

The complaint

Mr S complains that HSBC UK Bank Plc (trading as first direct) delayed applying defaults to his accounts.

What happened

Mr S says that, due to financial difficulties, he stopped making payments to his overdraft and credit card in the middle of 2019. He says both accounts were at their limits, but neither was defaulted when they should have been – in late 2019. Mr S says that when he complained, First Direct registered a default on his bank account, but not on his credit card and not until May 2022. He adds that he needs to apply for a mortgage and lenders will assume this is a recent default when in fact he wants both accounts to show as defaulting in 2019.

First Direct initially said it could not backdate the default as it hadn't issued a default notice outlining the breach and the consequences of failing to remedy the breach. However, it said it would arrange for the default to drop off Mr S's credit file in line with the date it should have been added. First Direct went on to explain that it could not register defaults on its credit card accounts, so the default balance on Mr S's current account entry includes his credit card balance.

First Direct has now backdated the default to 17 February 2021 as that was the date the final demand expired. It said it could not backdate it any further as a final demand letter was not sent in 2019 because First Direct was updating its procedures to allow customers more time to remedy their accounts before a default was issued.

Our investigator recommended the complaint should be upheld. He found that Mr S hadn't been able to make any payments since August 2019 and that registering defaults in November 2019 would be a fair reflection on his credit report.

Mr S responded to say that the default had not been backdated to 2019.

First Direct initially responded to say, in summary, that it is was their intention to accept the investigator's recommendation but was unable to backdate the default to November 2019. However, it said would ensure that *"the default is manually removed in Nov 2025, in line with the original date it should be removed had the default been backdated"*.

It then sent a follow-up including a 2018 document titled the *"Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies"* which was drawn up in conjunction with the Information Commissioner's Office (ICO). First Direct said this says the lender may record a default when the customer is 3 or more months in arrears, but as it had received an offer of token payments from Mr S, this wouldn't happen automatically. It adds

that there is also a requirement to send a default notice before registering a default and this didn't happen until December 2020, so the earliest point at which First Direct could have taken the decision to register a default was January 2021. First Direct also pointed to a previous decision by this service where a similar complaint was not upheld.

So, in summary, First Direct says it can't backdate the default to "*(mis)report*" it in 2019, but it would still ensure the default is removed from his credit file early, in 2025.

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.

It is clear from looking at Mr S's statements for his credit card and his current account, that he began to experience financial difficulties in June 2019:

- His last payment towards his credit card was on 28 May 2019 and minimum payments were returned unpaid in June 2019 and July 2019;
- Mr S was notified he was over his credit card limit on 19 June 2019 and was then sent a letter about his arrears on 1 August 2019;
- Mr S's last credit to his current account was on 30 May 2019 and he went over his overdraft limit on 14 June 2019;
- Charges were applied to Mr S's current account in July 2019, and he was notified about his overdraft being over its limit on 6 August 2019;
- No further interest or charges were applied to either account from August 2019.

When Mr S spoke to First Direct on 15 August 2019, he agreed he would make token monthly payments of £1 and was advised that accounts were usually defaulted after they were passed to Repayment Services, although the bank's procedures were changing.

In calls later in August 2019, Mr S was advised that his credit file would reflect the fact he was unable to make contractual payments but he said he wanted the accounts defaulted. First Direct said that couldn't happen yet as he hadn't received a final demand.

I have seen evidence that First Direct continued to send arrears notices and make contact attempts from September 2019 onwards, but a default notice wasn't issued until 22 December 2020, with a final demand following on 29 January 2021.

I acknowledge that First Direct says there is a requirement to send a default notice before registering a default and so it couldn't do so until early 2021. I also accept that it has now combined the default balances on Mr S's credit card and current account and moved the default from May 2022 to February 2021.

However, although First Direct has agreed to remove the default from Mr S's credit file in November 2025, Mr S has said the default date is not a fair reflection of how the accounts were managed and indicates to future lenders that he was in financial difficulty more recently than was the case.

I now need to consider whether a default date of February 2021 is fair and reasonable given all the evidence I have seen and the relevant guidelines in this area.

By the end of August 2019, Mr S had missed three payments on his credit card and had been over his overdraft limit for well over two months. Although I accept that First Direct was changing its procedures with regard to defaults, I find it would have been reasonable to issue a default notice to Mr S shortly after this. I say that because:

- The document quoted by First Direct says *“There’s no set date by which an account must be defaulted, although the guidelines provided by the Information Commissioner’s Office (“ICO”) suggest that notice of intention to default should be provided to an account holder when an account has fallen three or more months into arrears.”*
- Although Mr S said he would make token repayments, none were actually made;
- Mr S made it clear on the call that he wanted the accounts defaulted.

Whilst I understand the reasons for First Direct updating its procedures, and this service cannot interfere with a bank’s processes, I consider the new procedures were implemented to allow customers to avoid a default if they were striving to repay their arrears. As this was clearly not the case with Mr S, I find an appropriate course of action would have been to issue a default notice in September or October 2019 after Mr S said he wanted the accounts defaulted and it had become clear that he wasn’t actually making any token repayments.

The above document says *“If you fall into arrears on your account, or you do not keep to the revised terms of an arrangement, a default may be recorded to show that the relationship has broken down. As a general guide, this may occur when you are 3 months in arrears, and normally by the time you are 6 months in arrears.”*

I acknowledge that First Direct issued a final demand after the default notice in December 2020, so I consider it likely that the same process would have been followed in 2019. On that basis, I find the end of November 2019 would be an appropriate time to record the default, as this is also when Mr S would have been six months in arrears on his credit card.

Finally, I acknowledge First Direct says it cannot move the default any earlier as it hadn’t sent the relevant default notice and final demand until December 2020. Whilst I accept that to be the case, this is not in line with the ICO guidelines above and I don’t consider it reasonable that this should prevent First Direct ensuring that Mr S’s credit file is an accurate reflection of how he managed his account.

With regard to a previous decision to which First Direct has referred, I must make my decisions based on the individual merits of each case, so I cannot comment on other decisions with different circumstances.

In summary, I find that it would have been reasonable for First Direct to have registered a default on Mr S’s accounts by November 2019.

My final decision

My decision is that I uphold this complaint. HSBC UK Bank Plc (trading as first direct) should backdate the default recorded on Mr S's credit file to November 2019.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 31 March 2023.

Amanda Williams
Ombudsman