

The complaint

Mr H has complained that HSBC UK Bank Plc (“HSBC”) acted unfairly by continuing to apply charges to his account when he was in financial difficulty.

What happened

Mr H complained to HSBC about the charges applied to his account when it ought to have known he was suffering from financial difficulties. HSBC agreed that it hadn’t treated Mr H fairly and refunded £170 in charges and compensated him a further £200 for lack of attention to his circumstances.

Mr H was dis-satisfied with this as over the years he says he has been charged hundred’s when HSBC allowed him to go into unarranged overdraft yet HSBC wouldn’t agree a formal overdraft.

An adjudicator looked at this complaint and thought that HSBC should have stopped charging overdraft fees from 2 September 2016 as by this point it was clear Mr H was in financial difficulty as he was going into unarranged overdraft on a monthly basis and some months hadn’t seen a credit balance.

HSBC disagreed with our adjudicator’s view – it says there wasn’t enough to alert it of financial difficulty before Mr H got in contact in touch. So it has asked for an ombudsman’s decision.

Why I can’t look at charges applied before June 2015

The rules applying to this service say that, I can’t look at a complaint made more than six years after the event being complained about – or (if later) more than three years after the complainant was aware, or ought reasonably to have been aware, of cause for complaint. This is Dispute Resolution rule 2.8.2R(2) – which can be found online in the Financial Conduct Authority’s handbook.

Mr H raised his complaint in June 2021. Six years before he raised his complaint is June 2015. And as the charges for use of the unarranged overdraft would’ve been notified to Mr H at the time they were being applied, I think he ought to have known enough to decide whether they were unfair or causing financial difficulty. So, I don’t think that three years from when Mr H ought to be reasonably aware he had reason to complain provides him with a longer period than the six year rule. So, I will only be looking at charges applied from June 2015.

What I’ve decided – and why

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'm intending to find that HSBC acted unfairly when it continued charging overdraft interest and associated fees on Mr H's account from 2 September 2016. By this point, it ought to have been clear that Mr H was in no position to sustainably repay what he owed within a reasonable period of time.

By this point, it was clear that Mr H was having difficulty managing his money. Mr H's statements show that he was going into unarranged overdraft on a monthly basis and needed to do this to make ends meet as he was reliant on it to meet essential payments. In these circumstances, it ought to have been apparent that Mr H was at a significant risk of experiencing financial difficulty and so should have been treated with forbearance rather than having had even more interest, fees and charges added to his overdraft.

I accept that Mr H did manage to bring his account into credit at times when his benefits were received. But he didn't maintain a credit balance and I can see that Mr H was using his overdraft to pay monthly household bills and within weeks would be back in unarranged overdraft.

So I think that Mr H's regular use of an unarranged overdraft should have prompted HSBC to have realised that Mr H wasn't using his account as intended and shouldn't have continued offering it on the same terms. As HSBC didn't react to Mr H's unarranged overdraft usage and instead continued charging in the same way, I think it failed to act fairly and reasonably.

Mr H ended up paying additional interest, fees and charges on his unarranged overdraft and this ended up exacerbating difficulties he already had in trying to clear it. So I think that HSBC didn't treat Mr H fairly and he lost out because of what HSBC did wrong. And this means that it should put things right.

Putting things right

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

- Reworking Mr H's current overdraft balance so that all interest, fees and charges applied to it from 2 September 2016 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr H to arrange a suitable repayment plan. If it considers it appropriate to record negative information on Mr H's credit file, HSBC should reflect what would have been recorded had it started the process of taking corrective action on the overdraft from 2 September 2016.

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 H 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 H's credit file.

† HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mr H 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 uphold Mr H's complaint against HSBC UK Bank Plc and instruct it to put this right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 April 2022.

Caroline Davies
Ombudsman