide a loan on a sole basis.

55. Subscribers should ensure they are familiar with the requirements of the Code Sponsors' Guide to Credit Scoring and the explanations that need to be given to customers if credit scoring is used.

56. If a lending application is declined following credit assessment, the subscriber should explain the main reason why if asked by the customer. If the decline is as a result of information obtained from a CRA search, the subscriber should provide the customer with contact details for the CRA.

Section 9 of the Lending Code is concerned with Financial Difficulties. It says:

178. *Subscribers should be sympathetic and positive when considering a customer's financial difficulties. Although there is an onus on customers to try to help themselves, the first step, when a subscriber becomes aware of a customer's financial difficulties, should be to try to contact the customer to discuss the matter. This applies to both personal and micro-enterprise customers.*

179. *Personal customers should be considered to be in financial difficulty when income is insufficient to cover reasonable living expenses and meet financial commitments as they become due. This may result from a change in lifestyle, often accompanied by a fall in disposable income and/or increased expenditure, such as:*

- *loss of employment;*
- *disability;*
- *serious illness;*
- *relationship breakdown;*
- *death of a partner;*
- *starting a lower paid job;*
- *parental/carer leave;*
- *starting full-time education; and*
- *imprisonment*

180. *Financial difficulties may become evident to a subscriber from one or more of the following events:*

- *Items repeatedly being returned unpaid due to lack of available funds;*
- *Failing to meet loan repayments or other commitments;*
- *Discontinuation of regular credits;*
- *Notification of some form of insolvency or court proceedings;*
- ***Regular requests for increased borrowing or repeated rescheduling of debts;*** [my emphasis]
- *Making frequent cash withdrawals on a credit card at a non-promotional rate of interest; and*
- ***Repeatedly exceeding a credit card or overdraft limit without agreement.*** [my emphasis]
- *The customer informing the subscriber that they are, or at risk of being in financial difficulties.*

182. *If a subscriber becomes aware via their existing systems or from external data feeds (e.g. CRAs) or from information provided by the customer that the customer may be at risk of being in financial difficulties, the subscriber should contact the customer in order to:*

- *outline their approach to financial difficulties;*
- *encourage the customer to contact the subscriber if the customer is worried about their position;*
- *offer the customer appropriate and timely options where possible to help reduce the risk of deterioration in the customer's financial well-being; and*
- *provide signposts to sources of free, independent money advice.*

The subscriber's contact with a customer identified as being at risk of being in financial difficulties should be through the normal channel of communication with the customer concerned, such as letter, telephone, email or text.

183. Signs or indicators that a personal customer may be at risk of being in financial difficulties may include:

- **regular unarranged overdrafts or excesses on agreed overdraft facilities;** [my emphasis]
- *high or increasing numbers of unarranged overdraft charges being incurred by the customer, particularly where the total charges are high compared to the customer's monthly income (where known);*
- *regular returned items or refused authorisations in respect of Point of Sale or ATM transactions;*
- **frequent requests for increased overdraft limits;** [my emphasis]
- **hardcore borrowing* or increasing dependence on unauthorised overdrafts developing;** [my emphasis]
- *change in account behaviour such as significantly reduced credit turnover;*
- *missed or overdue payments in respect of products held by the customer; and*
- *deteriorating trend in third party data e.g. CRA data.*

This list is not intended to be exhaustive, nor are the above necessarily indicators that a customer may be at risk of being in financial difficulties. Subscribers should consider what other information they have available that might indicate that a customer is or is not at risk of experiencing financial difficulties.

* Hardcore borrowing is defined in the glossary of the code. It is defined as:

Hardcore borrowing refers to the position where a customer's current account overdraft remains persistently overdrawn for more than a month without returning to credit during that period.

The Standards of Lending Practice

The standards relating to assessing the affordability of credit are set out in the 'Product Sale' section of the Standards of Lending Practice. The relevant section says:

"5. Before providing any form of credit, granting or increasing an overdraft or other borrowing, Firms should assess, from the information available to the Firm at the time, whether the customer will be able to repay it in a sustainable manner without the customer incurring financial difficulty or experiencing significant adverse consequences. [CONC 5]"

There is also a section on 'Money Management' and paragraph 3 of this section says:

"3. Firms should monitor customers' credit card and overdraft limits to ensure that the customer is not exhibiting signs of financial stress and where relevant, offer appropriate support."

