

The complaint and background

Mr W has complained about changes to HSBC UK Bank Plc's charging structure for overdrafts. He explained that he had already been unhappy with the amounts he was being charged, and that this was exacerbated by the increase in interest rates. HSBC didn't uphold the complaint. And as Mr W was dissatisfied he referred the complaint to our service.

Mr W's complaint was considered by one of our adjudicators. She thought that HSBC ought to have realised that Mr W was experiencing financial difficulty by May 2015 and so shouldn't have added any more interest, fees and charges from this point onwards. HSBC disagreed so 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 after May 2015. By this point, it ought to have been clear that Mr W was in no position to sustainably repay what he owed within a reasonable period of time.

I say this because, by this point, Mr W was hardcore borrowing. In other words he hadn't seen or maintained a credit balance for an extended period of time. As our adjudicator explained, HSBC's own literature suggests that overdrafts are not for prolonged day-to-day expenditure. HSBC has argued that only unarranged overdrafts are referred to as being for 'emergency borrowing', but the terms and conditions that HSBC sent us with its file for this very complaint also refer to overdrafts in general as being for short-term borrowing.

In any case, industry codes of practice – such as the Lending Code – which were in place at the time and which HSBC signed up to, clearly stated that hardcore borrowing was a potential indicator of difficulty. So I remain of the view that sustained and prolonged overdraft usage is an indication of a potential problem.

I note that HSBC thinks Mr W has said he is not experiencing financial difficulty. But I don't agree that Mr W's comment that he can just about balance the incomings and outgoings from his account means that he's not experiencing difficulties, and I think the implication is also that the additional charges on top of his usual outgoings are not sustainable.

I also note HSBC's other comments about Mr W's financial position. Specifically that he is able to keep his credit card up to date – he appears to be using this overdraft to make payments to various credit cards including one he holds with HSBC – and that he has made some payments to an investment account – the evidence of that investment account that HSBC has provided is from several years after 2015. But with all I've seen none of these

points change my decision that HSBC should have begun to take action regarding this account in May 2015.

With all this in mind, I think that Mr W's overdraft usage should have prompted HSBC to have realised that he wasn't using his overdraft as intended and so it shouldn't have continued offering it on the same terms. As HSBC didn't react to Mr W's overdraft usage and instead continued charging in the same way, I think it failed to act fairly and reasonably.

Mr W 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 W 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 W's complaint for HSBC to put things right by:

- Reworking Mr W's current overdraft balance so that all interest, fees and charges applied to it after 1 May 2015 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr W to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr W's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in May 2015. HSBC can also reduce Mr W's overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over his 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 Mr W 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 W's credit file. HSBC can also reduce Mr W's overdraft limit by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mr W 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 W'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 W to accept or reject my decision before 16 March 2022.

Sophie Mitchell

Ombudsman