

The complaint

Mr G complains that HSBC UK Bank Plc recorded a default on his credit file in error.

What happened

Mr G said he closed an account he had with HSBC in October 2018. He said he then received communication from a debt management company, W, which said he owed £251. Mr G said he had already paid this. He contacted W and said he resolved the situation. Mr G then explained that although he closed his bank account with a zero balance, HSBC still referred his account to W and recorded a default on his credit file.

Mr G said up to when he closed the account HSBC had his old address on file. He said any correspondence HSBC had sent him was going to his old address. Mr G said he tried to resolve the situation at a branch but was directed to the Financial Ombudsman Service. He received two cheques from HSBC, for £25 and £50 which he assumed was as a response to his complaint. He brought his complaint to this service.

HSBC hadn't had the chance to investigate Mr G's complaint or issue a final response. But under the early consent rule and with permission from HSBC, our investigator was able to look into Mr G's complaint. She said she hadn't seen evidence Mr G was sent a default notice or told that a default would be applied to his credit file.

HSBC disagreed with this view. It said it issued a pre-demand letter which was its version of a default notice on 24 July 2018. The investigator believed the letter sent was ambiguous. HSBC asked for a final decision from an ombudsman.

I wrote a provisional decision on 31 August 2021. I said I believed the requirements of default notices are clear. And they appeared to have been met here. I said:

Was there an overdraft debt and when was the default applied?

HSBC said Mr G's bank account was overdrawn for several months and in July it wrote to him to advise the account was overdrawn by £706.99. This balance is confirmed on the bank statements provided. I've seen a copy of the letter sent dated 9 July. The letter informed Mr G his overdraft was £706.99 but his arranged overdraft limit was £300, so HSBC cancelled the overdraft limit. The letter invited Mr G to contact the bank to discuss a repayment plan. HSBC said it sent a 'pre-demand' letter to Mr G on 24 July and advised if the account wasn't paid in full a final demand would be sent. I've seen a copy of this letter.

HSBC said it received a payment of £219.53 on 22 August which brought the overdrawn balance to £528.21. As the balance wasn't paid in full, it sent Mr G a final demand on 6 September. HSBC said it received a further payment of £264.00 on 21 September and £10.00 on 7 October, which left a balance of £254.21 on the account. Again, this is confirmed on the bank statements and I've seen a copy of the final demand.

On 8 October the account was closed and on 11 October HSBC said it passed the debt to its internal debt collector, D, and registered a default against Mr G.

Having seen the account bank statements I'm satisfied that Mr G did have an outstanding balance on 8 October, which, despite HSBC's correspondence, was not paid in full. And I'm persuaded it was reasonable for HSBC to record a default on Mr G's credit file.

Did HSBC issue a default notice, and did it send it to the correct address?

On 24 July HSBC sent a 'pre-demand' letter. HSBC told this service that this letter is its "default notice". It said it sent the letter correctly and it explicitly advises of what action can and will be taken if the customer does not make contact or make arrangements to repay the outstanding balance. It added that its terms and privacy notice tell customers it notifies agencies where relevant. It said there is nothing ambiguous about its letter, which states at the outset "To stop Demand being issued". It said this is clear enough.

Section 88 of the Consumer Credit Act 1974 sets out the contents and effect of a default notice. It says:

(1)

- The notice must specify the nature of the alleged breach;*
- If the breach is capable of remedy what action is required to remedy it and the date before which that action is to be taken;*
- If the breach is not capable of remedy, the sum (if any) required to be paid as compensation for the breach, and the date before which it is to be repaid.*

(4)

- The default notice must contain information in the prescribed terms about the consequences of failure to comply ...*

I'm satisfied the letter of 24 July adheres to these criteria. In the letter dated 9 July HSBC notifies Mr G that the arranged overdraft limit has been cancelled and immediate payment is needed per the terms and conditions of the account; overdraft facilities are repayable on demand. The notice letter of 24 July identifies the alleged breach as not having received an acceptable proposal for repayment and stipulates the time frame after which final demand would be issued. And I'm satisfied the letter outlines the consequences of failure to comply – this includes that HSBC may pass the customer's details onto a credit reference agency which could adversely affect the customer's ability to obtain credit in the future. And that the account may be passed to a third-party debt collection agency. I don't find this ambiguous.

Mr G has said he didn't receive any letters because HSBC had the wrong address for him. Mr G said he moved into his new property around March/April and he made HSBC aware of this by telephone a few months later at the latest, around June or July. In his complaint call to this service Mr G said he was aware HSBC held the incorrect address for him and he called HSBC again and "advised them of the address situation and my plan to close down my accounts."

I'm not disputing Mr G when he says he contacted the bank to change his address. But he has acknowledged he didn't receive the letters because he knew HSBC had the wrong address. It was Mr G's responsibility, per the terms and conditions of his account, to correct this. It says:

"If we need to tell you anything about our service, we'll use the most recent postal address, email address, telephone and mobile numbers you've given us..."

