

Complaint

Mr A and Mrs B have complained that HSBC UK Bank Plc (“HSBC”) applied interest, fees and charges to their overdraft in circumstances where it was unfair to do so.

Background

One of our adjudicators looked at this complaint and thought that HSBC ought to have realised that Mr A and Mrs B’s overdraft had already become unsustainable for them by December 2015 and so it shouldn’t have added the charges it did from this point onwards. As HSBC didn’t agree the case was passed to an ombudsman to 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 continued adding interest and associated fees and charges to Mr A and Mrs B’s overdraft from December 2015. By this point, it was evident that Mr A and Mrs B had been hardcore borrowing for an extended period. And they hadn’t seen a credit balance for an extended period of time. Equally, the amount of the credits going into Mr A and Mrs B’s account, in proportion to what was going out, didn’t suggest that they’d be able to repay what they owed within a reasonable period of time either.

So by this point, I think HSBC ought to have realised Mr A and Mrs B were unlikely to be able to sustainably repay their overdraft and should have stopped providing it on the same terms. It should have instead treated Mr A and Mrs B with forbearance, even if this meant taking corrective action in relation to the facility.

All of this means that HSBC should have realised that Mr A and Mrs B weren’t using their overdraft as intended and as the account conduct had suggested it had become unsustainable shouldn’t have continued offering it on the same terms.

Mr A and Mrs B ended up paying additional interest, fees and charges on his overdraft at a time when they were already struggling to repay what they owed. So I think Mr A and Mrs B 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 A and Mrs B

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

- Reworking Mr A and Mrs B's current overdraft balance so that all interest, fees and charges applied to it from December 2015 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr A and Mrs B to arrange a suitable repayment plan, Mr A and Mrs B are encouraged to get in contact with and cooperate with HSBC to reach a suitable agreement for this. If it considers it appropriate to record negative information on Mr A and Mrs B's credit file, HSBC should reflect what would've been recorded if it had started the process of taking corrective action on the overdraft in December 2015. HSBC can also reduce Mr A and Mrs B's overdraft limit by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave them over their 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 A and Mrs 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 HSBC should remove any adverse information from Mr A and Mrs B's credit file. HSBC can also reduce Mr A and Mrs B'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 A and Mrs B 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 this 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 and Mrs B to accept or reject my decision before 21 March 2022.

Jeshen Narayanan
Ombudsman