

Complaint

Miss C is unhappy with what HSBC UK Bank Plc (“HSBC”) has agreed to do to put things right after she complained about unfair charges on her overdraft.

Background

As a result of our adjudicator’s involvement, HSBC agreed that it should refund all the interest, fees and charges it added to Miss C’s overdraft from July 2016 and it proposed to reduce what Miss C owed by this amount.

One of our adjudicators looked at Miss C’s complaint and he thought that what HSBC had agreed to do to put things right was fair and reasonable in all of the circumstances of the case. Miss C didn’t agree so the complaint was passed for an ombudsman’s 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.

Having carefully considered everything, I think that what HSBC has already agreed to do to put things right for Miss C is fair and reasonable in all the circumstances of her complaint. I’ll explain why I think this is the case.

HSBC has agreed that it ought to have realised that it was unfair to continue adding interest, fees and charges to Miss C’s account as it ought to have realised the overdraft was unsustainable at this stage. And it has agreed to refund all the interest, fees and charges added it to Miss C’s overdraft from then in order to put things right.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we’d expect the business to put the consumer in the position they would be in if that wrong hadn’t taken place. And in an ideal world, we’d tell a business to put a consumer in the position they’d now be in if they hadn’t been given the credit they shouldn’t have. However, that’s not possible in cases where funds that shouldn’t have been advanced were advanced because typically those funds will have already been spent.

So we have to look at a way of asking a business to put things right in a fair and reasonable way. And where a business provided, or continued to allow a consumer to use, a credit facility which it should have realised was unsustainable, we’d typically expect it to put the consumer in the position they’d be in now if they hadn’t paid any further interest and charges on that credit.

This means we’d normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised it was unsustainable. And if those interest and charges were paid also add 8% simple interest per year. That’s what HSBC has agreed to do here, so it has agreed to do what I’d normally expect a firm to do in these circumstances.

In this case, Miss C has been left with an outstanding balance even though she's been 'refunded' all of the interest, fees and charges applied. So while Miss C has been left with an outstanding balance to repay and she might be unhappy with this, HSBC has done what I'd normally expect it to do here.

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where it continued to provide credit it shouldn't have (such as here), we can and will tell it to do something different and/or something more if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

Miss C believes that HSBC should do more. As I understand it, she's unhappy with the amount of her reduction and she says it doesn't adequately reflect the distress HSBC's actions caused here. I've thought about what Miss C has said. But what Miss C is left has been left to repay are the funds which she used and crucially I don't agree the interest, fees and charges have left her with a debt that she wouldn't otherwise have been left with.

Equally as Miss C's spending and not any interest, fees or charges added, is responsible for the balance remaining and it's likely that Miss C would have spent in this way irrespective of HSBC's actions and I've given thought to Miss C's circumstances, I'm not persuaded a further award for distress and inconvenience is appropriate here.

Bearing in mind all of this, I'm satisfied that what HSBC has already agreed to do to put things right for Miss C – reworking her account so that all the interest, fees and charges added since July 2016 are removed and backdating any adverse credit file information to when it should have taken corrective action – is fair and reasonable in the circumstances of this case. And I'm not requiring it to do anything more. As this is the case, it's up to Miss C to decide whether she wishes to accept HSBC's offer.

My final decision

For the reasons I've explained, I'm satisfied that what HSBC UK Bank Plc has already agreed to do to put things right for Miss C is fair and reasonable in the circumstances of her complaint. So I'm not requiring it to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 22 March 2022.

Jeshen Narayanan
Ombudsman