

## **Complaint**

Miss F has complained that HSBC UK Bank Plc (“HSBC”) didn’t act fairly and reasonably towards her in relation to her overdraft.

She’s essentially said that HSBC unfairly continued applying charges to her overdraft even when it was clear that she was in financial difficulty and failing to see a credit balance for an extended period.

## **Background**

One of our investigators looked at this complaint and thought HSBC should have realised that Miss F’s overdraft had become unsustainable for her by October 2018 and so it shouldn’t have added the charges it did from this point onwards.

Despite being chased for a response on more than one occasion, HSBC didn’t respond to our investigator’s assessment. On the other hand, Miss F didn’t disagree with the investigator’s conclusions.

As HSBC didn’t respond to the investigator’s assessment the complaint was passed to an ombudsman for a final decision, as per the next stage of our dispute resolution process.

Furthermore, as Miss F has effectively agreed with the investigator’s findings on matters, this decision is only looking at whether HSBC acted fairly and reasonably towards Miss F from October 2018 onwards.

## **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 good industry 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 considered everything provided, I think HSBC acted unfairly when it continued adding interest and associated fees and charges to Miss F’s overdraft from October 2018. By this point, it was evident that Miss F’s overdraft had become unsustainable for her and that continuing to provide it was likely to cause significant adverse consequences.

A cursory look at Miss F’s statements leading up to this period shows that Miss F had been hardcore borrowing and hadn’t seen meaningful credit balances for an extended period of time. Indeed, HSBC, in its final response appears to have taken the view that as Miss F’s salary significantly exceeded her overdraft limit, it was fine to continue providing the overdraft.

However, it has taken this view by taking the salary Miss F received in a single month and when it was higher than usual. It has also considered Miss F’s overdraft limit when it was at

its lowest. By October 2018, Miss F's overdraft limit was higher and her salary in a typical month was only around the amount of her overdraft limit.

Furthermore, around a third of Miss F's income was going towards her rent alone. I can also see payments to a number of creditors indicating the likelihood that Miss F had significant credit commitments. So it's difficult for me to see how she was in a position to repay what she owed within a reasonable period of time – particularly as she was also incurring additional fees for exceeding her overdraft limit.

Overall I think that by October 2018, HSBC ought to have realised that Miss F was struggling and unlikely to be able to sustainably repay her overdraft without help. In these circumstances, HSBC should have stopped providing the overdraft on the same terms. It should have instead treated Miss F with forbearance, even if this meant taking corrective action in relation to the facility.

All of this means that HSBC should have realised that Miss F wasn't using her overdraft as intended and as the account conduct had suggested it had become unsustainable shouldn't have continued offering it on the same terms.

In reaching my conclusion, I've considered that HSBC has provided us with copies of a number of letters it sent Miss F which told her that she was using an overdraft in the way that was expensive and that she should get in contact if she was experiencing difficulty. I take HSBC's provision of the copies letters to us to mean that HSBC is arguing that Miss F should have reached out if she was struggling and it was limited in what it could do in circumstances where she didn't.

I've thought about what HSBC has said. But the mere fact that HSBC felt the need to send Miss F so many letters means that it recognised there was a problem with the way that Miss F 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 F because it sent her letters as it had identified that her overdraft usage had become a problem. But because Miss F didn't respond to the letters it was reasonable to continue allowing her to use her overdraft in the same way, notwithstanding that it had identified her use of the overdraft as being problematic.

In my view, this 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 in circumstances where they simply cannot do so.

While Miss F didn't contact HSBC, most likely because she didn't realise the impact failing to deal with the matter at hand was having, I don't think it was reasonable for HSBC to conclude that her problematic overdraft usage would correct itself.

In any event, I'm satisfied that HSBC should have stopped providing the overdraft on the same terms and treated Miss F with forbearance by October 2018, which well was ahead of when it started sending letters anyway. So as HSBC didn't react to not receiving a response to letters that Miss F's problematic overdraft usage had triggered and instead continued charging in the same way, I think that it failed to act fairly and reasonably.

Miss F ended up paying additional interest, fees and charges on her overdraft at a time when she was already experiencing difficulty. So I think that Miss F lost out because of what HSBC did wrong and that it should put things right.

In reaching my conclusions, I've also considered whether the lending relationship between HSBC and Miss F might have been unfair to Miss F under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct HSBC to do, in the following section of this final decision, results in fair compensation for Miss F given the overall circumstances of her complaint. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

### **Fair compensation – what HSBC needs to do to put things right for Miss F**

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

- Reworking Miss F's current overdraft balance so that all interest, fees and charges applied to it from October 2018 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Miss F to arrange a suitable repayment plan, Miss F 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 Miss F's credit file, it should reflect what would have been recorded if it had started the process of taking corrective action on the overdraft in October 2018. HSBC can also reduce Miss F's overdraft limit by the amount of 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 F 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 F's credit file. HSBC can also reduce Miss F'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 F 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 F'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 Miss F to accept or reject my decision before 3 March 2025.

Jeshen Narayanan  
**Ombudsman**