Information HSBC itself provided

On 14 June 2016 HSBC sent Mr R a letter entitled **"Important information about your overdraft"**. Amongst other things this letter said:

The terms and conditions that apply to your overdraft state you should make regular payments into your account when it's overdrawn.

As a responsible lender we regularly review overdraft limits to ensure they're appropriate for customers, according to their circumstances. As part of this process, we monitor payments

you make into your account each month. When the credits to your account have been low in relation to your overdrawn balance, we'll recommend an amount we'd like you to pay into your account each month.

Your account was £4,802.86 overdrawn on 14 June 2016

We recommend that you pay a minimum of £1,930.00 into your account within the next month.

On 29 January 2020 HSBC wrote to Mr R about his overdraft usage. Amongst other things this letter said:

"Many of us find an overdraft a convenient and easy way to access a little extra money if needed

An arranged overdraft can help you avoid fees from returned payments for bills that happen when your account doesn't have enough money in it. You may also find it useful if you need money over a short time period or for an unexpected event. To help you keep control of your borrowing costs, we recommend that it's not used regularly."

Further on, the letter goes on to say:

"Our Overdraft Service is a short-term way to borrow money on your current account. It's not designed for long term borrowing and could be more expensive than other lending options."

HSBC's Personal Banking Terms and Conditions, in December 2015, also said:

"Overdrafts are a short-term way to borrow money on your account. Overdrafts are subject to status. You must not borrow on savings accounts."

These Terms and Conditions also said:

"When you have to repay your overdraft

Overdrafts are a short-term way to borrow money. You must make regular payments into your account and tell us straightaway if you're not able to do this.

We can, at any time, end your overdraft. If we do this, we'll send you a demand in writing asking you to repay the overdrawn balance on your account immediately.

We can also ask you to repay part of your overdrawn balance at any time. If we end or reduce your overdraft this will usually be because there has been a change in your personal circumstances."

Finally, it is my understanding that HSBC's overdraft agreements around the time the limit increases in question took place on Mr R's included the following wording:

"Your overdraft will be provided until we tell you otherwise. We'll review your facility annually [my emphasis] and contact you if we make any changes to your overdraft"

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having taken into account the relevant rules, guidance and good industry practice. I think there are three overarching questions, which I need to consider in order to decide what is fair and reasonable in all the circumstances of Mr R's complaint. These questions are:

- Did HSBC carry out reasonable and proportionate checks to satisfy itself that Mr R would be able to repay what he borrowed in a sustainable way at the time of each lending decision in question (in other words - each time it increased the overdraft limit)?
 - If so, did it make a fair lending decision?
 - If not, what would reasonable and proportionate checks more likely than not have shown?
- Bearing in mind the circumstances, at the time of each limit increase, was there a point where HSBC ought reasonably to have realised it was increasing Mr R's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit?
- Did HSBC act unfairly or unreasonably towards Mr R in some other way?

I'll consider each of these questions in turn.

Did HSBC carry out reasonable and proportionate checks to satisfy itself that Mr R would be able to repay what he borrowed in a sustainable way at the time of each lending decision in question (in other words - each time it increased the overdraft limit)?

The rules and regulations during the period in question required HSBC to carry out a reasonable and proportionate assessment of whether Mr R could afford to repay what he owed in a sustainable manner. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so HSBC had to think about whether repaying the overdraft sustainably would cause difficulties or adverse consequences *for Mr R*. In practice this meant that HSBC had to ensure that repaying the overdraft wouldn't cause Mr R undue difficulty or adverse consequences. In other words, it wasn't enough for HSBC to simply think about the likelihood of it getting its money back, it had to consider the impact of any repayments on Mr R.

Checks also had to be "proportionate" to the specific circumstances of the application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);

- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether HSBC did what it needed to each time it increased his overdraft limit.

