

## The complaint

Mrs T complains that HSBC UK Bank Plc defaulted her loan after agreeing a payment pause.

## What happened

I issued my provisional decision on this complaint on 5 December 2022. This is what I said:

### *What happened*

*Mrs T had a loan with HSBC and, in 2020, her new business was severely impacted by the Covid-19 pandemic. Mrs T found herself in a difficult financial situation without income or government financial support.*

*As she couldn't make her loan repayments, Mrs T contacted HSBC in March 2020. HSBC agreed a short payment holiday and asked Mrs T to contact them when this concluded. However, because of her increasingly difficult situation, Mrs T didn't feel able to call HSBC or make any payments.*

*HSBC sent Mrs T statements and arrears letters; however, Mrs T didn't respond or pay. On 31 December 2020, HSBC sent Mrs T a default notice letter advising her that her loan was overdue by £1,877.04 and this needed to be repaid by 20 January 2021.*

*Mrs T called HSBC on 15 January 2021, to discuss her difficult financial situation and the arrears that had built up. Mrs T was very concerned about her credit file and gained the impression that HSBC were helping her by pausing her loan. However, accepting they could've been clearer, HSBC say they agreed a 6-month Long-Term No Affordability Plan (LTNA) which didn't change the collections process and still meant a Default Notice/Final Demand would be issued if the arrears weren't paid. HSBC subsequently sent demand letters in March 2021 and defaulted Mrs T's account at the end of May 2021.*

*As Mrs T thought a pause was in place, she was shocked at HSBC's action and thought they had reneged on the plan. Mrs T complained to HSBC, however they said they hadn't agreed a pause and had followed the correct procedure to repay the outstanding amounts owed.*

*Mrs T complained to our service as she felt it was clear from the 15 January 2021 call recording that HSBC had agreed to pause her loan. Our investigator thought HSBC could have been clearer but didn't uphold the complaint. This is because she thought HSBC's default action was reasonable considering the arrears.*

*As Mrs T remains dissatisfied, this case has now been referred to me to look at.*

### *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, for the following reasons, I have come to a different view to the investigator and I intend to uphold Mrs T's complaint.*

*As Mrs T was severely impacted by Covid-19, I first considered the support offered by HSBC together with business guidance from the Financial Conduct Authority (FCA).*

*The FCA said that customers could have payment holidays for a period of up to three months and the business could agree to this twice. Therefore, had Mrs T contacted HSBC after the short 'breathing space' they gave her in March 2020, she would've received further support for the period April to August 2020.*

*Furthermore, a third set of guidance issued by the FCA explained that consumers who had had two lots of three month payment holidays but whom might still be experiencing financial difficulty because of the impact of Covid-19, should continue to be given ongoing financial assistance by credit providers, such as HSBC, following the end of the second three month payment holiday.*

*So, had Mrs T contacted HSBC prior to 30 December 2020, it is likely she would've been in a different position and, rather than being in arrears by 9 months, she would've been on a payment plan and not discussing a default.*

*As Mrs T's vulnerability contributed to her not contacting HSBC, I considered whether HSBC should've changed its position when Mrs T made contact on 15 January 2021. Also, if it was reasonable for Mrs T to request a payment plan.*

*Although by her own admission Mrs T should've made contact with HSBC, considering both the FCA guidance and Mrs T vulnerability, I think HSBC should have given consideration to both the arrears and default and looked at a new plan with significantly reduced arrears. In addition, the 30 December 2020 letter stated 'we may: demand immediate repayment' which suggests flexibility.*

*So, on this basis I think it was reasonable for Mrs T to ask for a plan and, once aware of her circumstances and vulnerability, I would've expected HSBC to have reduced some of the arrears and looked at a way of preventing a default.*

*When speaking to HSBC on 15 January 2021, Mrs T was apologetic and she became emotional when describing her vulnerable position. When Mrs T asked for a plan, I found that the HSBC representative reacted in a sensitive, helpful, and supportive way. This included when Mrs T spoke about her anxiety over a default and how she couldn't allow this to happen. Although Mrs T said she didn't have the money to pay the arrears, she mentioned that as a last resort, parental support was available. Also, when a conversation ensued about a plan, Mrs T said she could afford £100 or more per month and wanted to start paying her debt.*

