

The complaint

Ms F complains HSBC UK Bank Plc (HSBC) unfairly defaulted her credit card account and a number of other issues related to it.

What happened

In October 2018, Ms F opened a credit card account. She transferred a balance of around £6,600 into the account.

For several months in 2019, Ms F failed to make the minimum payment. In August 2019, HSBC advised of their intentions to default the account. According to Ms F, HSBC agreed to a repayment plan of £50 per month. HSBC said there is no evidence of such an agreement.

Due to the impact of the Covid-19 pandemic, Ms F said she was suffering with financial difficulties. HSBC agreed to a three month payment deferral between June to August 2020. Once this ended, they said Ms F never applied for another one, nor did she contact them about the account. However Ms F states, she was told she could resume the £50 repayment plan.

As the account was several months in arrears, in August 2021 HSBC issued a default notice and demanded full payment of the outstanding balance. As it wasn't satisfied, they defaulted the account in September 2021. It was transferred to their in-house debt company, who I will refer to as T.

Ms F complained about a number of issues, including but not limited to:

- The account had been unfairly defaulted despite being on a repayment plan;
- She wasn't told the debt had been passed to T;
- Despite paying towards the debt, the balance wasn't reducing;
- She had been charged interest despite it being an interest free account;
- She hadn't received a response to a subject access request (SAR).

HSBC said they had acted fairly in defaulting the account. However due to the delays in responding to the SAR and other service related issues, they agreed to pay £75 compensation.

Dissatisfied with their response, the complaint was referred to our service. Our investigator concluded HSBC had acted fairly and in line with the terms of the agreement. Ms F disagreed and maintained her position.

Since then, HSBC has confirmed in response to the final demand letter in May 2019, Ms F paid around £500 yet the account didn't default until two years later in September 2021. They've agreed to backdate the default to May 2019.

In February 2023, I issued a provisional decision outlining my intention to uphold the complaint in part. I said:

“The repayment plan

As a starting point, the terms of the account say HSBC may take action if the minimum payments aren't paid on time. Based on the statements I've seen, for a number of months throughout 2019, Ms F failed to make the minimum payments. So I can understand why HSBC started default proceedings in April 2019. As they received no response, in May 2019 they demanded full payment of the outstanding balance which was around £6,700.

Ms F asserts around this time, HSBC agreed to a £50 repayment plan. HSBC dispute this. Based on Ms F's version of events, it's unclear when and how this was allegedly agreed, whether in branch or by phone. I note she started making monthly payments of £50 in August 2019 which was around three months after the deadline set in the final demand letter. If this was an agreed repayment plan to avoid the default, I would've expected this to have started sooner. Having considered HSBC's contact notes and system records, I find there is insufficient evidence HSBC agreed to this repayment plan. They've told our service, if one had been agreed, there would be a record of it and written confirmation sent to Ms F outlining the same and how long it would last for. I find £50 repayments is considerably less than the monthly minimum payments Ms F was required to pay which was around several hundred pounds. If HSBC agreed to such a reduced payment, I would expect that to be recorded somewhere but neither party have produced evidence of the same. Based on the evidence presented to me, I'm not persuaded HSBC agreed to a £50 repayment plan as Ms F alleges.

The default

The Information Commissioner's Office's guidance explains that a financial business such as HSBC should register a default with credit reference agencies when an account is between three and six months in arrears.

Here, based on statements I've seen, Ms F failed to make the minimum payments for several months in 2019. As the account fell into arrears, HSBC sent a default notice in April 2019. Based on the above guidance, I find HSBC acted fairly by initiating such action. As the required payment wasn't made nor any contact from Mrs F to discuss it, HSBC sent a final demand letter stating she must pay the full balance.

Having read these letters, I'm satisfied HSBC made the status of the account clear and what would happen should Ms F not take action as required. I understand Ms F maintains she never received such correspondence but as they were correctly addressed, on balance, I believe they were sent by HSBC. Overall, I find HSBC acted reasonably because it was clear Ms F couldn't afford the minimum payments.

As the default and final demand notices weren't satisfied, I would've expected the account to default shortly thereafter but that didn't happen. Instead it remained open for quite some time even though Ms F didn't make the minimum payments. She made monthly payments of £50 per month between August 2019 to June 2020 and October 2020 and October 2021. I'm aware HSBC agreed to a Covid-19 payment deferral for three months which was meant for short term temporary support for those negatively impacted by the pandemic. However in this case, it was evident Ms F was experiencing long term financial difficulty. I'm not persuaded there was anything to suggest that she could get the account back on track within a reasonable period of time.

