

Complaint

Miss W has complained that HSBC UK Bank Plc (“HSBC”) unfairly continued applying charges to her overdraft when she was in financial difficulty.

Background

One of our adjudicators looked at this complaint and thought HSBC should have realised that Miss W’s overdraft had become unsustainable for her by July 2016 and so it shouldn’t have added the charges it did from this point onwards. HSBC didn’t accept our adjudicator’s view. 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.

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 considered everything provided, I think HSBC acted unfairly when it continued adding interest and associated fees and charges to Miss W’s overdraft from July 2016. By this point, it was evident that Miss W’s overdraft had become unsustainable for her and that continuing to provide it was likely to cause significant adverse consequences.

Miss W’s statements leading up to this period shows that she hadn’t seen a credit balance for an extended period of time. Miss W was also struggling to manage and regularly exceeding her limit. In reaching my conclusions, I’ve thought about what HSBC has said about there being more than a year between when Miss W says she was in difficulty and when she next successfully applied for a limit increase. But this was after HSBC ought to have realised that Miss W was already struggling. Equally, I also think that there was information on Miss W’s account statements which called into question the accuracy of the information HSBC relied upon when deciding Miss W’s overdraft was affordable for her.

So overall by July 2016, I think that HSBC ought to have realised that Miss W was struggling and unlikely to be able to sustainably repay her overdraft. In these circumstances, HSBC should have stopped providing the overdraft on the same terms. It should have instead treated Miss W with forbearance, even if this meant taking corrective action in relation to the facility. All of this means that HSBC should have realised that Miss W wasn’t using her overdraft as intended and as the account conduct had suggested it had become unsustainable shouldn’t have continued offering it on the same terms. As HSBC didn’t react to Miss W’s overdraft and instead continued charging in the same way, I think it failed to act fairly and reasonably.

Miss W ended up paying additional interest, fees and charges on her overdraft at a time when she was already experiencing difficulty. So I think that Miss W 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 Miss W

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

- Reworking Miss W's current overdraft balance so that all interest, fees and charges applied to it from July 2016 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Miss W to arrange a suitable repayment plan, Miss W 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 Miss W's credit file, it should reflect what would have been recorded if it had started the process of taking corrective action on the overdraft in July 2016. HSBC can also reduce Miss 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 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 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 Miss W's credit file. HSBC can also reduce Miss 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 Miss W 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 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 Miss W to accept or reject my decision before 25 March 2022.

Jeshen Narayanan
Ombudsman