

The complaint

Mr A has complained that HSBC UK Bank Plc (“HSBC”) acted unfairly by continuing to apply charges to his account when he was in financial difficulty.

What happened

Mr A complained to HSBC after it continued to apply charges to his account when he was in financial difficulty. HSBC didn’t uphold the complaint. But as a gesture of goodwill it refunded £385 of charges and provided information about its financial guidance team. As Mr A was dis-satisfied he referred the complaint to our service.

Mr A’s complaint was considered by one of our adjudicators. They thought that HSBC ought to have realised that Mr A was experiencing financial difficulty by 6 November 2013 and so shouldn’t have added any more interest, fees and charges from this point onwards. HSBC disagreed but offered to refund the balance of Mr A’s overdraft and remove the overdraft facility. The offer was put to Mr A but as he was still dis-satisfied the case was passed to an ombudsman.

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.

Having carefully considered everything provided, I’m intending to find that HSBC acted unfairly when it continued charging overdraft interest and associated fees to Mr A’s account from 6 November 2013. By this point, it ought to have been clear that Mr A was in no position to sustainably repay what he owed within a reasonable period of time.

By this point, Mr A was hardcore borrowing. In other, words he hadn’t seen or maintained a credit balance for an extended period of time. HSBC’s own literature suggests that overdrafts are for unforeseen emergency borrowing not prolonged day-to-day expenditure. HSBC had also sent Mr A a number of letters informing him that the payments he was trying to make would’ve taken him over his credit limit as well as notifying him that direct debits hadn’t been paid – this is an indication in itself that Mr A may have been in financial difficulty.

I’m also concerned that a cursory look at Mr A’s account statements show a significant amount of gambling – indeed the majority of the transactions on his account over the period in question were gambling related. HSBC ought to have realised Mr A was in no position to sustainably repay what he already owed within a reasonable period of time.

So I think that Mr A’s overdraft usage should have prompted HSBC to have realised that Mr A wasn’t using his overdraft as intended and should have stopped providing the overdraft and instead treated Mr A with forbearance.

As HSBC didn't react to Mr A's overdraft usage and take corrective action 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 and this ended up exacerbating difficulties he already had in trying to clear it. So I think that HSBC didn't treat Mr A fairly and he lost out because of what HSBC did wrong. And this means 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 HSBC to put things right by:

- Reworking Mr A's current overdraft balance so that all interest, fees and charges applied to it from 6 November 2013 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr A to arrange a suitable repayment plan for this. If it 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 overdraft on 6 November 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 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 HSBC should remove any adverse information from Mr A's credit file.

† HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mr A a certificate showing how much tax it has taken off if they ask for one.

My final decision

For the reasons I've explained, I'm upholding Mr A'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 A to accept or reject my decision before 5 January 2022.

Caroline Davies
Ombudsman