

complaint

Mr W complains that HSBC Bank Plc is charging him interest and applying charges to a debt he accrued using an unauthorised overdraft.

Mr W is being represented by his father.

background

In November 2016 Mr W was detained in hospital under the Mental Health Act 1983 as a result of his mental health deteriorating to a significant degree. Mr W was in receipt of benefits at the time.

Between 11 November, when Mr W's benefits were paid, and 14 November no transactions were made on his account. So he was in credit by around £900. But between 14 November and 16 November, Mr W made 23 purchases from an online retailer for a total of almost £2,800. This meant that by 16 November Mr W was overdrawn on his account by almost £1,900. Mr W has explained he wasn't fully in control of what he was doing during this time.

Mr W didn't have a formal overdraft facility with HSBC. So Mr W was using HSBC's unauthorised overdraft facility. This meant that he was paying a higher rate of interest, and was also incurring charges.

Mr W complained to HSBC. He didn't dispute that he needed to pay the debt. And he also didn't dispute that he hadn't told HSBC he was in hospital, so it couldn't have been expected to have known that. But he thought it was unfair that HSBC had allowed him to accumulate such a significant debt, given his low income, and was now also charging him interest and applying charges.

HSBC didn't think it had done anything wrong. It explained that it allowed an informal overdraft facility in order to help customers who needed money before a salary or other deposit was received. It explained its charging policy, and concluded that the charges and interest had been applied correctly to Mr W's account. However, it did agree to refund the interest and charges, but not indefinitely.

Mr W brought his complaint to us. In the meantime, interest had continued to accrue on the debt. One of our investigators looked into the complaint and agreed he hadn't been treated fairly. She thought that it wouldn't have been unreasonable for HSBC to approve an informal overdraft up to a certain amount. And she acknowledged that HSBC wasn't aware that Mr W was unemployed. But she thought that HSBC had a responsibility to ensure that before authorising credit, like an overdraft, it established whether a consumer would be able to repay the debt in a sustainable way. In this case, while HSBC didn't know Mr W was unemployed, it did have enough information about how the account was managed and how much was being paid in each month.

So the investigator concluded that HSBC should refund any interest or charges it applied to the overdrawn debt. And it should freeze this until Mr W had repaid the debt he currently owes through a sustainable repayment plan. She also considered that by continuing to apply interest and charges to a debt which Mr W would struggle to pay back, HSBC caused Mr W significant trouble and upset. For this, she thought it would be fair and reasonable to pay him £200.

HSBC didn't agree. In short, it explained what an informal overdraft was – namely one not pre-arranged with the bank. And it said that while it understood *'some customers would prefer us to disable informal overdrafts on their accounts, which would prevent charges being accrued, however, we allow our customers to exceed any overdraft limit under certain situations, as we understand some customers occasionally need to borrow additional funds for a short time to cover various outgoings'*.

It also said that Mr W hadn't been in touch with its mental health team, so it had been unable to explore the options available to Mr W. And it said that it couldn't assume a customer was in financial hardship *'just because they are incurring charges applied to their bank account'*. It said that *'once a customer confirms their hardship, we would direct them to our Financial Guidance Team. Doing so may put HSBC in the position to offer financial assistance or guidance that may alleviate the amount of charges which are debited to their account'*.

Overall it concluded that the charges had been applied correctly and in line with its terms and conditions.

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 done so, I agree with the investigator's overall conclusions, and for broadly the same reasons.

I'm also not persuaded by HSBC's argument in response to the investigator. I'm not convinced it said anything which is particularly relevant to Mr W's situation. I don't dispute that at the time it wasn't aware Mr W had been detained under the mental health act, nor that he wasn't fully in control of his actions. But once Mr W made his situation clear to HSBC (including his income and his ability to repay the overdraft with charges and interest accruing), it had an obligation to treat him fairly and take into account all of his circumstances.

Given the particular circumstances of Mr W's case, and how the informal overdraft was credited, I don't think it's fair that he's now in a position where he's basically struggling to pay back a debt he accrued at a time when he was particularly vulnerable. And I think it's to Mr W's credit that he doesn't dispute that he owes the debt – he simply wants to have a fair chance of being able to pay it back.

I can see that HSBC did initially agree to refund the charges and interest. But it then started applying them again from April 2017 – and I don't think this was fair. I say this because continuing to add interest and charges will make it that much harder for Mr W to repay his debt.

In addition, I'm persuaded that HSBC's failure to properly consider Mr W's circumstances once he notified it of the difficulties he was experiencing has caused him significant trouble and upset. And I think he should be compensated for that.

So to put things right, I think HSBC should:

- Stop adding any interest and charges on the debt, if it hasn't already stopped doing so.
- Refund all charges and interest which it applied to the debt from 14 November 2016 onwards.
- Work with Mr W to assess his finances and see how much he can regularly afford to repay.
- Pay Mr W £200 for the trouble and upset caused to him once he explained to HSBC what had happened. It should give Mr W the option of either having this compensation applied to the debt, or paying it to him directly.

my final decision

My final decision is that I uphold Mr W's complaint. HSBC Bank Plc must take the actions I've outlined above, and pay the compensation I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 October 2017.

Alessandro Pulzone
ombudsman