HSBC says that Mr R passed its affordability checks which were based on his income (and credits going into his account), information about his existing credit commitments obtained from a credit reference agency and an assessment of his essential spend. Each time there was enough disposable income left over for the proposed limit to be deemed affordable and as the credit checks didn't suggest Mr R had missed or late payments on his other credit, the limit increases in question were agreed.

Mr R's overdraft was an open-end (running account) agreement (in other words, while HSBC committed to reviewing the facility each year there was no fixed end date) where there was an expectation that he'd repay what he borrowed plus the interest due within a reasonable period of time. CONC didn't 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.

HSBC's response to our investigator suggests that it used Mr R's account data for some parts of its assessment and relied on estimates and third-party data for others. Having considered this, it seems to me that HSBC treated each of Mr R's applications in isolation with little regard to what had happened previously or how his circumstances were evolving.

In my view, this approach failed to take into account Mr R was a repeat borrower and assess the plausibility of the monthly disposable income amount arrived at against what was happening on Mr R's account. I'm concerned that some of the estimates used were contradicted by what was showing on Mr R's statements. For example, Mr R's accommodation costs were estimated to be £155 month because he said that he was living at home with parents. However, his statements clearly show a standing order of £400 a month going towards rent.

Equally Mr R's monthly credit commitments were estimated at £440 but his statements show significantly in excess of this going out of his account each month for this. And while HSBC hasn't provided the details of the credit searches it carried out and it has sought to downplay Mr R's use of payday loans, Mr R's credit file shows that he'd taken out a payday loan almost every month in the first half of 2015. Indeed, it looks like the reason why Mr R stopped taking payday loans in the three months prior to December 2015 was because he instead took out a larger loan with a high-cost lender instead.

I'm also mindful that HSBC appears to have ignored Mr R exceeding his overdraft limit, on more than one occasion, in favour of him not having missed payments on his other commitments. This is despite the fact that Mr R was only meeting his other commitments because he was using his overdraft (and exceeding his limit) in order to make these payments.

Indeed, at this time, CONC defined lending as being sustainable when the repayments can be made by the borrower without undue difficulties. In particular, this meant that the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. In my view, Mr R

was only meeting his existing commitments by borrowing further and this in itself was enough to suggest his existing debts may have unsustainable and he therefore shouldn't have been provided with further credit.

I think that all of this led to HSBC failing to take into account the whole picture of its overall lending history with Mr R, in favour of a narrower focus on the individual applications, which, in terms of the later limit increase applications at least presented a more favourable picture of a deteriorating position. In any event, the sheer number of inconsistencies in the information gathered, Mr R's relatively recent use of payday lending together with him exceeding his existing limit on multiple occasions all called into question whether he really had £550 (or a third of his monthly income) available in monthly disposable income.

As HSBC proceeded with these limit increases with what appeared to be, over-optimistic assessments on thirteen occasions (in the period I'm considering) even in the face of Mr R's indebtedness to it increasing, I'm satisfied that the checks HSBC carried out before increasing Mr R's overdraft limit weren't reasonable and proportionate.

Would reasonable and proportionate checks have shown HSBC that it shouldn't have increased Mr R's overdraft limit in the way that it did?

As reasonable and proportionate checks weren't carried out before Mr R's overdraft limit increases were provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that reasonable and proportionate checks would have told HSBC it shouldn't have provided the increases.

As HSBC had access to them, and it says that they played at least a part in it affordability assessments, I consider it perfectly fair and reasonable to use Mr B's bank statements to form my view on what proportionate checks would more likely than not have shown HSBC. I have therefore done so and set out what I think Mr R's statements ought reasonably to have demonstrated to HSBC.

- December 2015 increases

The first two limit increases were for relatively low amounts - £300 on each occasion. I do have concerns that Mr R hadn't seen a credit balance in the month before. But even though Mr R never reached a credit balance he did get close to doing so. And I'm satisfied that the amount he owed did reduce at periods during the month.

So while I have concerns with Mr R not seeing a credit balance, the information I have does lead me to think that it's more likely than not that reasonable and proportionate checks would not have prevented HSBC from providing the limit increases that it did.

