

The complaint

Mr P makes the following main complaints about HSBC UK Bank Plc trading as first direct:

- as an HSBC customer he was mis-sold a Sharedealing account by first direct
- the Sharedealing account did not have a share spend limit, only an overdraft limit that could be exceeded
- his Sharedealing account should not have been de-linked from his first direct 1st account and his ability to trade on the share dealing account blocked as this was separate from his 1st account and, as an HSBC customer, he should have had that protection
- the debt that first direct is asking him to repay is incorrect and he is unhappy that first direct have not proceeded with his proposed payment plan
- he is unhappy with the amount of phone calls received from first direct
- he disagrees with HSBC chasing him about the debt since his account was with first direct.

To put things right, Mr P wants HSBC to accept it has failed in its duty of care to him and agree that the sum it is demanding should be limited to a maximum of £500 – the overdraft limit on his (now closed) 1st Account.

What happened

19 July 2017 - Mr P applied online via the firstdirect.com website and opened a 1st Account with first direct with an overdraft facility of £500.

31 July 2017 - Mr P applied for a Sharedealing account via the website. An application form was sent to him.

4 Aug 2017 – first direct received the completed Sharedealing application form and Mr P's Sharedealing account was opened. This allowed Mr P to buy and sell shares up to a trading limit and his Sharedealing account was linked to his 1st Account, which was used to pay for shares Mr P purchased using his Sharedealing account.

2018/2019 – Mr P used his 1st Account to make Sharedealing trades and to balance the debit position of the Sharedealing account following purchases.

June 2020 – Mr P's 1st Account went into a debit balance that was more than twice his £500 overdraft limit on the account. As Mr P continued to place trades, the debit balance increased over the course of the following months.

July 2020 – after Mr P's 1st Account had been over its limit for more than 30 days, first direct took steps to engage with Mr P about the debit balance. Over the next year or so there were various phone calls and written communications between Mr P and first direct about this, culminating in Mr P complaining about what happened.

24 May 2021 – Mr P's Sharedealing account was blocked to stop any future trades causing the uncorrected debit balance on the 1st Account to go any higher.

June 2021 – first direct didn't uphold Mr P's complaint. In brief summary, it said it was entitled to put blocks on accounts if it felt the account terms and conditions were not being met and explained that the Sharedealing account came with a trading limit similar to a credit limit and was a lending facility. It also explained that funds were debited from the 1st Account within two working days to balance the deficit on the Sharedealing account and that this timescale allowed the customer time to ensure funds were available for the settlement to be made. It said Mr P's Sharedealing account was blocked on 24 May 2021 to prevent future trades due to the remaining uncorrected debit position on his 1st Account. first direct confirmed to Mr P what he'd been told over the phone several times – that it would need to understand his financial position better before it could accept his proposed repayment plan as it was required to ensure this would be affordable for him before agreeing to it.

Mr P continued to correspond with first direct, expressing a wish to resolve matters between himself and the bank.

23 Aug 2021 – after he failed to make contact with first direct's Financial Support Team to discuss a payment plan or complete a budget planner, Mr P's 1st Account was transferred to HSBC Repayment Services, who then contacted him to discuss repayment options.

September/October 2021 - Mr P continued to communicate his concerns to first direct, emailing its Chief Executive Officer saying it had sold him a Sharedealing account without safeguards, for its own ends. He complained that his repayment plan had been ignored and said he'd been called four times from overseas, causing him stress. He didn't feel his 1st Account should have been reported to credit reference agencies and that first direct shouldn't have allowed his 1st Account to exceed his £500 overdraft facility. He said phone calls about the amount owing on his 1st Account amounted to harassment and were illegal.

Mr P came to us and one of our investigators looked into what happened.

Our investigator felt that HSBC hadn't made any error or treated Mr P unfairly and didn't uphold Mr P's complaint.

Mr P disagreed with our investigator and, in brief summary, amongst other comments, he mentioned the following:

- as he has no account with HSBC it should withdraw from this matter
- first direct '*piled in*' and was too quick to chase him on the first working day after the investigator had phoned him to say she was closing this complaint
- the '*density*' of the phone calls he continues to receive, on both his mobile and landline, including at weekends and in the early evening, breach the Harassment Act 1997.

The complaint comes to me 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.

I appreciate that Mr P feels very strongly about his complaint and I understand this has all been stressful for him. But, after carrying out an independent review, I've reached the same conclusion as our investigator. I'll explain my approach and how I've reached my decision.

