

Complaint

Mr R has complained that HSBC UK Bank Plc ("HSBC") unfairly increased his overdraft and continued applying charges when he was in financial difficulty.

Background

One of our investigators looked at this complaint and thought that HSBC ought to have realised that Mr R was already struggling by December 2013 and so it shouldn't have provided the limit increases or added the charges it did from this point onwards. HSBC disagreed and asked for an ombudsman to review this complaint.

My findings

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.

Having carefully considered everything provided, I think HSBC acted unfairly when it continued adding interest and associated fees and charges to Mr R's overdraft from December 2013. By this point, it was evident Mr R was already struggling. A cursory look at his statements leading up to this period shows that he'd regularly exceeded his existing limit on a number of occasions.

It is also clear that Mr R was taking out payday loans with a significant number of lenders in an attempt to try and make ends meet and mask the fact that he was gambling heavily. So at this point, I think that HSBC ought to have realised that Mr R was unlikely to be able to sustainably repay his overdraft and should have stopped providing it on the same terms. It should have instead treated Mr R with forbearance, even if this meant taking corrective action in relation to the facility.

All of this means that HSBC should have realised that Mr R wasn't using his overdraft as intended and as the account conduct had suggested it had become unsustainable shouldn't have continued offering it on the same terms.

I've seen what HSBC has said about our investigator retrospectively applying the repeat use overdraft rules. I'm not sure why HSBC believes this given the investigator suggested it was irresponsible for HSBC to increase Mr R's limit. But, in any event, industry codes of practice in place at the time and which HSBC signed up to, all refer to banks monitoring the using of an overdraft and offering assistance where financial difficulties - such as here in Mr R's case - are apparent.

So I'm satisfied HSBC has been judged against its obligations at the time rather than against rules which came into force a number of years later. And as HSBC didn't react to Mr R's overdraft usage, as it ought to have done, I think it failed to act fairly and reasonably.

Mr R ended up paying additional interest, fees and charges on his overdraft at a time when he was already experiencing difficulty. So I think that Mr R lost out because of what HSBC did wrong and that it should put things right.

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

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr R's complaint for HSBC to put things right by:

- Reworking Mr R's current overdraft balance so that all interest, fees and charges applied to it from December 2013 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 HSBC 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 account from December 2013.

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 R along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then HSBC should remove any adverse information from Mr R's credit file.

† HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mr R a certificate showing how much tax it has 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 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 11 January 2022.

Jeshen Narayanan
Ombudsman