- January 2016 increases

The first of the January 2016 increases was for more than the combined amount of the December increases. I'm also concerned that it appears to have been provided when Mr R overdrawn all the way up to his existing limit. The same also appears to be the case when Mr R applies for an extra £300 later in January.

I think it's fair to say that a pattern of Mr R applying for a limit increase, using all the funds and getting close to exceeding his limit before once again applying for further funds was beginning to emerge. And Mr R was moving further and further away from seeing a credit balance too. For example, Mr R's best position was just over £200 overdrawn in November 2015 but in January 2016 his best position was just under £2,200.00 overdrawn.

So, in my view, there were some clear warning signs that Mr R's overdraft might have been becoming unsustainable for him. And that he was substituting his reliance on payday loans in the previous year, to a reliance on his overdraft. That said given it was just after a period of the year where consumers in general do tend to spend more, I don't think HSBC had no reasonable basis for believing that this increased overdraft usage might have been short-term (therefore in keeping with HSBC's own stated purpose of overdrafts) and that Mr R could sustainably repay his facility.

Therefore, while I have concerns about the developing pattern in Mr R's overdraft usage, I'm satisfied that reasonable and proportionate checks wouldn't necessarily have shown Mr R couldn't afford to sustainably repay what he was being lent or prevented HSBC from lending the additional funds. So I don't think that further checks would have prevented HSBC from increasing Mr R's overdraft limit on either occasion in January 2016.

However, for reasons I'll go on to explain in the next section of this provisional decision, I don't think that it was fair and reasonable for HSBC to have agreed to any of the further overdraft limit increases from February 2016 onwards.

Bearing in mind the circumstances, at the time of each limit increase, was there a point where HSBC ought reasonably to have realised it was increasing Mr R's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit?

I'm mindful that the relevant rules and guidance makes it clear that a lender shouldn't continue offering credit where the borrowing is unsustainable or otherwise harmful and/or where it's apparent the borrower may be experiencing financial difficulties.

I'm also mindful that the same rules and guidance as well as HSBC's own documentation suggests that overdraft facilities were only really suitable for (and so only supposed to be used for) short-term, occasional or emergency borrowing – I referred to this in the good industry practice and other information HSBC provided section of this decision.

This is a view shared by the FCA in Consultation Paper 18/42 *High-Cost Credit Review: Overdrafts consultation paper and policy statement* ("CP18/42"). I acknowledge that this was published sometime after the period I'm looking at here. But I think that it offers some insight on the FCA's perspective on the use of overdrafts. So I do consider it to be of some relevance in this case.

Paragraph 3.35 of CP 18/42 states:

"Overdrafts are intended for short-term or emergency borrowing, but some consumers use them repeatedly over a long period of time. This repeat overdraft use can harm consumers because it can be an expensive way to borrow, and they can build up problem debt over time."

Bearing all of this in mind, in addition to assessing the circumstances behind each *individual* lending decision, I also think it's fair and reasonable to look at what unfolded during the course of Mr R's overdraft history with HSBC – especially how it was managed and whether HSBC ought to have realised Mr R was building up problem debt.

I've already explained why I think that reasonable and proportionate affordability checks weren't completed for any of the limit increases I'm looking at. And that based on the evidence on file, I can't say that proportionate checks would not have shown that the limit increases provided in December 2015 and January 2016 when considered individually were unsustainable.

I also explained that a more in-depth assessment of Mr R's account usage showed that he was applying for limit increases, using the credit and then applying for further limit increases as he was about to reach his new limit. And he was moving further away from returning to a credit balance. Equally even though there were four applications in a short space of time, these all took place around Christmas.

So even though I thought that there were some warning signs that HSBC ought to have been alert to, I didn't think that Mr R's overdraft usage had, in itself, become demonstrably unsustainable or harmful – such that I could reasonably say that the facts spoke for themselves – by the time of the second increase in January 2016.

