

## **The complaint**

Mr B says 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 B held an account with HSBC with a £800 overdraft. Mr B complained to HSBC regarding the overdraft charges applied to the account which he says caused him financial difficulties.

HSBC says all the charges were correctly applied in line with the terms and conditions of the account and that it supported Mr B by writing to him regarding the status of the account, sending text alerts and asking him to contact its financial support team and providing the details of external debt advice organisations that could help.

Mr B’s complaint was considered by one of our adjudicators. They thought having reviewed Mr B’s statements that HSBC should refund all fees and charges applied to Mr B’s account from January 2017 because if it had reviewed his account it would’ve seen that Mr B was clearly struggling and that his overdraft usage was not sustainable. They didn’t think HSBC went far enough in supporting Mr B with his overdraft and there should’ve been some changes to the way it was offering overdrafts.

HSBC disagreed. It says since 2016 it had made multiple invitations to Mr B to contact it. It says as the customer didn’t reach out there was nothing more it could do as it couldn’t force the customer into collections and that when the account did meet collections criteria appropriate action was taken.

So the complaint came to me for a decision.

## **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 think HSBC acted unfairly when it continued charging overdraft interest and associated fees on Mr B’s account from January 2017.

By this point HSBC ought to have realised that Mr B’s use of his overdraft was unsustainable and that Mr B was in no position to repay what he owed within a reasonable period of time. Mr B’s statements show he was living off borrowed money in the form of student, payday and other loans and that he was unable to see or maintain a credit balance for any reasonable period of time and often had direct debits returned. In these circumstances,

HSBC ought to have realised that Mr B was at a significant risk of being unable to repay what he already owed.

HSBC say Mr B never responded to its invitations to contact it and that he didn't meet its collections criteria. But by HSBC's own admission it says it wrote to Mr B on 61 occasions from 2016 regarding the use of his overdraft before it issued a final demand letter in January 2022. So I think it was clearly aware Mr B wasn't using the overdraft as intended but HSBC still took no proactive action for over five years. HSBC should have stopped providing the overdraft on the same terms and treated Mr B with forbearance rather than charge even more interest, fees and charges on the overdraft.

Mr B 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 Mr B 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 B's complaint for HSBC to put things right by:

- Reworking Mr B's current overdraft balance so that all interest, fees and charges applied to it from January 2017 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr B to arrange a suitable repayment plan. If it considers it appropriate to record negative information on Mr B's credit file, HSBC should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in January 2017.

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 B 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 B's credit file.

† HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mr B 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 B'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 Mr B to accept or reject my decision before 23 May 2023.

Caroline Davies  
**Ombudsman**