

Complaint

Miss K has complained that Northern Bank Limited (trading “Danske” Bank) unfairly increased the interest rate on her overdraft. She’s said the increased charges would make it make difficult to exit her overdraft.

Background

One of our investigators looked at Miss K’s complaint and thought while Danske was entitled to vary its overdraft interest rate, it should have realised it was unfair to do so in Miss K’s case as it ought to have realised that doing so meant it was unlikely she’d be able to exit her overdraft. So it needed to refund all the interest, fees and charges it added to Miss K’s overdraft from January 2020. Danske didn’t respond and Miss K disagreed. 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.

Danske 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 Danske acted unfairly when it continued charging overdraft interest and associated fees from January 2020. By this point, it was evident that Danske’s proposed changes to its overdraft charging structure would lead to Miss K’s overdraft becoming demonstrably unsustainable for her.

In reaching my conclusions, I’ve seen what Miss K has said about her overdraft usage and regularly being overdrawn for a number of years prior to January 2020 and that it is unfair to take into account the period she had a credit balance for in early 2019. In Miss K’s view, it’s unfair to take this into account because she was only in credit for this period as she’d been involved in a road traffic accident and she bought a replacement vehicle with these funds.

I’m sorry to hear that Miss K was involved in an accident. But the funds she received weren’t restricted. And I don’t think it’s unfair to say that she could have chosen to use some or all of these funds to reduce her overdraft had she wished to do so. I don’t think it’s fair and reasonable for me to require Danske to refund the interest, fees and charges for this period in circumstances where Miss K chose not to do this.

I’ve also considered whether Danske ought to refund some of the interest and fees it added before then. But it isn’t in dispute that Miss K hadn’t got in contact with Danske to say that she was experiencing financial difficulty and I don’t think it ought to have realised this for itself either. It’s fair to say that Miss K did use her overdraft regularly and she may well point to this in itself being evidence of her experiencing difficulty.

But it's also fair to say that there were regular credits going into Miss K's account throughout the period concerned. And while I'm not seeking to make retrospective value judgements over Miss K expenditure, nonetheless there are significant amounts of non-committed, non-contractual and discretionary transactions being made. So I don't think it's fair to say that it was the interest, fees and charges which unfairly prevented Miss K from exiting her overdraft, when it appears to be the case that she had the disposable income to repay her overdraft within a reasonable period of time.

I accept neither of these things in themselves (or taken together) mean that Miss K wasn't experiencing financial difficulty. And I know Miss K says that these charges did cause her to miss payments elsewhere. I'm sorry to hear that this was the case and I sympathise with what must have been a difficult time. But there isn't anything in Miss K's transactions on this account, in themselves, which ought to have alerted Danske to the fact that this might have been the case and which meant that it would have been fair and reasonable to step in here.

I say this while especially mindful that corrective action in relation to Miss K's overdraft facility is likely to have resulted in adverse information being recorded on her credit file, which I think would have been disproportionate considering Miss K appeared able to repay what she owed within a reasonable period of time.

However, I think that by January 2020 the situation had changed as Danske had introduced a new variable. Danske's proposed changes to the charging structure and doubling of the interest rate meant that it would be far more difficult for Miss K to exit her facility – even with the disposable income she had. And I'm satisfied that, in January 2020, Danske should have stopped providing the overdraft on the same terms and treated Miss K with forbearance rather than adding an increased amount of interest, fees and charges on the overdraft.

As Danske didn't react to Miss K's account usage, and instead proposed to add increased charges, I think it failed to act fairly and reasonably towards her. Miss K eventually ended up paying additional interest, fees and charges and this led to her being unable to exit her overdraft. So I'm satisfied that Miss K lost out because of what Danske did wrong and that it should put things right.

Fair compensation – what Danske needs to do to put things right for Miss K

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

- Reworking Miss K's current overdraft balance so that all interest, fees and charges applied to it from January 2020 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Danske should contact Miss K to arrange a suitable repayment plan, Miss K is encouraged to get in contact with and cooperate with Danske to reach a suitable agreement for this. If it considers it appropriate to record negative information on Miss K's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in January 2020. Danske can also reduce Miss K'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 Miss K 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 Danske should remove any adverse information from Miss K's credit file. Danske can also reduce Miss K's overdraft limit by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires Danske to take off tax from this interest. Danske must give Miss K 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 Miss K's complaint. Northern Bank Limited 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 Miss K to accept or reject my decision before 24 March 2022.

Jeshen Narayanan
Ombudsman