

The complaint

Ms G complains that HSBC UK Bank Plc (“HSBC”) acted unfairly by defaulting her account and recording this on her credit file.

What happened

Ms G held a credit card account with HSBC. In 2019, due to a change in her circumstances, it became difficult for her to meet the monthly payments to the account. In February 2020, she contacted HSBC and completed an income and expenditure review. Her outgoings were more than her income, so HSBC agreed to put a “no affordability” plan in place for two months. Ms G wasn’t expected to make payments during that time and HSBC agreed not to charge interest or contact her about missed payments while the plan was in place.

In March 2020, Ms G borrowed some money from family and made a significant payment to the account. The no affordability plan came to an end in April 2020. Ms G got in touch with HSBC and explained that the Covid-19 pandemic was affecting her, so she wasn’t in a position to resume monthly payments. HSBC agreed to extend the no affordability plan until December 2020. As before, it didn’t contact her about arrears during this time and didn’t charge interest.

In January 2021, Ms G told HSBC that she was working with a debt charity. HSBC allowed her some further breathing space. This continued until around August 2021. Ms G contacted HSBC in around June 2021 and started making monthly payments to the account again from July 2021 onwards. In August 2021, she completed an income and expenditure review and had a further conversation with HSBC in September 2021. She says it was agreed that she would pay what she could afford, but HSBC says there was no agreed plan in place.

In November 2021, HSBC sent out a default notice, asking Ms G to clear the arrears by 6 December 2021. This was followed by a final demand in January 2022, asking Ms G to pay the full outstanding account balance by 24 January 2022. HSBC says it didn’t hear from Ms G and the balance remained outstanding. So, in February 2022, it defaulted the account. The account was later transferred to a debt collection agency which I’ll call M.

Ms G says she didn’t receive the default notice and didn’t know the account had been defaulted until she was told about it by M. The account remains with M and Ms G has been making payments to them.

But Ms G didn’t think the default was fair, so she complained to HSBC. HSBC said it had applied the default correctly and couldn’t remove it or change the entries on Ms G’s credit file.

I issued a provisional decision on 24 November 2022, indicating my intention to uphold this complaint and direct HSBC to pay Ms G compensation of £200. Neither party accepted the provisional recommendations and both provided further comments for me to consider.

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.

I've looked at everything again and taken the parties' recent comments into account. But I haven't seen anything which changes my mind about the appropriate outcome here. So I'm going to uphold this complaint in the way I indicated in my provisional decision. My reasons are set out below.

Ms G first contacted HSBC in February 2020 to explain that she was struggling financially. I think she was acting responsibly by contacting HSBC proactively and making it aware of the situation. I think HSBC acted fairly by completing the income and expenditure review and putting the no affordability plan in place. This was initially set up for a period of two months but, based on numerous phone calls with Ms G from time to time, HSBC extended the plan and applied further breathing space to her account. These arrangements were in place until around August 2021. So, for around 18 months, HSBC didn't apply any interest to Ms G's account and didn't chase her for payments. I think that was fair.

The arrangements HSBC put in place over that period didn't stop payments from falling due each month. HSBC knew Ms G couldn't pay them and had agreed not to chase her for payments. But, as her statements showed, a minimum payment was still falling due each month in line with the terms and conditions of Ms G's account. I think that was reasonable.

As Ms G wasn't able to meet the minimum monthly payments, her account fell into arrears in April 2020. No payments were made to the account until July 2021. By that time, the arrears were significant.

Ms G says that, from July 2021, she agreed with HSBC that she would make monthly payments according to what she could afford. I've seen HSBC's notes of the calls with Ms G in August and September 2021, after the breathing space expired. These confirm that Ms G wanted to resume payments and she told HSBC that she was paying what she could afford. But the notes record that Ms G didn't want to enter into a reduced payment plan and the call was cut off after the agent tried to explain the collections process. I find that Ms G did make regular payments to the account from July 2021, but these weren't made under a payment plan. There was no formal arrangement or payment plan in place to deal with the arrears.

HSBC went on to issue a default notice in November 2021 and default the account in February 2022. Generally speaking, if a customer's account is more than three months in arrears, it can be reasonable for the bank to view it as defaulted. I'd expect a bank to treat an account as defaulted by the time a customer is six months in arrears with no arrangement in place. Here, more than 18 months' worth of arrears had built up on the account and Ms G hadn't agreed a repayment plan with HSBC. So, under normal circumstances, I think it would have been reasonable for HSBC to treat the account as defaulted at that point.

But the particular circumstances here lead me to think that HSBC didn't act fairly. Ms G says that she didn't receive the default notice or any letters about the account from February 2020 onwards. From the information I've seen, I'm satisfied that's the case.

In the period from February 2020 to January 2022, HSBC sent eight letters to Ms G about her account. These include the default notice and final demand. All of these documents were sent to Ms G's old address. But she wasn't living there by this stage and had told HSBC that.

HSBC's notes from February 2020 record that Ms G had moved in with family. The notes from a phone call in May 2020 also record that Ms G had moved and no longer lived at the

old address. In response to the provisional decision, HSBC said that it didn't take the new address in this call because the line disconnected.