*The HSBC representative offered a LTNA plan. However, critically, she spoke about a pause and when offering this, didn't explain that by not addressing the arrears this plan would result in a default. In addition, the representative said it could 'potentially effect' Mrs T's credit score.*

*So, although HSBC didn't say the default would be lifted, Mrs T was given the impression that she was being given a 6-month pause on her loan which would avoid a default.*

*Furthermore, as Mrs T believed the representative had saved her from a default, Mrs T expressed such relief and gratitude that the call concluded with an emotional exchange. In this exchange, Mrs T praised the representative who seemed to acknowledge the help she had given. So, I found it difficult to understand why the representative didn't at this stage reset Mrs T's expectations.*

*Considering the representative's reaction, comments and on call referral, another possibility, which I think more likely, is that the representative made an error and thought she was preventing default action. Although it is not possible to know the representative's thinking, I have to conclude that she ultimately failed to clarify matters. Had Mrs T been fully informed about what she was agreeing to – I'm satisfied it's more likely than not that she would have taken steps to avoid the default being registered here.*

*I can understand why HSBC thought it was unlikely that Mrs T could avoid a default on the loan and offered an LTNA plan. However, because of Mrs T's above-mentioned comments about avoiding a default and possible family support I'm not persuaded that this was a certainty. Also, Mrs T said she was getting some income and by June 2021 she was back in full time employment.*

*Furthermore, I think HSBC should've taken note of Mrs T's circumstances and the FCA guidance mentioned above, to look at a different plan, especially as Mrs T made such a proposal and only had a brief payment pause.*

*Finally, I looked at the HSBC letters of 18 and 20 January 2021, to see if these clarified matters. However, I can't see that they did. This is because they would have arrived only a few days after she believed a 6-month pause was in place, the wording suggested she didn't need to speak to HSBC until after 6 months and neither letter was explicit about the LTNA. So, although the letter 20 January 2021 did refer to default action, I can understand why Mrs T didn't think it applied in the individual circumstances here.*

*So, considering the above, although it wasn't HSBC's fault that Mrs T had not contacted them to let them know of her circumstances, once they found out on 15 January 2021, I don't think it was fair or reasonable for HSBC to continue with the same arrears and default plan. Also, HSBC misled her when offering an LTNA plan.*

*I think HSBC should've followed FCA guidance, addressed some of her arrears and offered an alternative payment plan that would have enabled her to make either reduced or full payments from January 2021. I'm persuaded that had they done so Mrs T would've avoided a default.*

*So, HSBC should remove any adverse information recorded between January and May 2021 including the default, and if the loan hasn't been paid in full agree a way forward with Mrs T in terms of payments.*

*In addition, to recognise the distress and inconvenience caused during a period of vulnerability HSBC should pay Mrs T £250 compensation.*

*My provisional decision*

*For the reasons I've given above, it's my provisional decision to uphold this complaint.*

*I require HSBC UK Bank Plc to:*

- remove any adverse information recorded between January and May 2021 including the default;*
- if the loan hasn't been paid in full, agree a way forward with Mrs T in terms of payments, and;*
- pay £250 compensation for distress and inconvenience*

*I'll look at anything else anyone wants to give me – so long as I get it before 2 January 2023. Unless that information changes my mind, my final decision is likely to be as I've set out above.*

**I invited both parties to let me have any further comments or evidence before the deadline.**

Mrs T responded to say she was in agreement with the above provisional decision. Mrs T said that she has never disputed the amount she owes HSBC, merely the fact that *"I was put in default when I genuinely was led to believe I was on a payment break."* Mrs T added that HSBC's actions had caused her *"two years of extreme anxiety"*.

HSBC said, *"While we accept that the lack of clarity in our call warrants compensation, we can't agree that removing the Default is correct."* And, to support this statement, HSBC submitted further information and consideration points, which I address 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.