You must tell us as soon as possible if any of your contact details change. If you don't, we won't be responsible if you don't get information or notices from us."
I'm satisfied the letters were sent by HSBC. Mr G hasn't said specifically when he changed the address, and it does appear that in July HSBC were sending them to Mr G's old address. But it was Mr G's responsibility to change his contact details with HSBC and to check this had been implemented.

Was Mr G told the account had no money owing?

In November 2019 the debt was referred to the external debt management company, W. HSBC said Mr G contacted it in January 2019 advising he'd called HSBC in October and been told nothing was outstanding. HSBC said Mr G's statements confirm he did still owe money. It said the only call it had a record of was on 19 October to close Mr G's savings account; after his current account was closed and the default was registered. To resolve this complaint, HSBC said it credited Mr G's account with £254.21, which allowed him to repay the debt at no cost. HSBC said it couldn't confirm whether Mr G was told the account had no money owing.

As there is no record of Mr G's call to the bank closing his current account HSBC has given Mr G the benefit of doubt and paid him £254.21. Mr G told this service that he closed his current account on 13 October and paid the outstanding amount. There is no record of Mr G making the outstanding payment before 8 October when the account was closed or 11 October when the default was applied. So I accept Mr G may have been told in error that there was no balance outstanding on 13 October but I'm satisfied there was an outstanding balance on the account on 11 October and the default was correctly applied.

Mr G has told us he moved address in March or April and told HSBC his new address in June or July. On Mr G's statement I can see he exceeded his overdraft limit in February up to £794 and then made payments which brought him back into credit later in the month. A similar situation occurred in March, then from 9 April onwards the account exceeded the overdraft again. The May and June statements posted to him would have confirmed this. I can see that Mr G also had several returned direct debits. In addition he made deposits in August and September. So, I'm satisfied he was actively engaged with the account and aware of payments going in.

I'm persuaded Mr G knew his bank balance prior to moving house as he would've received statements, and the balance was close to the overdraft limit. It's also possible he was made aware of the returned direct debits by the third parties involved. So even if the default notice was ambiguous or he didn't receive it, I'm satisfied Mr G was aware, or ought reasonably to have been aware of his balance and that payment would be required between April and 11 October when the default was applied or 13 October when Mr G said he closed the account.

The recent cheques HSBC issued relate to remedial action taken across a whole range of customers and service issues. It said these did not relate to Mr G's individual issues in 2018.

HSBC responded saying it had nothing further to add. Mr G did not agree. He made some further comments and provided additional documents to which I have responded below.

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.

Having done so I believe my provisional decision still stands.

Mr G said he feels there have been errors on both sides yet he is the only one paying for the mistakes, in the form of a default on his credit file for six years. He provided a screen shot of an email from HSBC on 13 October which, he said states his current account was closed but he can't find any communication in relation to a default.

I understand Mr G's strength of feeling in this matter, but I don't agree that HSBC has made an error in applying the default. I've seen a copy of the bank statements which clearly say the account closed on 8 October. I note that HSBC said it transferred the debt to its internal debt collector on 8 October which is a correction on my provisional decision. I previously said this happened on 11 October. I can see from the final statement that this was 8 October. The screenshot Mr G has provided is a cover email for providing him with a transaction history on the closure of the account. Although there is no transaction history provided in this email it seems likely it would contain the same information as the statements.

Mr G asked to see communication regarding the default. As I said in my provisional decision, I'm satisfied HSBC sent him communication regarding the default. The letter said that HSBC may pass the customer's details onto a credit reference agency which could adversely affect the customer's ability to obtain credit in the future. And that the account may be passed to a third-party debt collection agency. The letter HSBC sent is a 'pre-demand' letter. HSBC told this service that this letter is its "default notice". And I'm satisfied this complies with the Consumer Credit Act 1974, the regulations relevant at the time.

Mr G also said he had called HSBC to change his address so that all further communication would be received, yet it had no proof of the call which, he said, was convenient. I note that Mr G said he moved into his new property around March/April and he made HSBC aware of this by telephone a few months later at the latest, around June or July. Mr G accepted he was aware HSBC held the incorrect address for him and he called HSBC again and "advised them of the address situation and my plan to close down my accounts."

I'm not disputing Mr G when he said he called HSBC to change his address. But by his own admission he was aware it hadn't been changed because he said he advised HSBC at the same time as informing it of his plan to close his accounts. In July the pre-Demand letter was sent but he was aware it didn't have his correct address around October when he said he went to close his accounts. It was Mr G's responsibility to ensure HSBC had the correct address.

Mr G said HSBC had his email address but still he received no communication regarding a default. Generally, I would expect a financial business to post such formal communication rather than use email.

Mr G said he was paying off the amount he owed, and he said he called up to discuss financial issues. I can see Mr G made some payments into the account, but these were not enough to clear the debt in time. I don't dispute Mr G but I haven't seen any evidence that Mr G called to discuss financial issues.

Mr G also mentioned the cheques HSBC sent regarding customer service errors. As I mentioned in my provisional decision these compensation payments were unrelated to this complaint.

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 G to accept or reject my decision before 3 December 2021.

Maxine Sutton
Ombudsman