But the notes from a further call that month (on 23 May) record again that Ms G was living with relatives and say that a correspondence address had been added. The notes ask for paperwork to be sent to the new correspondence address. So I'm satisfied that, by 23 May 2020 if not before, HSBC had been told Ms G's new address and had noted that correspondence should be sent there. But it continued to write to her at the old address.

Ms G says that the breathing space and no affordability plans were agreed with HSBC over the phone. They were, but they were also followed up by HSBC in writing. However, as Ms G didn't receive any of the letters, she didn't realise the arrangements were being confirmed in writing at each stage. So it's understandable that the arrangements must have seemed fairly informal from her point of view.

But the letters included important information about how her account would be treated. For example, the letter of February 2020 about the no affordability plan said that HSBC would issue a default notice when the missed payments reached a certain level. It went on to explain that, if Ms G couldn't repay the amount requested in the default notice, it would usually send a formal demand asking her to pay the outstanding account balance in full. If the balance remained unpaid after that step, HSBC's letter said it would consider taking legal action or transferring Ms G's account to its debt collection unit and that it would tell the Credit Reference Agencies that her account had defaulted. Similar information was contained in letters sent in May and November 2020 and July 2021.

I'm satisfied that Ms G didn't receive these letters. So I don't think she was aware of the potential consequences or likelihood of her account defaulting if she didn't manage to clear the arrears. I find that she didn't receive the default notice either and I don't think it was properly served because HSBC didn't send it to her last known address.

HSBC says that Ms G confirmed her old post code in a phone call in September 2021. But Ms G says this was just for identification purposes. I've listened to the call. It was a call from HSBC to Ms G and she was asked to complete customer verification by providing her post code and date of birth. Ms G did provide her old post code in this context. I'm satisfied that she had already told HSBC that she had moved and had provided her new address before this. I think she could have taken the opportunity in this phone call to explain it again. But Ms G says she has asked HSBC multiple times over a long period to update her address and it still hasn't done so. In the circumstances, I think it was reasonable that she simply provided the old post code (which she knew HSBC hadn't updated) for identification purposes when HSBC called her, especially as she said in the call that she was working and didn't have much time. I don't think it was reasonable for HSBC to continue writing to Ms G's old address after May 2020 and I don't think this phone call changes that.

Ms G says that, if she'd received the default notice, she would very likely have been able to pay off the arrears as she was working at that time. But even if Ms G hadn't been able to pay off the arrears in full, I find it likely that things would have taken a different course at that time if she had received the letters and notice. That's because, if she'd seen the letters, Ms G would have been aware of the possibility of her account defaulting and the consequences of that. I haven't seen anything to suggest she was made aware of these consequences by any way other than the letters.

I think that, if Ms G had received the letters, she would have realised in September 2021 how important it was to either clear the arrears in full or (if that wasn't possible) enter into a repayment plan. As she was able to make reasonable monthly payments at that time, I think it's likely that a formal repayment arrangement could have been agreed then. So I don't think

the account would have defaulted at that time if Ms G had received the letters.

I've thought about what HSBC needs to do to put things right here. Ms G has confirmed that there's still a balance outstanding on the account. She maintained regular payments to M up until this Summer, but these are currently frozen. So, any resolution needs to bear in mind how the outstanding balance should be dealt with going forward.

Ms G responded to the provisional decision to say that she would like the default to be removed and explained the impact it's having on her. She says she's being penalised for a situation which isn't her fault. I sympathise with her point of view. But I'm looking at the situation impartially and I think the account would have ended up defaulting at some stage, even if it hadn't happened in February 2022.

In general, I think it's reasonable for a business to default a customer's account when it's between three and six months in arrears without a repayment arrangement in place. Here, the level of arrears was significantly more. Arrangements to pay are generally intended to be short term solutions. Here, an arrangement to pay would've needed to be in place for quite some time to clear the arrears and Ms G is currently unable to make monthly payments.

I've noted her comments about her current circumstances and her expectation that she will be able to start payments again in the near future. I don't doubt what she says. But, in the circumstances, I still think it's likely the account would have defaulted at some stage even if not in February 2022 and that, if the default were to be removed now, it could end up being reapplied. As I said in my provisional decision, I don't think that would be in Ms G's best interests as the default would start running from a later date than currently recorded. So, although I'm sorry to disappoint Ms G, I think it's best that the account stays with M and the default remains in place.

Putting things right

I think the best way for HSBC to put things right here is for it to pay some compensation to Ms G to reflect the impact of its mistakes. I think it acted fairly by applying payment breaks and breathing space to the account over such a long period of time. But it made repeated administrative errors by not updating her address even though she told it on numerous occasions where she was living. This was frustrating for Ms G and meant she didn't receive important information about her account. I think this led to the account defaulting at a time when this may have been avoidable. It was upsetting for Ms G to discover that her account had defaulted and to find this out from M. But, looking at the situation impartially, I think it's likely that the account would have defaulted at some stage, given the level of repayments compared to the arrears and bearing in mind the current position.

Having taken everything into account, I still think compensation of £200 would be fair here.

My final decision

For the reasons above, I uphold this complaint. HSBC UK Bank Plc should pay compensation of £200 to Ms G.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 10 January 2023.

Katy Kidd
Ombudsman