

The complaint

Mr F complains HSBC UK Bank Plc unfairly charged him unarranged overdraft fees and turned him down for an overdraft on his current account.

What happened

I issued a provisional decision setting out what'd happened, and what I thought about that. I've copied the relevant elements of this below, and they form part of this final decision.

In March 2023 Mr F contacted HSBC saying he'd been unfairly turned down for an overdraft on many occasions which would have prevented all of the fees he's been charged. Mr F asked for a refund of these fees which were incurred when payments were presented, and paid by HSBC, when Mr F didn't have enough funds in his account to cover them.

HSBC said all the fees had been applied in line with their charging structure at the time – so they wouldn't be refunding what Mr F had asked them to do.

Unhappy with this Mr F asked us to look into things. After clarifying we'd only be able to look into charges applied since 1 April 2017 (which Mr F accepted), our Investigator ultimately didn't uphold the complaint. She felt HSBC hadn't done anything wrong.

Mr F disagrees with this, he said given he wasn't able to get an overdraft then it would have made sense for any direct debits or other debits to have been simply refused – rather than go through on an informal basis and then charge him over the odds for doing so. So, the complaint's been passed to me to decide.

What I've provisionally 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.

I've noted Mr F's concerns about HSBC allowing payments to take him over his overdraft account. HSBC have said the charges were applied in line with their terms and conditions.

While that might be true, HSBC will also be aware of all of the rules, regulations and good industry practice that apply in a case of debiting charges and fees from a customer's account.

I'm aware Mr F was being charged unarranged overdraft fees from 2016, and can see in January, February and March 2017 Mr F was regularly going into an unarranged overdraft. While these are outside of the scope of the complaint in terms of what I can redress for, they provide important context about the position of Mr F's account from 1 April 2017 onwards – the time period I can consider.

HSBC have said they've allowed the payments to go through and it's their choice as per the terms and conditions on whether they do. While HSBC are correct in that they can, that doesn't mean they should. They're required to treat Mr F fairly and reasonably.

In his situation, I think it's clear Mr F had already developed a reliance on an unarranged overdraft by April 2017 – the earliest date at which I can consider any charges that were applied.

HSBC will be aware the relevant guidance and industry practice at the time made it clear that an increasing reliance on an unauthorised overdraft would be considered a sign that a customer may be in financial difficulties. Mr F paid £745 worth of daily unarranged overdraft fees – which meant he was in an unarranged overdraft for 159 days in the year October 2016 to October 2017 – so I think this was a clear sign of his situation.

In the circumstances, I think HSBC should have found out more about Mr F's circumstances before allowing more payments to go through which took him into an unarranged overdraft. And, had they looked into things, I think they'd have found Mr F was struggling financially, and should have supported him rather than continuing to debit fees.

Because I think HSBC should have done more, I don't think they've treated Mr F fairly. The evidence I have shows Mr F's problems were there in the early part of 2017 – so, I'm planning to uphold this complaint and require HSBC to refund all fees from 1 April 2017.

I've noted part of Mr F's complaint related to HSBC not granting him a formal overdraft. They've not provided me with enough information to fully assess whether they turned him down for the overdraft applications fairly – but I don't think I need to consider that further given I'm upholding this complaint anyway.

Responses to my provisional decision

Mr F said he had nothing to add and was happy with the outcome I'd reached.

HSBC said a regular salary of £1,800 went into the account each month and in general the account went well into credit each month following this. And, the spending each month clearly shows leisure / non-essential spending each month – including some abroad spending potentially. They said it'd be reasonable to say the unauthorised positions, which were rectified by Mr F's salary every month, were because of Mr F's spending habits. Overall, they don't think just because Mr F went into an overdrawn position this indicates he was in financial difficulty.

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.

While I've noted HSBC's points I don't agree. Someone going into an unauthorised overdraft position for 159 days out of 365 (43% of the time) is clearly signs of someone struggling – and this is what happened in 2016-2017.

The position wasn't much different in later years. Despite that, HSBC have taken no proactive action to support Mr F. They've allowed him to continue going into an unauthorised overdraft position, on a very regular basis, without providing any support at all that I can see.

Mr F applied for overdrafts on several occasions which HSBC turned down. It can't be right or fair that HSBC won't give Mr F an authorised overdraft but are happy to pay an item which takes him into an unauthorised overdraft and charge him more for that. And, as I've said, this happened on 159 days out of 365 in 2016-2017. From April 2017 (the period I can consider) to April 2020 (when unauthorised overdraft charges were banned) I've got evidence to show

Mr F was charged those fees every month bar August and September 2018. It's unclear to me if Mr F may have been charged in that time as the evidence may be incomplete.

But, either way, it's clear Mr F was struggling with his finances. And although HSBC have pointed out some of his spending may not have been on what they consider to be essential spending, ultimately I'm satisfied Mr F was showing signs of financial difficulties and HSBC didn't do anything to support him. So, I still uphold this complaint.

Putting things right

Overall, I require HSBC to:

- Rework Mr F's account so that all interest, fees and charges applied to it as a result of the unarranged overdrafts are removed.
- If a balance is still outstanding with HSBC once these amendments have been made, then HSBC need to contact Mr F to arrange a suitable repayment plan. HSBC can record negative information on Mr F's credit file if they consider it appropriate – and this should reflect what the information would have been, had they stopped charging Mr F on 1 April 2017.
- If no balance is outstanding with HSBC once these amendments have been made, then anything outstanding should be treated as overpayments, and returned to Mr F along with 8% simple interest* on the date they were made, to the date of settlement. If no outstanding balance remains, then HSBC also need to remove any adverse information from Mr F's credit file.

*HM Revenue and Customs requires HSBC to deduct tax from the interest payment referred to above. HSBC must give Mr F a certificate showing how much tax they've deducted if he asks them for one.

My final decision

I uphold this complaint and require HSBC UK Bank Plc to carry out the actions in the 'Putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 12 April 2024.

Jon Pearce

Ombudsman