As HSBC disagree with my provisional decision to lift the default, I first considered the following points which they raise:

- HSBC said *"Whilst all customers were guaranteed to receive the initial 3-month payment holiday, there was no guarantee they would receive an extension. This was very much dependant on their circumstances. In all cases they had to apply for an additional extension."*

I'm satisfied that Mrs T had characteristics of vulnerability according to the FCA guidance on this topic. And, I'm persuaded Mrs T's vulnerability during an unprecedented global pandemic led to her not contacting HSBC. So, although I accept there was no guarantee Mrs T would've received a payment holiday or extensions, when considering her particular circumstances, I still think it would've been unlikely for any bank to have not followed the FCA guidance here. Also, I considered available information on Mrs T's payment record prior to the pandemic.

- HSBC said *"Even if our representative was unclear on the call, receipt of this letter corrects that position. If she felt the information in our letter was contradictory, she could've immediately contacted us to check."*

I listened to the call again and, rather than a lack of clarity, I still think it likely that the HSBC representative made an error and thought she was preventing default action.

I looked again at the HSBC letters of 18 and 20 January 2021, to see if these clarified matters. However, I can't see that they did. This is because they would have arrived only a few days after she believed a 6-month pause was in place, the wording suggested she didn't need to speak to HSBC until after 6 months and neither letter was explicit about the LTNA.

Mrs T has said she was under the impression there was a 6-month payment holiday and she didn't need to take any further action until July 2022. Also, that she thought the letters predated her call. So, although the letter 20 January 2021 did refer to default action, I can understand why Mrs T didn't think it applied in the individual circumstances here.

- HSBC pointed out that no payments had been received since June 2021 and

questioned the mention of family support. Also, current affordability to pay the loan considering Mrs T is close to the limit of her overdraft facility. In addition, HSBC say the debt owed at default was £6,465.36 whereas the debt passed to debt collection was £5,349.09.

Regarding the lack of payment since the default, in Mrs T's submission she says there has been a lack of contact from HSBC and, because of her complaint to our service, a debt department stated her account would be on hold. I can't see any information on file which contradicts this and I'm persuaded from reviewing the file and listening to calls that Mrs T has always intended to repay her debt and, to avoid a default, would have requested family support.

Regarding current affordability, as stated in my provisional decision, Mrs T has been back in employment since June 2021. Also, Mrs T has submitted information on her regular salary payments, more stable financial position and management of her finances including use of a flexible pre-agreed overdraft facility. So, Mrs T is confident she can make the HSBC loan repayments and avoid falling back into arrears and has consistently stated she is committed to paying what she owes to avoid a detrimental default.

So, thinking about everything again and considering the above responses, I still don't think HSBC have treated Mrs T fairly here.

As stated in my provisional decision, I think it likely that the HSBC representative made an error and either thought she was preventing default action or failed to clarify matters. And, this had serious consequences, as it resulted in Mrs T being misled and unable to take steps to avoid the default being registered. Also, whilst I recognise the arrears and communication gap, I don't think HSBC took into account Mrs T's vulnerability together with the FCA guidance to consider an alternative payment plan. This would've enabled her to make either reduced or full payments from January 2021 which would've also avoided a default.

### **Putting things right**

Finally, I further considered the award for distress and inconvenience together with Mrs T's desire to bring this complaint to a conclusion. And, I think the compensation amount stated in the provisional decision to be fair and reasonable.

So, HSBC should remove any adverse information recorded between January and May 2021, including the default, and agree a way forward with Mrs T in terms of payments.

In addition, to recognise the distress and inconvenience caused during a period of vulnerability HSBC should pay Mrs T £250 compensation.

### **My final decision**

My final decision is that I uphold this complaint and I require HSBC UK Bank Plc to:

- remove any adverse information recorded between January and May 2021 including the default;
- agree a way forward with Mrs T in terms of payments, and;
- pay £250 compensation for distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 31 January 2023.

Paul Douglas  
**Ombudsman**