

The complaint

Mr H has complained that HSBC UK Bank Plc irresponsibly lent to him and unfairly continued applying charges to his overdraft when he was in financial difficulty.

Mr H is represented by a third party but for ease of reference I have referred to Mr H throughout this decision.

What happened

Mr H was provided with an £800 overdraft in March 2019. He says that HSBC didn't carry out appropriate assessments of his account and that had this happened it would have been clear that he had become reliant on the overdraft facility. He said he spent prolonged periods overdrawn and that the facility wasn't being used as emergency funding but had become hardcore borrowing.

HSBC issued a final response letter dated 25 October 2023. It said that it had monitored Mr H's account and written to him several times to offer support, but Mr H hadn't responded. It said that Mr H's monthly income was recorded as £2,705 which was substantially higher than the overdraft provided.

Our investigator didn't uphold this complaint. They said that they hadn't seen evidence to suggest that HSBC was wrong to provide the overdraft or that HSBC should have done more in response to Mr H's use of his overdraft.

Mr H didn't accept our investigator's view.

My provisional decision

I issued a provisional decision on this complaint, the contents of which are set out below.

Mr H was provided with an £800 overdraft in March 2019. As part of the application Mr H provided information about his income and a credit check was undertaken. Mr H was recorded as being employed full time with an annual income of £29,000. I have looked at the recent credit file Mr H has provided to understand what a credit search would have shown. This shows that Mr H has defaults recorded but these were after the overdraft was provided. Based on the evidence I have seen I do not find that the credit search would have raised concerns at the time the overdraft was applied which meant HSBC shouldn't have provided the lending.

Mr H's complaint is about HSBC not monitoring his account and continuing to charge him overdraft fees when he was in financial difficulty. He has said that HSBC should have realised that he wasn't using the overdraft as short-term funding but that it had become hardcore borrowing.

The rules, guidance and good industry practice in place typically require a bank to review an account on an ongoing basis. And it is generally accepted that a bank should review a customer's overdraft usage on an annual basis. I have therefore looked through the information provided to establish what these reviews would have identified.

During 2019, Mr H's account was generally in credit and when the account did enter the overdraft, Mr H transferred money from another account to clear this. While Mr H was reported as employed when the overdraft was provided, he wasn't receiving a regular income into this account and based on the outgoings this didn't appear to be his main account. We have requested copies of Mr H's statements from his main account but these haven't been provided and so I cannot say what the situation was regarding that account.

From January 2020 to March 2020 Mr H was making use of his overdraft and while there were some transfers into the account these didn't put his account in credit. However, in April 2020, Mr H received a payment into the account of £1,785. This would have put his account into credit, but he immediately transferred £1,000 to another account labelled 'wages'. A further payment from the same party was received in May 2020 for £2,384, and Mr H transferred out £2,000 to another account again labelled 'wages'. Given the payments into Mr H's account would have cleared his overdraft and Mr H hasn't provided further details in regard to the transfers out, I do not find I can say that HSBC should have taken further action at this point.

Had a review been undertaken in March 2021, this would have shown that Mr H was consistently operating in his overdraft. Mr H still wasn't receiving a regular income into this account and without his other account statements I cannot say whether he had funds available elsewhere. But, as Mr H was making regular transfers into this account from another account and these did on occasions bring the account into credit but more generally substantially reduced the overdraft, I find I cannot say that HSBC should have considered the overdraft unsustainably affordable. And, while Mr H was using the overdraft for more than emergency funding, on balance, I do not think I have enough evidence to say that the overdraft should have been identified as hardcore borrowing at this time.

Over the following year, Mr H continued to make consistent use of his overdraft, and at this time he was often at or over his overdraft limit. While he was still making transfers into the account these were no longer making substantial reductions to the overdraft suggesting that Mr H was no longer able to sustainably manage this account. Mr H hadn't been in credit for an extended period and the borrowing was remaining at or around the overdraft limit suggesting this had become hardcore borrowing. I note that HSBC had sent letters to Mr H about his account identifying returned payments and the repeated use of his overdraft. But just because letters were sent, and Mr H didn't respond, this doesn't mean that HSBC wasn't required to take further action at that time. So, by March 2022, I think that HSBC should have realised that Mr H wasn't using his overdraft as intended and as the account conduct had suggested it had become unsustainable it shouldn't have continued offering it on the same terms. As HSBC didn't react to Mr H's overdraft and instead continued charging in the same way, I think it failed to act fairly and reasonably. Because of this I am upholding this complaint from March 2022.

HSBC responded to my provisional decision saying that had Mr H responded to its attempts to engage with him it would have been better placed to understand his circumstances and tailor any support. It said the bank account didn't appear to be Mr H's main account and said there was insufficient evidence to show that the overdraft had become unsustainable as opposed to Mr H choosing to keep the account overdrawn and then crediting the account with the same amount of funds as he was using.

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.

HSBC will be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So, I don't consider it necessary to set all of this out in this decision.

As I set out in my provisional decision from March 2021, Mr H continued to make consistent use of his overdraft and was often at or over his overdraft limit. I note HSBC's comment about this account not being Mr H's main account and him making transfers from another account. But having reviewed the statements given the transfers were no longer substantially reducing the overdraft and that the overdraft was remained around its limit for an extended period, I think by March 2022, the evidence suggested that the overdraft had become hardcore borrowing and unsustainable for Mr H.

HSBC had sent letters to Mr H about his account identifying returned payments and the repeated use of his overdraft. I accept that had Mr H engaged at this time that could have led to tailored support being provided. But, as I noted in my provisional decision just because letters were sent, and Mr H didn't respond, this doesn't mean that HSBC wasn't required to take any further action at that time.

So, while I have considered HSBC's comments in response to my provisional decision, my conclusions haven't changed and I think that by March 2022, HSBC should have realised that Mr H wasn't using his overdraft as intended and as the account conduct had suggested it had become unsustainable it shouldn't have continued offering it on the same terms.

Putting things right

HSBC UK Bank Plc should:

- Re-work Mr H's current overdraft balance so that any additional interest, fees and charges applied from 30 March 2022 onwards are refunded, as this is when HSBC should have stepped in to help as part of their annual review.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made, HSBC should contact Mr H to arrange a suitable repayment plan for this. If they consider it appropriate to record negative information on Mr H's credit file, it should backdate this to 30 March 2022.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr H, along with 8% simple interest on the charges from the date they were made until the date of settlement*. If no outstanding balance remains after all adjustments have been made (if they were) then HSBC should remove any adverse information from Mr H's credit file.

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

My final decision

My final decision is that HSBC UK Bank Plc should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 May 2024.

Jane Archer
Ombudsman