But looking at what happened after the second limit increase in January 2016 and the period leading up to the increase in February 2016, I think that the emerging pattern of Mr R struggling to manage his overdraft had now become firmly established. I think that the account was never really able to recover from this point and in my view, bearing in mind what had happened on the account previously, HSBC ought to have seen this was a reasonably foreseeable consequence of its actions in increasing Mr R's overdraft limit here.

I say this because Mr R made a further application for an overdraft limit increase just as he was once again approaching his limit. This time Mr R's overdraft limit was increased to more than double his monthly salary. As Mr R had moved further and further away from returning to a credit balance, after each of the four previous limit increases, I can't see any reasonable basis for reaching the conclusion he would have been able to sustainably repay a facility which would now take more than two months of his salary (without any deductions) to clear.

The position wasn't much better at the time of the next increases either. Indeed, Mr R's statements appear to indicate that he was already over his existing limit at the time the second limit increase in March 2016 took place. The statements suggest the same thing may well have happened at the time of the April 2016 increases as well.

What is truly astonishing about the May 2016 and June 2016 increases is that they all took place in the month prior to Mr R being sent a letter telling him that he wasn't crediting his account with enough funds. I can't see how HSBC can argue that the credits going into Mr R's account were sufficient to repay his overdraft within a reasonable period of time at the time of these limit increases, when it wrote to Mr R telling him that after monitoring the payments going into account he needed to increase the credits being paid in, less than a month later. And this was even after HSBC appear to have provided Mr R with a loan for £4,000.00 too.

It's also worth noting that HSBC agreed to sixteen overdraft limit increases in the space of nine months. And during this time Mr R's overdraft limit (and to intent and purposes his overdrawn balance) increased from £900 to £4,950.00 – so more than five times the original amount. Mr R also had many instances where he'd exceeded his existing limit and HSBC clearly agreed to frequent requests for increased overdraft limits during this period when Mr R never saw a credit balance and was therefore hardcore borrowing. So HSBC agreed to all of these limit increases in circumstances where the Lending Code suggested Mr R may have been experiencing financial difficulty.

In reaching my conclusions I have also considered what HSBC has deemed to be Mr R's non-essential spending including any gambling transactions. To be clear, I'm not saying that it is up to HSBC – or any other bank for that matter - to tell a consumer how they can and can't spend their money. But as Mr R was constantly using his overdraft here and was developing a reliance on his limit being increased, he wasn't spending his own money.

Mr R was spending and gambling funds that HSBC was lending to him. And his ability to repay – especially as the later limit increases were being requested after gambling transactions had taken place - was becoming more and more dependent on his success as a gambler. I don't think that there was or is any reasonable basis for concluding this was a sustainable way of Mr R repaying a debt that had, by the final limit increase, reached three times his monthly income.

Given all of HSBC's obligations and what I think is fair and reasonable taking into account the circumstances and everything I've covered in this section, I find that HSBC ought fairly and reasonably to have realised it was increasing Mr R's indebtedness in a way that was unsustainable or otherwise harmful. And so it shouldn't have provided any of the overdraft limit increases after it increased Mr R's credit limit to £3,200.00 in January 2016.

Did HSBC act unfairly or unreasonably towards Mr R in some other way?

I've already pointed out that as well as ensuring it doesn't lend irresponsibly, a lender is also required to monitor a borrower's repayment record and also provide assistance should that repayment record suggest the borrower is experiencing financial difficulty. It also appears to be the case - from the documentation I've referred to in the good industry practice and other information HSBC provided section of this decision – that HSBC committed to reviewing Mr R's overdraft on annual basis.

As our investigator pointed out in her assessment, HSBC sent Mr R a number of letters telling (or at least suggesting to) him that he wasn't paying enough funds into his account to sustain his overdraft limit. And that he needed to pay an increased amount into his account otherwise it would need to review whether offering (or allowing him to keep seeing as a he already had one) a formal overdraft at its current level was appropriate. It looks like the first such letter and first such suggestion was sent in June 2016. Mr R didn't make the recommended payment and, at least, three further letters with similar warnings but higher recommended amounts be credited were sent in the year after the February 2017.

