

## **The complaint**

Mr J has complained that HSBC UK Bank Plc (HSBC) continued charging him excessive amounts for his overdraft when he was in financial difficulty.

## **What happened**

Our adjudicator thought the complaint should be not upheld. Mr J disagreed with the adjudicator's opinion. The complaint was then passed to me.

I issued my provisional decision saying that Mr J's complaint should be upheld in part. A copy of the background to the complaint and my provisional findings are below in italics and form part of this final decision.

## **What I said in my provisional decision**

*I can only consider the charges that HSBC has added to Mr J's complaint after 28 April 2020 in this provisional decision. I've considered Mr J's complaint about the charges before this time separately in a decision about our jurisdiction.*

*Mr J complained to HSBC that it was continuing to add charges and fees when it was clear that he was having financial problems. He said the extra cost would make his overdraft more difficult to repay. HSBC didn't uphold the complaint. And as Mr J was dissatisfied he referred the complaint to the Financial Ombudsman.*

*Mr J's complaint was considered by one of our adjudicators. She didn't think that Mr J's account showed signs of financial difficulty. She said he had a healthy income and his overdraft was paid off at times.*

*Mr J didn't agree and so the case was passed to me, an ombudsman, to consider.*

### **What I've provisionally decided – and why**

*I've considered all the available evidence and arguments to provisionally 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 after 28 April 2020. At this point, it ought to have been clear that Mr J was in no position to sustainably repay what he owed within a reasonable period of time.*

*This is because, by this time, Mr J was hardcore borrowing. In other, words he hadn't seen or maintained a credit balance for an extended period of time. I've seen Mr J's bank statements since 2015 and he was very rarely in credit since this time. He usually had a significant overdraft balance.*

*HSBC's own literature suggests that overdrafts are for short term or emergency use. For*

*example, the product literature it has provided from 2018 says that 'Overdrafts are only for short-term borrowing'. So, an overdraft shouldn't have been used for prolonged day-to-day expenditure.*

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

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

HSBC, and Mr J, received my provisional decision. And no one had anything to add after they'd seen it.

### **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, and Mr J, didn't raise any new points after receiving my provisional decision. So, I've reached the same conclusions I reached before, for the same reasons. I still think that it was clear that Mr J couldn't sustainably repay his overdraft from 28 April 2020. This was because he'd been unable to adequately do this in the years running up to this time. So, I think HSBC should put things right.

### **Putting things right**

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

- Reworking Mr J's current overdraft balance so that all interest, fees and charges applied to it after 28 April 2020 are removed.

and

or

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr J to arrange a suitable repayment plan, Mr J is encouraged to get in contact with and cooperate with HSBC to reach a suitable agreement. If it considers it appropriate to record negative information on Mr J's credit file, HSBC should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in 28 April 2020. HSBC can also reduce Mr J's overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave Mr J over their limit.
- 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 J 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 J's credit file from 28 April 2020. HSBC can also reduce Mr J'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 J a certificate showing how much tax it has taken off if he asks for one.

### **My final decision**

For the reasons I've explained, I uphold Mr J's complaint.

HSBC UK Bank Plc should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 6 May 2022.

Andy Burlinson  
**Ombudsman**