My role is to consider all the evidence presented by the parties and reach a fair and reasonable decision based on the facts of the case. We provide an informal complaints handling service and this is reflected in our approach. I've expressed some of Mr P's concerns in my own words and my focus is on what I think are the key issues here. Our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. This means I won't necessarily mention everything that Mr P has brought to my attention, especially where I have nothing to add to what the investigator has said already. But I will comment on everything that makes a difference to the outcome of the complaint.

It might be helpful if I start by explaining that first direct is a trading name of HSBC UK and part of the HSBC UK Group (as is HSBC Repayment Services) and although Mr P seeks to draw a distinction between these entities, this makes no difference to the outcome of this complaint. I am looking overall at the service HSBC UK Bank Plc trading as first direct provided to Mr P. I would also just mention here that I do not have the power to make rules for financial businesses or tell a business it must change the way it operates. That's the role of the regulator, the Financial Conduct Authority (FCA). For these reasons I won't be responding to Mr P's concerns about the way HSBC operates or structures its business.

The crux of the complaint seems to me to be whether HSBC UK Bank Plc trading as first direct has acted fairly and reasonably towards Mr P in connection with:

- opening and operating his Sharedealing account and
- how it has handled the debit balance on his 1st Account.

Based on all the information I've seen and been told, including listening to call recordings provided, I find as follows:

opening and operating his Sharedealing account

Mr P didn't go through a suitability assessment with anyone at the bank and he wasn't personally advised by anyone at the bank to sign up for this service. It was up to him to decide if the execution-only Sharedealing account was right for him. HSBC had a responsibility to ensure that it provided Mr P with sufficient information to be able to make an informed decision – and I find that it did. I've been provided with a Key Features Document that applied in November 2021. I think it's reasonable for me to assume the business terms that Mr P would've been able to see and that he would've signed up to in order to use his Sharedealing account would have been similar.

The Terms of the Sharedealing account state:

'The shares service has a Settlement Account, which will be opened for you and is linked to your nominated first direct current Account...The proceeds of your deals and dividends will be transferred each business weekday (in a single transaction) to your nominated first direct current Account. The money to pay for share purchases will be taken from your nominated first direct current Account each business weekday (in a single transaction)....At the end of each business weekday, the balance in the settlement account will be nil.'

'UK equity trades settle two business days after the date of the trade...'

In other words, the Sharedealing account offered a short term lending facility which allowed Mr P to trade up to his Sharedealing account limit, in the knowledge that funds would be debited from his 1st Account within two working days to balance the deficit on the trading limit.

The terms and conditions put the onus on Mr P to ensure that he had the money available in his nominated account, his 1st Account, to settle account fees and trades arranged through his Sharedealing account: *'You also authorise us to debit and/or credit the necessary funds from/to your Qualifying first direct Account to ensure that the balance of your Settlement Account is returned to nil at the close of each Business Day.'*

The fact that the Sharedealing account did not have a share spend limit, only an overdraft limit that could be exceeded, is not a reason for me to uphold this complaint. I consider that Mr P had access to enough information to be able to see how the account worked and decide if this was going to meet his requirements.

first direct has provided information showing that the terms and conditions Mr P agreed to explained that the 1st Account would be debited in order for the share purchase to be executed, even if this meant taking the 1st Account into an overdrawn position: *'If your Qualifying first direct Account is not in credit....we may still deduct any or all outstanding amounts from that account. In these circumstances, your Qualifying first direct Account may go into overdraft. It is your responsibility to meet any associated obligations (including any overdraft fees you may have under the terms and conditions applicable to your Qualifying first direct Account.'*

For these reasons, I don't find that HSBC mis-sold this Sharedealing account to Mr P.

Mr P accessed his Sharedealing account by logging on to his online banking, which showed his account balances onscreen when he logged on. And from there, he would've had to click on the link to access the Sharedealing platform. So Mr P was always able to see the balance on his 1st Account before being taken to his Sharedealing account. This means he would've known what his financial situation would be before committing to any trades - and that he had up to two days after placing a trade to ensure he had sufficient funds in his 1st Account available to be drawn upon to cover the trade(s).

Mr P traded and operated the accounts for some time, mostly within the £500 limit on his 1st Account. And when Mr P was aware, in September 2020, that he had mis-timed a couple of trades and this would take his 1st Account into an unarranged debit position, he contacted first direct and asked if this would be allowed overnight. So I think he understood how to operate his accounts successfully within limits and according to the terms and conditions that applied. On this occasion, first direct reminded him that the funds would automatically debit the following day, even if they weren't available in his 1st Account as per the terms and conditions that applied.

first direct declined Mr P's request when he asked for a temporary extension (as had happened previously) to cover the situation. I think this was reasonable as first direct explained it had changed its policy and it no longer allowed this. first direct suggested the possibility of increasing the overdraft facility on Mr P's 1st Account permanently as opposed to temporarily – or at least until Mr P phoned to reduce it again. But when Mr P didn't meet its criteria for increasing his account limit, first direct told him it was unable to agree an overdraft increase.

