

The complaint

X has complained that the overdraft facility on his HSBC UK Bank Plc (“HSBC”) account was unaffordable and the charges applied to it have left him in persistent debt.

What happened

X complained to HSBC regarding the affordability of his overdraft and that the charges applied were leaving him in persistent debt to his overdraft. HSBC said it couldn’t look at the increase in X’s overdraft limit as the last increase happened over six years ago. HSBC says all the charges were correctly applied in line with the terms and conditions of the account and it was X’s responsibility to get in touch with it if he was in financial difficulty.

X’s complaint was considered by one of our adjudicators. They thought having reviewed X’s statements from November 2015 that there weren’t any signs X was in financial difficulty and didn’t think HSBC had applied charges unfairly.

X disagreed and asked for an ombudsman’s decision. So the complaint came to me for a decision. I issued my provisional decision in July 2022. In my provisional decision, I explained why I was proposing to uphold X’s complaint.

I invited both parties to let me have any further submissions before I reached a final decision. HSBC provided bank statements of another of X’s accounts which showed he didn’t have sufficient funds in this account to pay back his overdraft.

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.

In my provisional decision I said that:

“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 currently intending to find that HSBC acted unfairly when it continued charging overdraft interest and associated fees from November 2016. By this point, it ought to have been clear that X was in no position to sustainably repay what he owed within a reasonable period of time.

By this point, HSBC ought to have realised that X’s use of his overdraft was unsustainable. X’s statements show significant gambling and that he was consistently overdrawn and near the top of his limit. In these circumstances, HSBC ought to have realised that X was at a significant risk of being unable to repay what he already owed.

HSBC say it was X’s responsibility to get in contact with it if he was in financial difficulty. But HSBC on its own admission says it wrote to X 47 times regarding the use of his overdraft –

so I think it was clearly aware X wasn't using the overdraft as intended. HSBC should have stopped providing the overdraft on the same terms and treated X with forbearance rather than charge even more interest, fees and charges on the overdraft.

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

As neither party has provided any further evidence or arguments for consideration and HSBC can't show X had sufficient funds in another account to pay off his overdraft I see no reason to depart from the conclusions set out in my provisional decision. It follows that I uphold this complaint.

Putting things right

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

- Reworking X's current overdraft balance so that all interest, fees and charges applied to it from November 2016 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact X to arrange a suitable repayment plan, X 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 X's credit file, HSBC should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in November 2016 HSBC can also reduce overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave X over their 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 X 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 X's credit file. HSBC can also reduce X'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 X 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 X's complaint against HSBC UK Bank Plc and direct it pay the fair compensation I've set out above.

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

Caroline Davies
Ombudsman