

Complaint

Mr W has complained that HSBC UK Bank Plc (“HSBC”) unfairly continued allowing him to use an overdraft even when he was hardcore borrowing.

Background

When HSBC reviewed Mr W’s complaint it agreed that it shouldn’t have increased Mr W’s overdraft limit from £2,000.00 in June 2019. So it agreed to refund all of the interest it charged on balances over £2,000.00 from June 2019 to January 2023. Mr W remained dissatisfied at this offer, didn’t accept it and instead referred his complaint to our service.

One of our investigators looked at Mr W’s complaint and she thought that HSBC should have realised that Mr W’s overdraft had already become unsustainable for him by July 2017. And it needed to refund all the interest, fees and charges it added to Mr W’s overdraft from this point.

HSBC disagreed with the investigator’s assessment. It nonetheless agreed to refund all of the interest Mr W paid from June 2019 to January 2023, rather than just the extra that was paid as a result of the unfair limit increases.

As this wasn’t in line with the investigator’s recommendations and Mr W was of the view he was entitled to more of the charges he paid should be refunded, the complaint was passed to an ombudsman for a final decision as per the next stage of our dispute resolution process.

My findings

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 industry codes of 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 from July 2017. While Mr W might not have got in touch to confirm this, nonetheless by this point, it was evident Mr W’s overdraft had become demonstrably unsustainable for him.

A cursory look at his statements leading up to this period shows that Mr W had been hardcore borrowing for an extended period. And the transactions taking place on Mr W’s account indicated that there was little prospect of him being able to repay what he owed without undue difficulty or borrowing further.

Indeed, Mr W’s account only ever saw a credit balance as a result of gambling winnings. So it seems to me that repaying this overdraft was entirely based on Mr W’s success as a gambler. And this wasn’t a realistic, credible or even sustainable repayment strategy.

I've seen that HSBC is relying on having sent Mr W a number of letters from 2019 onwards (23 letters up until 2020) telling him that using an overdraft in the way that he was expensive and that he should get in contact if he was experiencing difficulty. It then sent further letters and communications from 2021 onwards as a result of the regulator's repeat overdraft use rules. HSBC says that Mr W should have reached out if he was struggling.

I've thought about what HSBC has said. But the mere fact that it felt the need to send Mr W so many letters within such a period means that it recognised the problem with Mr W's overdraft usage. I don't think that simply sending further letters in the absence of Mr W reaching out means that it was fair and reasonable for HSBC to ignore what was unfolding.

Furthermore, I also find it somewhat odd that HSBC is relying on letters sent during the period it has agreed to refund some of the interest, fees and charges added to Mr W's account for, to argue that it acted fairly and reasonably earlier. I've seen HSBC's argument that its offer has been made on a gesture of goodwill basis.

That might be the case for the additional interest refund proposed in response to the investigator's assessment but given the final response acknowledges that HSBC shouldn't have increased Mr W's overdraft limit in the way that it did, in June 2019, I don't accept that HSBC considers that it didn't do anything wrong.

So I'm not persuaded by HSBC's arguments that the letters it sent mean that its offer is fair and reasonable, or that Mr W's failure to respond to the letters meant that he wasn't experiencing difficulty and struggling to clear his indebtedness.

And I'm satisfied that HSBC should have stopped providing the overdraft on the same terms and treated Mr W with forbearance by July 2017, rather than going on to increase the limit on the overdraft. As HSBC didn't react to Mr W's account usage and instead increased Mr W's overdraft limit without having regard to his account activity, I think it failed to act fairly and reasonably towards him.

Mr W ended up paying interest, fees and charges at a time when his overdraft was already unsustainable. So I'm satisfied that Mr W lost out because of what HSBC did wrong and that it should put things right.

Fair compensation – what HSBC needs to do to put things right for Mr W

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

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

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr W to arrange a suitable repayment plan, Mr W is encouraged to get in contact with and cooperate with HSBC to reach a suitable agreement for this. If it considers it appropriate to record negative information on Mr W's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in July 2017. HSBC can also reduce Mr W's overdraft limit by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over his 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 Mr W 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 W's credit file. HSBC can also reduce Mr W'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 W 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'm upholding Mr W's complaint. HSBC UK Bank Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 November 2023.

Jeshen Narayanan
Ombudsman