

Complaint

Mr S has complained that HSBC UK Bank Plc ("HSBC") unfairly continued applying charges to his overdraft when it ought to have realised that it was irresponsible to continue providing it.

Background

One of our adjudicators looked at this complaint and HSBC shouldn't have continued providing an overdraft to Mr S from December 2016 and it needed to refund all the interest, fees and charges it added from this point as a result. HSBC disagreed so the complaint was passed to an ombudsman for review.

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 increased Mr S' limit and continued adding interest and associated fees to his overdraft in December 2016. By this point, it was evident Mr S was gambling significant sums of money. And his ability to repay what he was being lent was dependent on his success as a gambler.

So at this point, I think that HSBC ought to have realised that Mr S was unlikely to be able to sustainably repay what he could owe on his overdraft and should have stopped providing it on the same terms, let alone increase the limit. And at this point HSBC should have instead mitigated the position, even if this meant taking corrective action in relation to the facility.

All of this means that HSBC should have realised that Mr S 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 HSBC didn't react to Mr S' account conduct and instead increased Mr S' limit and continued charging in the same way, I think it failed to act fairly and reasonably.

Mr S ended up paying additional interest, fees and charges on his overdraft because HSBC failed to take action. So I think that Mr S 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 S

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

- Reworking Mr S' current overdraft balance so that all interest, fees and charges applied to it from December 2016 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr S to arrange a suitable repayment plan for this. If HSBC considers it appropriate to record negative information on Mr 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 2016.

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 S 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 S' credit file.

† HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mr S 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 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 S to accept or reject my decision before 20 December 2021.

Jeshen Narayanan
Ombudsman