

Complaint

Miss H has complained that HSBC UK Bank Plc (“HSBC”) irresponsibly provided her with an overdraft which it unfairly continued allowing her to use even when it should have realised that she was struggling with the interest on it.

Background

Miss H has also complained about loans and a credit card that HSBC provided to her. Those complaints have been looked at separately and do not form part of this final decision.

We’ve already explained to the parties why we’re only able to look at matters in relation to Miss H’s overdraft from March 2017 onwards. For the sake of completeness, I wish to confirm that I have reviewed the circumstances and I agree that I am only able to look at whether HSBC acted fairly and reasonably in its dealing with Miss H from March 2017 onwards. So this decision is only considering those matters.

One of our investigators looked at Miss H’s complaint and he, in effect, thought that HSBC should have realised that Miss H’s overdraft had already become unsustainable for her by March 2017. And it needed to refund all the interest, fees and charges it added to Miss H’s overdraft from this point. HSBC disagreed with the investigator’s assessment and asked for an ombudsman’s review.

My findings

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’m currently minded to partially uphold Miss H’s complaint. I’ll explain why in a little more detail.

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’m satisfied that HSBC acted unfairly when it continued charging overdraft interest and associated fees from March 2017 onwards. While Miss H might not have got in touch to confirm this, nonetheless by this point, it was evident Miss H’s overdraft had become demonstrably unsustainable for her.

A cursory look at Miss H’s statements show that she was hardcore borrowing for an extended period. And the transactions taking place on Miss H’s account indicated that there was little prospect of her being able to repay what she owed within a reasonable period of time.

By this point it was clear that Miss H was being sucked deeper into her overdraft balance, once she had been paid, in order to meet her day-to-day expenditure. So HSBC ought to

have seen from Miss H's overdraft usage that she wasn't using her overdraft for short-term emergencies and instead that she was using it over a much longer and unsustainable term.

I've seen that HSBC is relying on having sent Miss H a number of letters telling her that using an overdraft in a way that was expensive and that she should get in contact if she was experiencing difficulty. Furthermore, it has commented on Miss H's expenditure not being indicative of someone who was in difficulty. As I understand it, it then sent further letters and communications from 2020 onwards as a result of the regulator's repeat overdraft use rules. HSBC says that Miss H should have reached out if she was struggling.

I've thought about what HSBC has said. But the mere fact that it felt the need to send Miss H so many letters within such a period means that it recognised there was a problem with the way that Miss H was using her overdraft.

Indeed, if I take HSBC's argument to its logical conclusion here, I see it as being that it acted fairly and reasonably towards Miss H because it sent her letters as it had identified that her overdraft usage had become a problem. But downgrading Miss H's account and ensuring she wasn't paying any fees for the account itself didn't really address the issue of Miss H's problem debt.

In my view, this 'solution' ignores the fact that there comes a point where a lender cannot continue simply relying on a borrower not wanting to discuss the situation. After all there are many reasons why a consumer might not want to get into discussions about their finances even though they're in a situation where they're struggling, or they may even go further and say they can and will make payment when the reality is that they cannot do so.

While Miss H didn't contact HSBC, most likely because she didn't realise the longer-term impact failing to deal with the matter at hand was having and she was instead focusing on making ends meet, I don't think it was reasonable for HSBC to conclude that her problematic overdraft usage would correct itself.

Equally, even if I were to accept that some of Miss H's expenditure was non-essential in the way that HSBC states, this still does not alter the fact that Miss H's use of her overdraft was clearly a problem. And, in these circumstances, HSBC needed to take steps to help Miss H address this matter in order to have acted fairly and reasonably.

For the sake of completeness, I don't think any solution necessarily meant that HSBC had to leave Miss H in a position where she was using an unarranged overdraft. I'm satisfied that there are a plethora of solutions available to lenders – including providing a facility interest free and reducing a limit gradually. It doesn't necessarily follow that a facility needs to be completely removed before a lender can take steps to help a customer reduce problem debt.

So, I'm satisfied that what needed to happen was that HSBC should have stopped offering the overdraft on the same terms and instead treated Miss H with forbearance by March 2017, which well was ahead of when it started sending the letters it has referred to. This could have included but was not limited to terminating Miss H's overdraft. As HSBC didn't react to Miss H's account usage and have regard to her account activity, I'm satisfied that it failed to act fairly and reasonably towards her.

Miss H ended up paying interest, fees and charges at a time when her overdraft was already unsustainable. So I'm satisfied that Miss H lost out because of what HSBC did wrong and that it now needs to put things right.

Fair compensation – what HSBC needs to do to put things right for Miss H

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

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

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Miss H to arrange a suitable repayment plan, Miss H 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 Miss H's credit file, HSBC should reflect what would have been recorded had it started the process of taking corrective action in March 2017. HSBC can also reduce Miss H'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 her over her 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 Miss H 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 Miss H's credit file. HSBC can also reduce Miss H'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 Miss H a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Miss H's complaint directing HSBC UK Bank Plc to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 12 February 2024.

Jeshen Narayanan
Ombudsman