

Complaint

Mr A has complained that HSBC Bank Plc (trading as “First Direct”) unfairly continued applying charges to his overdraft when he was in financial difficulty.

Background

One of our adjudicators looked at this complaint and thought First Direct should have realised that Mr A’s overdraft had become unsustainable for him by December 2018 and so it shouldn’t have added the charges it did from this point onwards. So it needed to refund all the interest, fees and charges it added to Mr A’s account from this point. First Direct disagreed with our adjudicator. So the complaint was passed to an ombudsman.

My findings

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

First Direct 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 here.

Having carefully considered everything provided, I think First Direct acted unfairly when it continued adding interest and associated fees and charges to Mr A’s overdraft from December 2018. By this point, it was evident Mr A’s overdraft had become unsustainable for him and continuing to provide it was likely to cause significant adverse consequences.

Mr A’s statements leading up to this period clearly show he was taking out a significant number of payday loans in an attempt to try and make ends meet and mask the fact that he was gambling heavily. I’ve seen First Direct’s argument that Mr A could have repaid the overdraft with better account management. This may well be the case. But it ought to have been apparent to First Direct that this better account management wasn’t happening and was that it was more and more unlikely to happen going forward.

I’ve also seen First Direct’s argument that *“financial difficulties is defined when a person is unable to make repayment”*. I’m not sure where First Direct has taken this definition from and I accept that a lender may no longer be prepared to take a credit risk in relation to an existing borrower once they start missing payments. But I would refer First Direct to the regulator’s Consumer Credit Sourcebook (“CONC”). And in particular section 1.3 which contains guidance on financial difficulty and more specifically what the regulator considers to be potential indicators that a borrower may be experiencing financial difficulty. A cursory look at this section shows that financial difficulty is far wider than simply being unable to make payments to an agreement in the way First Direct appears to be suggesting is the case.

Overall by December 2018, I think that First Direct ought to have realised that Mr A 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 A with forbearance, even if this meant taking corrective action in relation to the facility.

All of this means that First Direct should have realised Mr A 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. As First Direct didn't react to Mr A's overdraft and instead continued charging in the same way, I think it failed to act fairly and reasonably. Mr A 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 A lost out because of what First Direct did wrong and that it should put things right.

Putting things right

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

- Reworking Mr A's current overdraft balance so that all interest, fees and charges applied to it from December 2018 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made First Direct should contact Mr A to arrange a suitable repayment plan for this. If First Direct considers it appropriate to record negative information on Mr A'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 2018.

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 A 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 First Direct should remove any adverse information from Mr A's credit file.

† HM Revenue & Customs requires First Direct to take off tax from this interest. First Direct must give Mr A 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 A's complaint. HSBC Bank Plc (trading as "First Direct") 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 A to accept or reject my decision before 22 November 2021.

Jeshen Narayanan
Ombudsman