

The complaint

Miss B complains that HSBC UK Bank Plc (“HSBC”) irresponsibly provided an overdraft to her, and refused to assist her when she told them about her financial difficulties.

What happened

Miss B says that in 2011 HSBC irresponsibly gave her a £2,000 overdraft on her account. Miss B says she was a student at the time and wasn’t earning enough to repay it. HSBC confirmed that they applied the overdraft to Miss B’s student account based on the qualifying criteria being met.

Miss B said that she fell into further debt with the charges involved and was unable to come out of the overdraft. Miss B said she decided to take out a loan to repay the overdraft. Miss B says when she contacted HSBC for help with freezing the charges on her account and to arrange repayment of the charges, she was told HSBC couldn’t do this. But HSBC advised they weren’t aware of Miss B’s contact with them.

In March 2021 Miss B complained to HSBC. On 12 April 2021 HSBC sent their final response to Miss B’s complaint. They didn’t uphold it. HSBC said that the overdraft and related charges on Miss B’s account were applied correctly and in line with their policy. So, HSBC advised that they were unable to refund any charges.

Unhappy with their response Miss B brought her complaint to us. In their file submission HSBC advised that they believed Miss B brought her complaint about irresponsible lending to us too late and didn’t consent to us looking into it. One of our investigators looked into Miss B’s concerns and agreed with HSBC that the complaint relating to anything beyond six years ago wasn’t something we could consider. However, our investigator felt that from 2015 HSBC should have realised that Miss B was in financial difficulties and so should have done more to support her with her.

Our investigator recommended that HSBC remove all charges on Miss B’s account accrued after 3 October 2015 and arrange a repayment plan to settle any outstanding overdraft amounts or pay to Miss B any overpayments following the refund of charges.

Neither Miss B nor HSBC responded to our investigator’s view, so the case has been passed to an ombudsman for a final decision.

What I’ve decided – and why

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

In considering what is fair and reasonable, I’ve thought about all the evidence and information provided afresh and the relevant law and regulations, regulators’ rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The Financial Conduct Authority (FCA) set's the rules about when a complaint must be made by. The rules are published in the FCA's Handbook, under the heading "DISP".

Under the FCA rules, in order for our service to be able to consider whether HSBC should have given miss B the overdraft in 2011 Miss B needed to have raised her complaint to HSBC:

- within six years of the event she's complaining about; or
- within three years of when she ought to have reasonably become aware that she might have cause to complain

Miss B complained to HSBC on 16 March 2021 about the size of overdraft that had been given to her in 2011. Miss B said this led to her getting into debt and being unable to repay it. She also said HSBC didn't help her when she asked them earlier in 2021.

Miss B complained too late for her concerns to be considered under the first part of the rule. I also think Miss B would have had constructive knowledge more than three years ago that she had cause to complain about the size of her overdraft. I say this because Miss B said she earned less than the limit each month and that it led to her being in debt for years. So I think it's reasonable to say that she would have been aware that the overdraft was unaffordable for her during that period.

From the statements provided I can see that in 2015 Miss B was regularly near her limit. And the statements suggest this was the case before January 2015. In addition, Miss B received an annual summary of account charges in 2015, showing how much interest she paid over the past year. She also received a demand letter for outstanding debts on her credit card. Having considered this, I'm persuaded Miss B should have reasonably had the knowledge that she had cause to complain about her overdraft. So, in the circumstances I'm satisfied that under the second part of the rule Miss B has complained too late for her complaint about the overdraft being given to her.

I also haven't been made aware of any exceptional circumstances that would have prevented Miss B from raising her complaint.

In consideration of this, and as HSBC hasn't consented to us looking into Miss B's complaint about irresponsible lending in 2011, I've gone on to consider whether HSBC should have done more for Miss B from 2015, which is six years prior to when she first complained to them about her overdraft limit.

The Consumer Credit Sourcebook (CONC), which can be found within the FCA handbook, says that a business should consider consumers in default or arrears difficulties with forbearance and due consideration. This includes but is not limited to suspending, waiving or cancelling any further interest or charges or in certain circumstances allowing arrears to be deferred.

