

## **The complaint**

Mr G 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 G held an account with HSBC with an overdraft facility. Mr G complained to HSBC about the overdraft charges applied to his account. He says that he was struggling to pay the necessities and that direct debits were being returned and requested a refund of all charges.

HSBC said all charges were applied to Mr G’s account correctly in line with the terms and conditions of the account.

Mr G was dis-satisfied with this and brought his complaint to this service.

A jurisdiction decision was issued on 9 August 2023 deciding that we were unable to look at Mr G’s complaint regarding the charges HSBC applied to Mr G’s account prior to April 2017 because it was made out of time.

So my decision will only be looking at the merits of Mr G’s complaint from April 2017.

One of our adjudicators looked at this complaint and thought that HSBC acted unfairly when it continued charging overdraft fees from 1 January 2019 as Mr G’s statements showed that Mr G hadn’t seen or maintained a credit balance for an extended period of time.

Our adjudicator thought HSBC should put things right by:

- Re-working Mr G’s current overdraft balance so that all interest, fees and charges applied to it from 1 January 2019 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr G to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr G’s credit file, it should backdate this to 1 January 2019.

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 G, 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 G’s credit file.

HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mr G a certificate showing how much tax it’s taken off if she asks for one.

HSBC agreed to settle Mr G’s complaint in-line with our adjudicator’s recommendations.

Mr G doesn't wish to accept this and has asked for an ombudsman's 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.

Having carefully considered everything, I think that what HSBC has already agreed to do to put things right for Mr G is fair and reasonable in all the circumstances of this complaint. I'll explain why I think this is the case.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have.

So where a business increases or continued to allow a consumer to use a credit facility which it should have realised was unsustainable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit. This means we'd normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised it was unsustainable. And if those interest and charges were paid also add 8% simple interest per year.

In this case after reviewing Mr G's statements, I'm in agreement with our adjudicator that by 1 January 2019 it was evident Mr G wasn't managing his overdraft in a sustainable way. Although a healthy salary was being paid into Mr G's account, his overdraft overall wasn't reducing.

While I accept Mr G's statements show that there were at times a number of discretionary transactions on Mr G's account (including spending on online retail, takeout and cash withdrawals), for the period looked at from April 2017 Mr G wasn't able to see or maintain a credit balance and some discretionary spending doesn't mean the lending should continue without a review.

If HSBC had carried out a proper review of his statement's I think it ought to have realised it was unlikely Mr G would be able to sustainably repay the overdraft within a reasonable period of time. HSBC has agreed to settle Mr G complaint in-line with this finding and Mr G will be 'refunded' all of the interest, fees and charges caused by the overdraft facility.

So bearing in mind all of this, I'm satisfied that what HSBC has already agreed to do to put things right for Mr G is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything more. As this is the case, it's up to Mr G to decide whether he now wishes to accept HSBC's offer.

### **My final decision**

For the reasons I've explained, I'm satisfied that what HSBC UK Bank Plc has already agreed to do to put things right for Mr G is fair and reasonable in the circumstances of this case. So I'm not requiring it to do anymore.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or

reject my decision before 2 October 2023.

Caroline Davies  
**Ombudsman**