

Complaint

Mrs C has essentially complained that HSBC UK Bank Plc (“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 Mrs C’s overdraft had become unsustainable for her by August 2017 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.

So the complaint was passed to an ombudsman for a final decision.

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 Mrs C’s overdraft from August 2017. By this point, it was evident that Mrs C’s overdraft had become unsustainable for her and that continuing to provide it was likely to cause significant adverse consequences.

A cursory look at Mrs C’s statements leading up to this period shows that Mrs C had been hardcore borrowing and hadn’t seen a credit balance for an extended period of time. Indeed Mrs C’s regular credits seem to be for only around a fifth of the amount of her overdrawn balance. 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.

So overall by August 2017, I think that HSBC ought to have realised that Mrs C 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 Mrs C with forbearance, even if this meant taking corrective action in relation to the facility.

All of this means that HSBC should have realised that Mrs C 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 what HSBC has said about having sent Mrs C a number of letters telling her that she was using an overdraft in the way that she was

expensive and that she should get in contact if he was experiencing difficulty. HSBC says that Mrs C should have reached out if she was struggling and it was limited in what it could do because she didn't.

I've thought about what HSBC has said. But the mere fact that HSBC felt the need to send Mrs C so many letters within such a period means that it recognised there was a problem with the way that Mrs C 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 Mrs C because it sent her letters as it had identified that her overdraft usage had become a problem. But because Mrs C 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 her 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 Mrs C 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 Mrs C with forbearance by August 2017, which well was ahead of when it started sending letters anyway. So as HSBC didn't react to the not receiving a response to letters that Mrs C's problematic overdraft usage had triggered and instead continued charging in the same way, I think that it failed to act fairly and reasonably.

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

Fair compensation – what HSBC needs to do to put things right for Mrs C

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

- Reworking Mrs C's current overdraft balance so that all interest, fees and charges applied to it from August 2017 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mrs C to arrange a suitable repayment plan, Mrs C 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 Mrs C'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 August 2017. HSBC can also reduce Mrs C'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 Mrs C 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 Mrs C's credit file. HSBC can also reduce Mrs C'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 Mrs C 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 Mrs C'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 Mrs C to accept or reject my decision before 17 June 2024.

Jeshen Narayanan
Ombudsman