From the evidence provided I think HSBC should have done more to support Miss B.

In their file submission to us HSBC said that Miss B's account started accruing interest charges from October 2014 after her account had been converted from a student account to a bank account. Having reviewed the bank statements provided, ranging from 2015 to 2021 I can see that Miss B was in her overdraft the majority of the time and was regularly nearing her limit. I think it's fair to say that Miss B was using her overdraft for long-term borrowing.

Based on the regular credits to the account I think its reasonable to say Miss B would have been unable to repay the overdraft back in a reasonable period of time.

HSBC said in their correspondence to Miss B that overdrafts are designed for short term borrowing, and the Banking Conduct of Business source book (BCOBS), which can be found within the FCA handbook, confirms this when referencing financial promotions it says:

A firm may consider including the following in the information included to comply with BCOBS 2.2B.2R(1):

- *that overdrafts are primarily intended for short-term borrowing and are not generally suitable for longer-term borrowing;*

HSBC provided us with copies of correspondence they sent to Miss B each year from 2015, which provided an overview of her overdraft usage. HSBC's correspondence demonstrated they'd reviewed Miss B's account annually from 2015, and at least every six months from March 2020 to March 2021. Although I can't see that Miss B directly informed HSBC about her financial difficulties prior to March 2021, when she complained to them; with regular reviews of her account, I think HSBC should have realised the over reliance that Miss B had on her overdraft and should have done more to support her.

CONC says that a business should communicate with a customer highlighting the customer's pattern of overdraft usage. From the correspondence I can see that HSBC had done this. However, CONC also says where a business identifies that their customer is showing signs of actual or potential financial difficulties, the business should:

'seek to explore the reasons for the customer's pattern of overdraft use, as well as the reasons for the customer's actual or potential financial difficulties, and what (if anything) the customer is doing, or intends to do, to address those issues.'

It goes on to say that if appropriate the business must identify and set out suitable options designed to help the customer to reduce their overdraft usage and to address their actual or potential financial difficulties.

Although I can see that HSBC did correspond with Miss B about her overdraft I think from the account conduct it should have been apparent to HSBC that Miss B was potentially in financial difficulties and was over dependent on the overdraft facility. I think that had HSBC taken more action in 2015 to support Miss B, I think it's likely she wouldn't have been in the situation she now finds herself in. So, I'm satisfied that HSBC should have done more at the time to assist Miss B with managing her overdraft.

Putting things right

Given that I think HSBC should have done more for Miss B in 2015 when it continued charging her for her overdraft usage, I think it's fair that HSBC should now put things right for her.

The correspondence provided by HSBC shows the charges incurred on her account from the periods starting in October each year. With this being the case, I'll be instructing HSBC to rework Miss B's account to remove all the interest and related charges added from October 2015 onwards and pay to Miss B any overpayment following the settlement of the overdraft limit.

Following the reworking of the account as described above, HSBC should arrange a repayment plan with Miss B if any outstanding overdraft balance remains, or pay 8% simple interest on any over payment following the settlement of the overdraft limit.

My final decision

Having thought about everything above along with what is fair and reasonable in the circumstances I uphold this complaint and instruct HSBC UK Bank Plc to:

- rework Miss B's account to remove all the overdraft interest and related charges from October 2015 onwards
- arrange an affordable repayment plan with Miss B, for her to repay any outstanding overdraft amount following the reworking of the account, or pay 8% interest on any overpayment that may exist following the removed interest and charges
- following the removal of interest and charges, if no outstanding overdraft balance remains, HSBC should remove any adverse credit information that may exist in relation to the account from October 2015; or if an overdraft balance remains HSBC should amend Miss B's credit information to reflect the reworking of the account from October 2015

If HSBC UK Bank Plc considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Miss B how much it's taken off. It should also give Miss B a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 2 June 2022.

Benjamin John
Ombudsman