

complaint

Miss J complained about overdraft charges on her account with HSBC Bank Plc. She wants a refund of the charges, going back for the last six years.

background

In September 2017, Miss J wrote to HSBC about the overdraft charges on her account. She said she'd had several medical conditions in 2008, which had impacted on her daily life and her finance. She said there had been a period when she'd had bank charges every month, putting her into further financial difficulty. Miss J told HSBC that she believed the charges were contrary to the Lending Code and the Banking Conduct of Business Sourcebook. She said the bank should deal fairly with a customer who may have financial difficulties. Miss J said the charges had left her in financial hardship. She asked for a refund of all charges since February 2011, which she'd calculated as £2,180.75.

HSBC replied that it took its obligations under the Lending Code and Banking Conduct of Business Sourcebook very seriously. It said it wrote to customers with details of what to do if they believed they were in financial difficulties.

HSBC also explained how the overdraft charges, bounced direct debit and standing order charges worked. It said it was sorry to hear of Miss J's personal circumstances, but the charges had been applied correctly in line with the bank's policy.

HSBC also pointed out that it had recently refunded charges to Miss J as a gesture of goodwill – and it had done so on several previous occasions. HSBC said that as she'd now mentioned she was in financial hardship, it might be able to help, and it asked her to contact its financial guidance team, giving the phone number. It said this help wouldn't always be a refund, and would only be for debts to HSBC. The bank gave details of several charities giving free, confidential advice for any other debts.

Miss J wasn't satisfied and contacted this service.

The investigator said he was sorry to hear about Miss J's difficulties. But he couldn't uphold her complaint.

He explained that in 2009, the Supreme Court made a ruling that bank charges can't be challenged on the grounds they're unfair or too high. He'd checked Miss J's statements and said the charges had been applied correctly, in line with the account terms and conditions.

The investigator also explained that this service expects banks to consider cases of financial difficulty positively and sympathetically – though that doesn't necessarily mean it has to refund all charges. Miss J had told the investigator that she'd been using the services of a debt charity. But HSBC had said it had no record of either Miss J, or the debt charity, telling them she was in financial difficulties before Miss J's complaint in September 2017. There was nothing shown on the bank's contact notes. Miss J asked to see these, and HSBC agreed, and they were forwarded to Miss J.

Miss J was still unhappy. She said that the last time HSBC had refunded her £80, she'd stated her debt charity number several times and had said the charity was supporting her.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's correct that the Supreme Court ruling in 2009 says that charges can't be challenged on the basis they're unfair or too high. They can only be challenged if they've been applied incorrectly, against the terms and conditions of the account. Looking at Miss J's statements, and the terms and conditions of her account, I can see no evidence that HSBC applied the charges incorrectly.

Banks are required to deal positively and sympathetically with customers in financial difficulty. But what's important here is that customers need to tell the bank they're in financial difficulty. And there's no evidence on the bank's contact notes that Miss J, or her debt charity, ever did this.

I've looked back at the various letters which HSBC sent to Miss J over the years, about bounced direct debits, and informal overdrafts. The exact wording varies but they all say "*If you are experiencing financial difficulty, please contact us immediately on...*" So I find that HSBC did provide information about what anyone in financial difficulty should do.

Checking Miss J's records, I note that HSBC did refund a number of charges over the years, ranging from £15 to £125. The reason is described as "*Manager's discretion.*" So I find that HSBC did act positively and sympathetically. But it couldn't have provided the specialist help from its Financial Guidance Team, unless Miss J had said she was in financial difficulties and had asked for help from that team.

I recognise that Miss J was using a debt charity. But using a debt charity isn't the same thing as reporting financial difficulties to a lender. I find that it was up to Miss J to get in touch with the bank, and that it acted fairly by providing a way for her to do so.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 29 January 2018.

Belinda Knight
ombudsman