

The complaint

Mrs C complains that HSBC UK Bank Plc treated her unfairly when threatening to take legal action and registering a default in respect of a debt on a joint account

What happened

Mrs C and her ex-partner held a joint account with HSBC. Mrs C says her ex-partner was solely using the account and she thought her name had been taken off it. When HSBC later decided to close the account, Mrs C found out she was jointly liable for repaying an overdraft of over £2,000 because her name was still on the account.

HSBC wrote to Mrs C at various points about the overdraft and she responded to some of its letters, including:

- 31 August 2017 - HSBC wrote to Mrs C and her ex-partner and said the overdraft had exceeded the agreed limit. As a result, it said it had cancelled it and needed to discuss repayment to “*avoid a formal repayment demand*”.
- 15 September 2017 - HSBC sent a notice addressed to both parties saying that as it hadn't received an offer to repay the overdraft, it was entitled to demand the full amount. It said failure to act on its notice could lead to the account being closed and details being passed to a credit reference agency and a debt collection agency.
- 1 November 2017 - a final demand addressed only to Mrs C. HSBC said it had already written to her and sent a default notice. And, as payment hadn't been made, the full balance needed to be settled within 18 days, otherwise solicitors could be instructed, and the debt passed to repayment services. HSBC also confirmed it had given Mrs C's details to credit reference agencies.
- 9 December 2017 - HSBC said that following on from previous correspondence, it had passed the outstanding debt to repayment services to pursue (as it had closed the account and registered a default with credit reference agencies on 5 December 2017). It told Mrs C that if it didn't hear from her, collections activity might continue.
- 26 December 2017 – HSBC wrote to Mrs C and said it hadn't received a response to previous correspondence. It asked her to get in touch within 10 days. From the annotations on a copy of the letter that Mrs C's provided, it seems she responded to HSBC on 9 January 2018.
- Mrs C also wrote to HSBC on 17 February 2018 in response to another letter it sent on 22 January 2018 (confirming she was jointly liable to repay the overdraft). She explained, amongst other things, the very difficult personal circumstances eventually leading to the break down in the relationship. She said that her ex-partner had solely used the account since. And she said the first she'd heard about any outstanding debt was when she received a letter from HSBC in late December 2017 (she also indicated that her ex-partner had intercepted some mail, which was why she hadn't previously been aware of issues with the account). As far as Mrs C was concerned, her name had been removed from the account some time ago. So, she was in “*dismay and shock*” to find out that wasn't the case. Mrs C didn't think she should be held responsible for any debt accrued by her ex-partner.

- 19 February 2018 – HSBC wrote to Mrs C again and said it had yet to hear from her. And, if it didn't, it might consider taking legal action against her in the county court.
- HSBC wrote to Mrs C on 27 April 2018 in response to her letter of 17 February 2018. It apologised for the delay in responding and said, having reviewed the circumstances, Mrs C and her ex-partner were jointly liable for the debt. It again asked Mrs C to get in touch about repayment.

(Mrs C contacted this service in 2018 to complain about HSBC holding her liable for the debt and we sent her our assessment about that complaint in July 2018.)

- 14 March 2019 – HSBC confirmed that it had closed the account on 5 December 2017 with an outstanding balance of over £2,000. It asked Mrs C to get in touch with its collections department.
- 14 January 2020 – HSBC again said it had been trying to get hold of Mrs C to discuss the overdraft. It asked her to get in touch within the following 10 days, otherwise it would consider taking legal action through the courts.
- Mrs C responded to HSBC on 23 January 2020 pointing out that the account was closed in December 2017 after a payment of over £2,000 was credited to clear the overdraft. She also provided evidence (a statement, which she was given by the branch), which she thought showed that.
- HSBC wrote to Mrs C on 7 February 2020 saying it hadn't heard from her. It said it was considering making a claim against her in the county court to recover the overdraft and asked her to get in touch within 14 days to discuss options.
- Mrs C responded on 16 February 2020. She referred to her previous letter of 23 January 2020 and the bank statement she'd provided. She again said that the account was closed in December 2017 and the overdraft cleared. So, she wanted to know why HSBC was considering legal action in these circumstances.
- HSBC wrote to Mrs C on 2 March 2020. It said the account was now being managed by its 'pre-litigation' team. And if it didn't hear from Mrs C it may give formal notice that legal proceedings would be brought against her.

Mrs C complained to our service in February 2020 about the fact that HSBC was still contacting her in relation to a closed bank account. She made a number of different points to support her complaint.

She also complained to HSBC on 9 March 2020 stating it had chosen to ignore all of her previous correspondence and was harassing her. She mentioned that she'd already made a complaint to our service about this. In its response dated 30 March 2020 (which Mrs C says was sent to the wrong email address) HSBC said that it closed the account because it wasn't being managed within the agreed terms. And it referred to various letters it had sent outlining that the overdraft needed to be repaid. However, HSBC said it had since reviewed the file and had decided to write off the debt, so Mrs C wouldn't be contacted about it again. It also paid her £100 in compensation because it recognised she'd been inconvenienced when it failed to respond to some of her letters. And it sent Mrs C some flowers, although I understand she didn't receive those.

