

complaint

Mr Y complains about the charges HSBC Bank Plc have applied to his current account overdraft. He thinks the charges are too high and as he's experiencing financial difficulties he's unable to pay them back.

background

Mr Y used an overdraft on his HSBC current account since around 2014.

Between 2014-2015, Mr Y incurred overdraft charges and interest of around £15. In 2015-2016, Mr Y used his overdraft more and the annual charges totalled around £100. Mr Y relied on his overdraft in 2016-2017, and the overall annual charges were around £450.

HSBC kept Mr Y informed about the amount of charges he was incurring in his overdraft by sending him annual statements. They also wrote to Mr Y each time he exceeded his overdraft.

In October 2016, Mr Y applied for a credit card with HSBC. He did this to try and manage his finances. Mr Y said he wouldn't use his overdraft as much if he had a credit card, and therefore wouldn't incur any overdraft fees. HSBC approved Mr Y's credit card application. They sent him a copy of the credit card application and asked him to send a copy back to them in order to proceed with the application. Mr Y says he sent the application form back to HSBC but didn't ever receive the credit card – so he continued to use the overdraft.

In May 2017, Mr Y applied for another credit card but HSBC declined his application.

In July 2017, Mr Y exceeded his overdraft limit. It was also around this time, Mr Y unfortunately became unemployed and therefore started to experience financial difficulties. Mr Y couldn't afford to pay back the amount he owed HSBC, due to the amount of charges he'd previously paid – so he complained. HSBC refunded some charges as a gesture of goodwill but didn't uphold Mr Y's complaint overall. They also registered a default due to non-payment.

The investigator who looked at Mr Y's complaint didn't think HSBC had to do anything differently. She found they were entitled to apply the charges, and couldn't see they'd applied them unfairly. And she said Mr Y hadn't ever sent the credit card application back which is why he didn't receive his credit card from HSBC.

Mr Y remained unhappy. In particular he said he couldn't afford to pay HSBC what he owes them now because they'd taken so much in charges previously. Mr Y didn't want to complain about the default.

As an agreement couldn't be reached the complaint has been passed to me to review.

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 the complaint shouldn't be upheld. I know this will disappoint Mr Y greatly, so I've explained the reasons for my decision further below.

the credit cards

I recognise Mr Y says he applied for the credit card in 2016 to help control his finances. I've seen that HSBC did approve Mr Y's application – and they've provided a copy of the letter they sent to him. Mr Y says he signed the application form and sent it back to HSBC but he didn't receive the credit card which he thinks has resulted in him incurring more charges by using his overdraft.

Mr Y has provided a photocopy of the signed form which he would have needed to send back to HSBC. While I've no reason to doubt what Mr Y has said about sending the form back, I haven't seen any evidence that he actually posted the form. And the contact notes Santander have provided from the time don't show anything was received. HSBC have also shown they sent Mr Y text messages about his application but Mr Y didn't get in touch with them. I think it's reasonable to believe if Mr Y sent the form back, he would have expected to receive the credit card. And I would have expected him to contact HSBC to ask why he hadn't received it – but I haven't seen that he did that. Therefore, I can't reasonably conclude Mr Y did post the form back to HSBC. And so I can't say they did anything wrong by not sending him the credit card.

When Mr Y applied for another credit card in 2017, HSBC declined Mr Y's application. It's for a bank to decide who they do and don't lend to – and they're entitled to decide their own lending criteria. I haven't seen anything to suggest HSBC's decision not to lend to Mr Y at this point was unfair. So I won't be asking them to do anything in this regard.

the overdraft charges

I know Mr Y is concerned about the charges applied to his account. 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 Mr Y's statements, and the terms and conditions of his account, I haven't seen anything which suggests that HSBC applied the charges incorrectly.

I appreciate Mr Y is now struggling with his finances because he's unemployed. And he says he can't afford to pay back the amount he owes to HSBC because he's paid so much in charges previously. But I've found that HSBC were entitled to apply those charges – and that's because Mr Y was using his overdraft. So while I sympathise with the position Mr Y now finds himself in, I can't fairly ask HSBC to refund the charges it has applied.

HSBC kept Mr Y up to date with the amount of charges through statements and other documentation. And I've also seen letters where they give details of their specialist team if Mr Y found himself in financial difficulty. I haven't seen anything to show Mr Y told HSBC about his financial difficulties at the time. Banks are required to deal positively and sympathetically with customers in financial difficulty – but customers need to tell them if they're struggling.

I appreciate the reasons why Mr Y has brought this complaint and I'm sorry to hear of the difficulties he's found himself in. But looking at everything that happened, I consider that HSBC applied the overdraft charges fairly and correctly. Therefore, I won't be asking them to do anything.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 24 February 2019.

Hayley West
ombudsman