All this means that I don't find that first direct did anything wrong when it took Mr P's 1st Account over its £500 overdraft limit in order to pay for his trades in the Sharedealing account as it was acting in line with terms and conditions he would've signed up to in order

to carry out his trades. And I don't find that first direct acted in an unfair or unreasonable manner when Mr P got into financial difficulty on his 1st Account. first direct suggested and explored a possible option that might have helped Mr P, which was something I'd reasonably expect it to do – but it wasn't open to first direct to authorise something that it no longer permitted, so its decision not to extend his overdraft to cover the debit balance on his 1st Account was reasonable in the circumstances.

how first direct handled the debit balance on Mr P's 1st Account

Once Mr P's 1st Account had been over limit for more than 30 days, first direct passed his account to its Financial Support Team to engage with Mr P and, as far as I can see, it treated him fairly. Mr P was invited to make contact if he was having trouble managing his money so that options could be looked at – which wasn't unreasonable. On 28 July 2021, a restriction was put onto Mr P's 1st Account so that all new lending requests would have to be manually assessed from that point on to confirm affordability. This was in Mr P's best interests as it could help to limit his debt escalating and so I think it was reasonable for first direct to take this action, and it was entitled to do this.

Mr P had hoped in September 2020 that he'd shortly be able to put things right on his 1st Account. When that didn't happen, the onus was on first direct to take reasonable steps to help limit the financial detriment to Mr P given the indications that he might be in financial difficulty. Freezing his account for 12 months in February 2021 to stop further charges and interest accruing was a fair thing to do in this situation.

I can't fairly say that Mr P's Sharedealing account should not have been de-linked from his 1st account and his ability to trade blocked. By exceeding his agreed overdraft facility on his 1st Account and having an uncorrected debit balance, Mr P was already in breach of the terms and conditions that applied and not in a position to fund his trades or mitigate his existing debt. first direct was entitled to take this action and I don't think it would've been fair or reasonable if first direct had allowed Mr P to continue to trade in these circumstances given the evident risk that this would likely compound his money problems.

I don't consider that first direct has been unreasonable in requiring Mr P to engage in an income & expenditure assessment before it will agree a repayment plan. This is information first direct is entitled to require Mr P to provide as it can't reasonably agree payment terms without knowing Mr P's overall financial situation. As far as I am aware, should he wish to do so, Mr P could make payments into his 1st Account in order to start reducing his debt without a formal repayment plan being set up, so first direct's stance here doesn't cause any particular detriment to Mr P.

I understand that Mr P disputes the amount HSBC is asking him to pay but the 1st Account statements show how this figure has been arrived at and it seems to me that the amount accurately reflects the withdrawals and charges on the account.

HSBC Repayment Services handles debt collection on behalf of first direct. So I can't uphold Mr P's complaint on the basis that the bank is acting unfairly or unreasonably by pursuing this debt in this way.

I can appreciate why Mr P would prefer not to receive phone calls about the money owing on his 1st Account. But a financial business is entitled to take steps to pursue debt owing to it. I haven't been provided with evidence to show that HSBC is pursuing the debt unfairly or unreasonably. I've taken into account that Mr P has put forward his own settlement proposals, but he appears not to have engaged with or addressed HSBC's requirements, so I don't find its efforts to reach him by phone have been unreasonable.

In order to uphold Mr P's complaint I would have to find that HSBC did something wrong or acted unfairly or unreasonably – and for all the reasons I have explained, I haven't seen enough here to do so.

In coming to my decision, I've taken into account everything Mr P has said, including his concern about first direct getting back in touch with him about this matter so soon after the investigator issued her view. It's important to understand that a financial business might sometimes put recovery action on hold whilst we look at a complaint, but they don't have to, we can't tell them to do that and HSBC is entitled to pursue a lawful debt in a fair and reasonable manner. So the fact that HSBC resumed its collection activity following the investigator's view isn't a reason for me to uphold Mr P's complaint.

I appreciate that my decision will be disappointing for Mr P but I hope that setting things out as I've done helps to explain how I've reached my conclusions.

Just in case it's helpful to know, free debt management advice is available from agencies such as Citizens Advice or StepChange and there is more information about this on our website – or we can provide contact details over the phone if Mr P would like us to.

My final decision

My decision is that I don't uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 September 2023.

Susan Webb
Ombudsman