

Complaint

Mrs M has complained that HSBC UK Bank Plc (“HSBC”) unfairly increased the interest rate on her overdraft. She’s also complained that HSBC had previously been charging her even when she was in financial difficulty.

Background

One of our adjudicators looked at Mrs M’s complaint and thought while HSBC was entitled to vary its overdraft interest rate, it should have realised it was unfair to do so in Mrs M’s case as her overdraft had already become unsustainable for by June 2014. So it needed to refund all the interest, fees and charges it added to Mrs M’s overdraft from this point. HSBC didn’t agree in full and as Mrs M didn’t accept its alternative offer of settlement, 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.

HSBC will be familiar with all the rules, regulations and industry codes of 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 charging overdraft interest and associated fees from June 2014. By this point, it was evident Mrs M’s overdraft had become demonstrably unsustainable for her. A cursory look at her statements leading up to this period shows that Mrs M only ever saw a credit balance on her account for a few days at a time. She was also regularly exceeding her overdraft limit and had returned direct debits too.

In reaching my conclusions, I’ve seen what HSBC has said about Mrs M’s application for a loan in 2014 and her clearing the overdraft sometime after this. But the overdraft being cleared happened sometime after. And although I don’t have the details of how HSBC arrived at Mrs M having a monthly disposable income of over £450, I think the conduct of Mrs M’s account overdraft calls this figure into question.

So I think that by June 2014 HSBC should have stopped providing the overdraft on the same terms and treated Mrs M with forbearance rather than adding even more interest, fees and charges on the overdraft. As HSBC didn’t react to Mrs M’s account usage, and instead simply continued charging in the same way, I think it failed to act fairly and reasonably towards her. Mrs M ended up paying additional interest, fees and charges at a time when her overdraft was already unsustainable. So I’m satisfied that Mrs M lost out because of what HSBC did wrong (I don’t think that the Mrs M using the overdraft after having cleared it changes this) and that it should put things right.

Fair compensation – what HSBC needs to do to put things right

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

- Reworking Mrs M's current overdraft balance so that all interest, fees and charges applied to it from June 2014 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mrs M to arrange a suitable repayment plan, Mrs M is 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 Mrs M's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in June 2014. HSBC can also reduce Mrs M'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 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 Mrs M 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 Mrs M's credit file. HSBC can also reduce Mrs M'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 Mrs M 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 Mrs M'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 Mrs M to accept or reject my decision before 18 March 2022.

Jeshen Narayanan
Ombudsman