Mrs C wasn't happy with HSBC's response. She said that despite HSBC saying it had wiped off the debt, a live default was showing on her credit file. And she thought this had affected her credit status. She wanted us to continue looking into her complaint.

One of our investigators looked into things. She noted that our service had already given its response to a previous complaint brought by Mrs C about whether HSBC acted reasonably in saying she was jointly responsible for the debt. So, she said it wasn't something that we could comment on again. The investigator considered the additional complaint points that Mrs C brought to us - whether HSBC had acted fairly and reasonably by threatening to take

legal action and when registering a default against her credit file. The investigator felt that prior to writing off the debt, HSBC was entitled to tell Mrs C that it was considering legal action to recover it. However, she didn't think HSBC had acted fairly in relation to the default on Mrs C's credit file. Specifically, she didn't think it was fair for the account to show as 'open' seeing as HSBC had written the debt off. She felt the credit file should show the debt as partially settled/satisfied (even if HSBC wanted to keep an internal note about the debt) . So, the investigator recommended that HSBC correct Mrs C's credit file. The investigator asked HSBC to pay additional compensation of £100 in total in recognition of the impact of its reporting error on Mrs C's credit file and errors in certain correspondence. She also thought HSBC should consider sending Mrs C another bunch of flowers seeing as she didn't receive them first time around.

HSBC accepted the investigator's assessment. Mrs C didn't. She said that the amount of compensation recommended didn't fully reflect the distress she'd suffered over a prolonged period. She said the impact of having the default on her credit file had been significant through no fault of her own. And she wanted confirmation from HSBC in writing that it would immediately remove it from her credit file. Our investigator clarified to Mrs C that she wasn't seeking removal of the default from the credit file, just an amendment to show that the debt had since been settled.

As Mrs C didn't agree, the complaint's been passed to me to decide.

What I've decided – and why

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

And whilst I acknowledge that HSBC has taken some steps to try to resolve it, I'm not persuaded its actions have gone far enough. So, I'm going to uphold the complaint.

I'm really sorry to hear about the difficult circumstances Mrs C found herself in. And as she says she wasn't responsible for running up the debt, I can appreciate why she feels it was unfair of HSBC to pursue her for it. However, like our investigator, I won't be making a finding about whether Mrs C was liable for the debt or not, as that was covered in a previous response from this service. But to give additional context, I'll note here that colleagues concluded HSBC hadn't acted unreasonably when pursuing Mrs C for a debt that accrued on a joint account.

In this decision, I'll focus on whether it was fair and reasonable for HSBC (having decided that Mrs C was jointly liable for the debt) to threaten to take legal action and register a default against her credit file.

Taking legal action and registering a default is fairly serious action for a financial business to take. Not least because it can often have long lasting implications - particularly when the customer tries to secure credit in the future. Businesses are expected to support customers who run into difficulty by discussing options for repayment. And, if they're intending to take things further - such as legal action – they must give customers reasonable warning of their intentions should payment not be made. In addition, guidance from the Information Commissioner's Office (ICO) says that a default should typically be registered on an account within about three to six months of it falling into arrears.

In Mrs C's case, I'm satisfied from the evidence I've seen that HSBC sent various warnings from at least August 2017, telling her that it needed her to agree a repayment plan for the overdraft to avoid more formal action being taken. It also explained the next steps it could take in the event that payment wasn't made. I haven't seen any evidence that Mrs C got in touch with HSBC about the letters sent around that time. And she's indicated that the first she knew of a problem was around late December 2017. Whilst she's suggested that she hadn't previously received other correspondence about the account, as her ex-partner had

intercepted it, that doesn't appear to account for why Mrs C may not have received the letters from August 2017 onwards. I say that because Mrs C's suggested her ex-partner left the former marital home around February 2017 and doesn't appear to have returned since. So, as it doesn't seem that these particular letters could have been intercepted and they were properly addressed, it's not possible to say now why Mrs C appears not to have received them. And I don't think this is something that HSBC can be held responsible for. As HSBC didn't hear from Mrs C about a repayment plan, I think it was entitled to warn her that it could take legal action if necessary. And as the overdraft wasn't repaid, it follows that I think it was also entitled to share details with credit reference agencies and register a default when it received no further contact from Mrs C.

Mrs C's also indicated to our service that HSBC made no attempt to communicate with her between December 2017 and January 2020. It's clear from the evidence I've seen that it did contact her during that time and that Mrs C received at least some of HSBC's correspondence. I say that because her letter of 17 February 2018 was clearly written in response to HSBC's letter of 22 January 2018. And, whilst there was a delay in HSBC responding to her letter (it sent its response in April 2018) I'm satisfied it did respond. It's possible that HSBC may not have responded in the terms Mrs C hoped for or expected, but I don't think that's the same as saying it didn't communicate at all. There's further evidence of HSBC writing to Mrs C during 2019 and early 2020 too.