HSBC says that Mr R didn't respond to say he was in financial difficulty and the credits to his account must have increased because the letters stopped. But there comes a point where a lender cannot continue simply relying on a borrower not getting in touch to say they are in financial difficulty. There are many reasons why someone might not get in contact to ask for help even though they're in a situation where they're struggling, or they may even go further and say they can and will make payment when the reality is they can't. And while Mr R didn't respond to the letters the available evidence, which HSBC also had at the time, leaves me satisfied that he was struggling and that HSBC ought to have realised this.

It's worth noting this in the context of HSBC's response to our investigator saying that any limit increases requested after the final one would have been disallowed on the basis of affordability concerns. But this is a fallacious and somewhat disingenuous argument as even though HSBC didn't provide Mr C with a formal overdraft limit increase, HSBC did nonetheless allow Mr R to exceed his overdraft limit – by over £800 on at least one occasion - and therefore did lend him more than the amount it thought he could afford to repay. All it did was lend him these funds on an informal or unarranged basis and charged him even more for lending in this way. Indeed from November 2016 onwards Mr R's starting balance on his monthly account statements was over his agreed limit on thirteen out of seventeen months.

This additional cost of Mr R's increased dependence on unarranged overdraft borrowing is reflected in his annual summary of account charges. Between February 2016 and February 2017 (when HSBC was regularly increasing Mr R's overdraft limit) Mr R paid a total of £1,091.38 in overdraft fees and interest (£310 in unarranged (or informal) overdraft usage

fees and £781.38 in overdraft interest). Mr R looks to have spent 75 days in an unarranged overdraft during this period.

But between February 2017 and February 2018 (which included eight months where HSBC presumably wouldn't have increased Mr R's overdraft limit) he paid £1,414.77 in overdraft fees and interest (£600 in unarranged (or informal) overdraft usage fees and £817.44 in overdraft interest). In this period Mr R spent 155 days, more than twice the time in the previous year, in an unarranged overdraft and therefore over the maximum HSBC deemed he could afford.

It's fair to say that Mr R did pay less in the two years after this. But he still never saw a credit balance on his account. So Mr R still wasn't using his overdraft as intended – a short-term safety net for occasional use. And more importantly Mr R's credit file during the period shows that he once again started taking out payday and other high-cost loans. I don't think this was a coincidence, or that the lower amounts paid in 2018 and 2019 mean that Mr R was no longer struggling financially. In my view, Mr R was now substituting a reliance on his overdraft for a reliance on other forms of unsustainable high-cost borrowing.

I'm also concerned with the reason HSBC has provided for not taking corrective action in relation to Mr R's overdraft. HSBC's response to our investigator suggested that it didn't proactively assist Mr R or take corrective action without hearing from him because it didn't want to impact his credit file. However, this is a false dichotomy as there isn't anything within CONC (and specifically COCN 7) which requires a lender to default an account before proactively assisting a customer who is struggling financially.

But, in any event, leaving aside my concern about HSBC's binary and inflexible position here, I don't think it's fair and reasonable for a lender to allow a customer to continue using a credit facility that has become demonstrably unsustainable simply to avoid defaulting an account or reporting negative information with credit reference agencies. This is even where the borrower might not want a lender to take this course of action. After all while a default might be viewed negatively by other lenders, it does offer the borrower certain protections in relation to the debt which has been defaulted.

In this case, Mr R spent large amounts of time owing more than the maximum amount HSBC thought he could afford to repay, he didn't increase the payments going into his account as HSBC suggested, or even respond to the letters sent either; and he hadn't seen a credit balance for an extended period of time. In these circumstances, it was not only clear that Mr R's overdraft facility had become unsustainable for him, it was also clear Mr R wasn't adhering to the terms of his overdraft agreement either.

I think that this meant that HSBC ought fairly and reasonably to have taken corrective action in relation to Mr R's clearly problematic overdraft debt as far back as February 2016, even if this meant defaulting the account or recording negative information on Mr R's credit file.

