

Complaint

Ms B has complained that HSBC Bank Plc (trading as “First Direct”) unfairly continued applying charges to her overdraft when she was in financial difficulty.

Background

Ms B made complaints about two accounts to us. This decision is only looking at what happened on her account ending in 575. One of our adjudicators looked at this complaint and thought First Direct should have realised that Ms B’s overdraft had become unsustainable for her by August 2017. First Direct didn’t agree. So the complaint was passed to an ombudsman for a final decision.

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 in this provisional decision.

Having considered everything provided, I think First Direct acted unfairly when it continued adding interest and associated fees and charges to Ms B’s overdraft from August 2017. By this point, it was evident Ms B’s overdraft had become unsustainable for her. Ms B’s statements leading up to this period show that she hadn’t seen a credit balance for an extended period of time. Ms B was also struggling to manage and regularly exceeding her limit. This coupled with what was going on on Ms B’s other account meant that First Direct ought to have realised that Ms B was likely to experience significant adverse consequences.

So I think that by August 2017 First Direct ought to have realised that Ms B was unlikely to be able to sustainably repay her overdraft. And, in these circumstances, First Direct should have stopped providing the overdraft on the same terms. It should have instead treated Ms B with forbearance, even if this meant taking corrective action in relation to the facility.

All of this means that First Direct should have realised that Ms B wasn’t using her 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 Ms B’s overdraft and instead continued charging in the same way, I think it failed to act fairly and reasonably. Ms B ended up paying additional interest, fees and charges on her overdraft at a time when she was already experiencing difficulty. So I think that Ms B lost out because of what First Direct did wrong and that it should put things right.

Fair compensation – what First Direct needs to do to put things right for Ms B

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

- Reworking Ms B's current overdraft balance so that all interest, fees and charges applied to it from August 2017 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made First Direct should contact Ms B to arrange a suitable repayment plan, Ms B is encouraged to get in contact with and cooperate with First Direct to reach a suitable agreement for this. If it considers it appropriate to record negative information on Ms B's credit file, it should reflect what would have been recorded if it had started the process of taking corrective action on the overdraft in August 2017. First Direct can also reduce Ms B's overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave her over her limit.

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 Ms B 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 Ms B's credit file. First Direct can also reduce Ms B's overdraft limit by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires First Direct to take off tax from this interest. First Direct must give Ms B a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Ms B'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 Ms B to accept or reject my decision before 14 March 2022.

Jeshen Narayanan
Ombudsman