It's a pity though that HSBC didn't review and respond to some of Mrs C's correspondence. Particularly as there seemed to be some confusion about the position concerning the overdraft. Mrs C was clearly under the impression that the overdraft had been settled in full when HSBC closed the account in 2017. And she provided evidence in January 2020, which she thought showed that. Having looked at the statement Mrs C submitted, I can fully appreciate why she had come to that conclusion. It clearly shows that an '*account transfer*' of over £2,000 was made (an amount equal to the overdraft) and a balance of £0.00. Whereas, what seems to have happened was that HSBC had removed the overdraft for the purposes of closing the account, but had simply passed it to its collections team to recover. So, it wasn't a case of the overdraft no longer having to be repaid. It was just being managed by a different team. And had it responded to Mrs C's letters sooner, I think HSBC could have cleared up this confusion. But HSBC didn't respond to the question of whether the arrears had been settled or not until March 2020 when responding to Mrs C's complaint. And in the meantime, it had sent her another letter saying it was considering action in the county court. I can appreciate that this must have been frustrating for Mrs C particularly as she hadn't had an answer to her previous letter. And I can see she then wrote a further letter to HSBC in February 2020, again saying the account balance had been cleared in full. And perhaps, understandably, she questioned on what basis HSBC could be considering legal action. She also said she thought HSBC's actions amounted to harassment. Again, rather than responding, HSBC simply sent another letter to Mrs C in early March saying the matter was in the hands of its '*pre-litigation*' team. I can see how all of this may have contributed to Mrs C's feeling of being ignored by HSBC.

I'm sure it was a relief to Mrs C to find out that HSBC wasn't intending to pursue her for the debt after all. But she'd had to deal with the frustration and inconvenience of HSBC not responding to her letters in the meantime and simply sending further letters indicating it was intending to pursue legal action. HSBC accepts that its failure to respond to some letters caused Mrs C inconvenience. And it paid her £100 compensation to reflect that. Whilst there's no evidence HSBC did take legal action, I think its correspondence would still have caused Mrs C concern. But, on balance, I think HSBC's response overall is reasonable, so I'm not going to ask it to do anything more about this particular aspect of the complaint. I say that because HSBC was entitled to contact Mrs C about the overdraft once it deemed her jointly liable for it (again I make no particular finding about this), so I think it's responded in a fair and reasonable way by saying that it isn't intending to pursue the outstanding amount from her. And as it's recognised the inconvenience from not having responded to some of

Mrs C's letters, I think the £100 compensation it's already paid fairly recognises that and any other inconvenience caused by its handling of correspondence.

Turning now to the default placed on Mrs C's credit file. As I indicated earlier, having given appropriate warning, I think HSBC was entitled to register the default in the way it did. I appreciate that Mrs C feels it should be removed completely. But I don't think it would be fair for me to ask HSBC to do that. Financial businesses have a responsibility to accurately record activity on a customer's credit file to reflect their payment history amongst other things. This is also the sort of information that other lenders will want to take account of when making lending decisions, so it's important there's an accurate record of what happened on an account. And whilst Mrs C may not agree, HSBC deemed she was jointly responsible for the debt. And, as that debt wasn't repaid and was subject to a default, HSBC was entitled to notify credit reference agencies of that. However, as the debt was written off in March 2020, I think HSBC should have taken steps to amend Mrs C's credit file then to reflect this. As it hasn't done that and the debt is still showing as 'live', it follows that I don't think HSBC acted fairly and reasonably here.

Mrs C's said this has caused her various problems when trying to secure credit. I haven't been given any specific evidence beyond Mrs C's comments about the problems she faced. But as lenders do take account of the information recorded on a customer's credit file, I think it's entirely plausible that it caused some difficulties for Mrs C and I accept her account of what happened. However, I also need to bear in mind that, once recorded, a default will stay on a credit file for six years, so it's likely to have some impact in any event. Bearing in mind all of the circumstances here, I think the additional compensation of £100 in total recommended by our investigator fairly recognises the additional inconvenience Mrs C's likely to have suffered by HSBC's failure to amend the credit file sooner. So, that's the amount that HSBC needs to pay now.

On top of that and given the problems first time around, I think HSBC should again send Mrs C flowers if she's willing to accept them.

Putting things right

HSBC UK Bank Plc should pay Mrs C an additional compensation payment of £100. That's to recognise the inconvenience caused by its failure to amend Mrs C's credit file in March 2020 when it wiped off the outstanding debt.

In addition, HSBC should now amend Mrs C's credit file to show that the debt was satisfied in March 2020.

It should also send Mrs C flowers if she's willing to accept them.

My final decision

I uphold this complaint. HSBC UK Bank Plc should now take the action 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 19 October 2021.

Amanda Scott
Ombudsman