HSBC's failure to do this (and this decision which it says was taken with a view to avoid Mr R being unable to borrow elsewhere) meant that Mr R paid high amounts of interest (including extra amounts for exceeding his agreed limit) for the privilege of HSBC allowing him to continue to hold what, in my view, had clearly become an unsustainable debt. HSBC actions in allowing Mr R to continue using his overdraft in this way, while ignoring the evidence suggesting he couldn't afford to, worsened Mr R's problem rather than helped him.

So I find that HSBC also unfairly failed to take corrective action in relation to Mr R's overdraft when it ought to have seen he was experiencing financial difficulty as a result of his problem debt. And it follows that I find HSBC did also act unfairly or unreasonably towards Mr R in some other way.

Conclusions

Overall and having carefully thought about the three overarching questions, set out on page eleven of this decision, I find that:

- HSBC *didn't* complete reasonable and proportionate checks on Mr R to satisfy itself that he was able to sustainably repay what he owed for any of the overdraft limit increases agreed in the period of time I've looked at;
- reasonable and proportionate checks *would not* more likely than not have shown Mr R was unable to sustainably repay what he owed within a reasonable period of time when his overdraft limit was increased in December 2015 and January 2016;
- HSBC ought fairly and reasonably to have realised that the overdraft limit increases *after* January 2016 (in other words the ones from February 2016 onwards) were unsustainable or otherwise harmful for Mr R and were unfairly and excessively increasing his overall indebtedness;
- HSBC did also act unfairly or unreasonably towards Mr R in some other way.

The above findings leave me reaching the overall conclusion that HSBC unfairly and unreasonably provided Mr R with the overdraft limit increases from February 2016 onwards and also unfairly failed to take corrective action in relation to the overdraft.

Did Mr R lose out because HSBC didn't act fairly and reasonably towards him?

HSBC ought reasonably to have realised that Mr R was in financial difficulty by February 2016 at the latest and at this point HSBC ought reasonably to have exercised forbearance and helped Mr R manage his debt. But instead of doing this HSBC added further overdraft interest, fees and charges to his overdrawn balance.

So I think that Mr R lost out because he's had to pay, and he's still being expected to pay interest and charges that shouldn't have been added to his balance in the first place. And I'm satisfied that this means HSBC needs to put things right.

Fair compensation what HSBC needs to do to put things right for Mr R

I want to start by saying that in most cases, where additional credit has been provided when it shouldn't have been, it would be fair and reasonable for the lender to refund any additional interest and charges paid by the borrower (if they were) plus interest.

The borrower would be expected to repay any remaining amount of the funds they were given as well as any interest and charges on the funds that weren't unfairly provided with. So ordinarily I'd expect Mr R to pay back the funds he was lent plus any interest and fees on the first £3,200.00 owed.

That said, I'm mindful of the particular circumstances of this case and I think that a simple refund of the additional interest and charges merely provides a useful starting point here. Bearing in mind the circumstances and my findings in this case, I think HSBC needs to do a bit more than this and it should therefore do the following.

I've said that HSBC increased Mr R's credit limit from February 2016 onwards in circumstances where it should have seen he was already in financial difficulty and proving unable to sustainably repay a lower amount. So at this stage HSBC should not only have refused to increase Mr R's overdraft limit, it ought to have exercised forbearance and due consideration on the amount Mr R already owed.

As this is the case, HSBC should remove all the interest, fees and charges added to the account after February 2016 to reflect the fact that he was in financial difficulty and it failed to offer assistance and exercise forbearance.

All of this means that it I think it is fair and reasonable in all the circumstances of Mr R's complaint for HSBC to put things right in the following way:

- rework Mr R's current overdraft balance so that all the interest, fees and charges applied to it from February 2016 onwards are removed;

AND

- if an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr R to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr R's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in February 2016;

OR (if the effect of removing all interest fees and charges results in there no longer being an outstanding balance)

- any extra should be treated as overpayments and returned to Mr R. If no outstanding balance remains after all adjustments have been made then HSBC should remove all adverse information from Mr R's credit file;
- pay interest of 8% simple a year on any overpayments from the date they were made (if they were) to the date of settlement†.

† HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mr R a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr R's complaint. HSBC UK Bank Plc should put things right in the way that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 14 September 2021.

Jeshen Narayanan
Ombudsman