

Complaint

Mrs P has complained about the overdraft charges HSBC UK Bank Plc (“HSBC”) applied to her Advance current account.

She’s said the charges added were unfair and caused her financial hardship.

Background

Mrs P had two current accounts with HSBC. Her Advance account, which I will refer to as account A throughout the course of this decision, had an overdraft limit which was increased to £3,000.00 in July 2019 and then reduced to £2,400.00 in April 2022.

Mrs P’s second current account, which I will refer to as account B, also had an overdraft. The limit on this facility was reduced to £750 in October 2021, before once again being reduced to £600 in March 2022.

Mrs P’s complaint is solely about the overdraft on account A. I’ve therefore limited my consideration of this complaint to whether HSBC acted fairly and reasonably in allowing Mrs P to continue using this facility. Although I have considered some of the factors in relation to account B, insofar as they are relevant to whether HSBC ought to have taken corrective action on account A.

After Mrs P referred her complaint to us, HSBC agreed that it shouldn’t have increased the overdraft limit on account A to £3,000.00 in July 2019. And as a result it agreed to refund all interest, fees and charges on balances over £2,500.00 from this point onwards.

Mrs P’s complaint was subsequently looked at by one of our investigators. He thought that HSBC’s offer was fair and reasonable as Mrs P hadn’t said she was in financial difficulty and it wasn’t the case that HSBC ought to have realised this or that Mrs P’s overdraft (on account A) had become demonstrably unsustainable for her either.

So our investigator thought that what HSBC had already agreed to do to put things right for Mrs P was fair and reasonable in the circumstances and it didn’t need to do anything further. Mrs P disagreed and asked for an ombudsman’s decision.

Scope of this decision

As the parties have agreed that HSBC shouldn’t have increased Mrs P’s overdraft limit, on account A, to £3,000.00 in July 2019, I’ve not looked into this matter. I’ve simply considered whether HSBC ought to have realised, from Mrs P’s use of her overdraft, that a limit of any description was unsustainable for her and therefore continuing to allow her the use of a facility wasn’t fair and reasonable.

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 provided, I'm satisfied that what HSBC has already agreed to do to put things right for Mrs P is fair and reasonable in all the circumstances of the complaint. And I'm not requiring it to do anything further.

I'll now explain why I think that this is the case in further detail.

Before I go any further, I want to be clear in saying that I haven't considered whether the various amounts HSBC charged over the years were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately how much a bank charges for services is a commercial decision. And it isn't something for me to get involved with.

That said, while I'm not looking at HSBC's charging structure per se, it won't have acted fairly and reasonably towards Mrs P if it applied these interest, fees and charges to Mrs P's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mrs P was experiencing financial difficulty, and/or she couldn't repay what she owed within a reasonable period of time. So I've considered whether there were instances where HSBC didn't treat Mrs P fairly and reasonably.

It's fair to say that Mrs P used her overdraft and she appears to be suggesting that this in itself was an indication that HSBC ought to have taken action in relation to the facility. In the first instance, I don't think that it is accurate to say that HSBC didn't take any action in relation to Mrs P's overdraft usage. It's clear that the overdraft limits on account A and account B were reduced in 2021 and 2022.

I'd also add that it is far too simplistic to say that it automatically follows someone was in financial difficulty simply because they were using a financial product that they were entitled to use. Repeated use of an overdraft can be indicative of a customer being in financial difficulty or indicative of them using the facility unsustainably. However, it doesn't automatically follow that this is the case.

In my view, it's important to look at the overall circumstances of a customer's overdraft usage – particular in light of what this may suggest about their overall financial position. So, in this case, I've considered Mrs P's incomings and outgoings as well as any overdrawn balance and thought about whether it was possible for her to have repaid her balance and stopped using her overdraft, based on this.

After all if Mrs P was locked into paying charges because there was no reasonable prospect of her exiting her overdraft (by clearing what she owed within a reasonable period of time) then her facility would have been unsustainable for her. I've therefore carefully considered whether this was the case.

In considering this matter, the first thing for me to say is that I'm mindful that Mrs P was in receipt of a monthly salary and her salary had the potential to clear what she could owe within a reasonable period of time. So this isn't Mrs P's case isn't one where the borrower was permanently in their overdraft.

There were periods where Mrs P was in credit – although I do accept that there were times where Mrs P would have met the criteria of someone who displayed a pattern of repeat use of their overdraft and that HSBC sent her letters about this as well as reduced her overdraft limits as a result.

That said, even though this is the case, the question here is whether HSBC ought to have removed Mrs P's overdraft completely, because HSBC had sufficient information to realise

that it was unsustainable for her and that she was likely to be in financial difficulty. And having considered matters, I don't think that this is the case here.

To explain, while I'm not seeking to make retrospective value judgements over Mrs P expenditure, nonetheless there are significant amounts of non-committed, non-contractual and discretionary transactions going from account A. Furthermore, it appears as though Mrs P was regularly transferring funds from account A to account B.

I appreciate that Mrs P has said that account B was for her bills and that she was transferring funds from account A (which received her salary) to account B in order to ensure her commitments were being met. But the balance on account B was often in surplus. And the surplus funds in this account could have been used to reduce what she owed within a reasonable period of time too.

I accept neither of these things in themselves (or taken together) mean that Mrs P wasn't experiencing financial difficulty. But I'm mindful that Mrs P's account statements don't suggest that any of the potential signs of financial difficulty contained in the regulator's guidance on financial difficulty (set out in CONC 1.3) – such as Mrs P failing to meet consecutive payments to credit, borrowing from payday or other high-cost lenders, or Mrs P failing to meet her commitments out of her disposable income – were present in her circumstances at the time.

So, in these circumstances and in the absence of being told anything by Mrs P, I don't think that it was unreasonable for HSBC to have proceeded with adding the charges that it did and hasn't offered to refund. This is particularly bearing in mind that I also think the consequences of HSBC taking corrective action in this instance would have been disproportionate.

I say this because I don't think that it would have been proportionate for HSBC to demand that Mrs P immediately repay her overdraft on account A (and potentially default the account had she not done so), in circumstances where Mrs P was adhering to the terms and conditions on account A; and the balance on account B meant that there was a realistic prospect of Mrs P clearing what she owed in a reasonable period of time.

As this is the case, I don't think that HSBC needs to refund any additional interest, fees and charges above what it has already offered to refund. This means I'm satisfied that what HSBC has already agreed to do to put things right for Mrs P is fair and reasonable in all the circumstances of the complaint and I'm not requiring it to do anything further.

As I don't think that HSBC needs to do anything further, I now therefore leave it to Mrs P to decide whether she wishes to accept the offer that HSBC has made.

Overall and having considered everything, I'm satisfied that what HSBC has already agreed to do to put things right for Mrs P is fair and reasonable in all the circumstances of her complaint. And I'm not requiring it to do anything further. I appreciate that this will be very disappointing for Mrs P. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

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 Mrs P is fair and reasonable in all the circumstances of her complaint. And I'm not requiring it to do anything further.

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

reject my decision before 16 July 2024.

Jeshen Narayanan
Ombudsman