HSBC eventually defaulted the account in September 2021 which was over two years after the initial default notice in May 2019. As mentioned above, I would've expected this to have happened sooner. Having brought this to HSBC's attention, they've agreed to retrospectively

backdate the default to May 2019. I find this is a reasonable approach as it's a fair and accurate reflection of the point in which the account should've defaulted.

Interest and charges

Ms F states she was told the account would be interest free for two years. Due to the passage of time, HSBC hasn't provided a copy of the actual credit agreement but I don't feel this is material to the outcome. I say this because HSBC has provided copies of the statements since the account was opened.

I can see no interest was charged between October 2018 and December 2020. Which is around two years of no interest. Based on the statements, from January 2021 HSBC were entitled to start charging interest. Despite this, the statements show none was applied. I'm satisfied no interest was charged on the account before it was defaulted.

The balance

Ms F says despite paying at least £50 a month, the account balance hasn't reduced however I disagree. The statements show no interest was charged meaning any payments she paid were put towards the outstanding balance. I note the opening balance was around £6,800 and by the time it was defaulted in September 2021, it was around £4,600. Based on what I've seen, I'm satisfied payments made by Ms F were applied to the outstanding balance.

In October 2021, HSBC passed the account to their in-house agents, T, to collect the debt however they've confirmed they remain the legal owners of the debt. Their system records indicated a letter was sent to Ms F to confirm the same.

Ms F's comments that since the account passed to T, the payments she's made aren't reducing the balance. However according to HSBC, no payments have been received by T and they've provided evidence to support the same. If Ms F wishes to provide evidence of payments she's made to T since the account was defaulted and the balance hasn't reduced, I will consider the same.

The subject access request

Ms F made a subject access request in October 2021. HSBC accept this request wasn't responded to in a timely manner. For that and other service related issues, they've agreed to pay £75 compensation. From my understanding, the SAR was sent to Ms F by email in December 2021. However since the complaint has been at our service, it has come to light, Ms F no longer uses that email address. However I'm pleased to see HSBC has since sent the SAR to her postal address. As Ms F is now in receipt of the same, I won't be asking HSBC to do anything further in relation to this complaint point.

Other

From my understanding, following some remedial exercises by HSBC, they refunded £40 in charges in February 2021. Ms F says this demonstrates interest was charged however I disagree. As already explained above, there is no evidence interest was charged but I can see there were a number of charges for late payment fees and returned direct debits. On balance, I find it's mostly likely the £40 refund was for such account fees opposed to interest. I also understand in November 2020, HSBC paid £25 compensation as a gesture of goodwill as they potentially could've provided additional help and support from their collections team.

I strongly urge Ms F to contact T to discuss an affordable repayment plan in order to pay the outstanding balance."

Response to the provisional decision

HSBC accepted the findings. Ms F disagreed and maintained her position including her belief that the balance isn't reducing despite her making payments to T. She also commented HSBC incorrectly calculated the minimum payments on the account.

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 thank Ms F for her detailed response which I've carefully considered.

In terms of the issue about recent payments not being applied to the outstanding balance, I invited evidence to be provided so I can consider it however, she hasn't provided the same. In the absence of such evidence, I still find it reasonable to rely on HSBC's system records which show no payments have been made since the debt was passed to T.

Ms F has provided a lot of detail as to why she believes the minimum payments were calculated incorrectly by HSBC. However, I find this to be new complaint point therefore not one that was previously raised. As there is no indication HSBC has had the opportunity to investigate that particular concern, it wouldn't be appropriate for me to comment on it. Ms F would have to raise this as a separate complaint with HSBC in the first instance.

I consider the rest of Ms F's submissions to be the same or of a similar nature to what she's already told our service. I'm satisfied I've addressed these points in my provisional decision so I won't be repeating them again here.

On the basis I haven't been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

My final decision

For the reasons set out above, I've decided to partially uphold Ms F's complaint.

To say to put things right, HSBC UK Bank Plc must:

- Backdate the default to May 2019 and amend Ms F's credit file accordingly;
- Pay £75 compensation to Ms F for the service related issues (if not paid already).

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 3 April 2023.

Simona Reese
Ombudsman