

## **The complaint**

Mr K complains that HSBC UK Bank Plc have recorded incorrect default dates on his bank account and his credit card.

## **What happened**

Mr K says that HSBC registered a default for his bank account on 31 December 2021, and for his credit card on 30 September 2022. He says these dates are incorrect as the default on his bank account should be dated 1 February 2020 and the credit card default date should be 1 July 2019 as this is when he was six months in arrears. Mr K made a complaint to HSBC.

HSBC did not uphold Mr K's complaint. They said that they only register a default when the final demand letter has expired, and the account(s) are closed and passed to HSBC Repayment Services. They said their records show Mr K was sent default notice letters in 2018/2019 but the process to register the defaults on his accounts were suspended. HSBC said their records show at the time there was an ongoing investigation into fraud transactions on his account, and his accounts were reviewed again in 2021 and the default process reinstated as they had received no payments to repay the debt. They said letters were sent to him to inform him of their intention if they received no payments.

Mr K brought his complaint to our service. He said the fraud/disputed transaction investigation was concluded on 26 April 2018, and he provided our service with a letter HSBC sent on this date stating the investigation into the disputed debits had been completed, and they were unable to support his claim for reimbursement.

Our investigator did not uphold Mr K's complaint. She said HSBC explained that the fraud complaint stopped the default process, and when the default process was restarted in 2021, they had issued the default notice on 18 June 2021 for the bank account, with a default being registered on 30 December 2021. She said the default notice was issued on the credit card in February 2019. Mr K asked for an ombudsman to review his complaint. He said he wanted the defaults removed and he wasn't given the chance to make repayment plans.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Firstly, I'm aware that I've only summarised Mr K's complaint points. And I'm not going to respond to every single point made by him. No discourtesy is intended by this. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is a fair outcome.*

*I've considered whether the date of the defaults are fair for what happened here. I've considered what the Information Commissioner's Office (ICO) says about what should or shouldn't be reported to the credit reference agencies (CRA's). The ICO is the body created which deals with an individual's data, and it has released a document called "Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies". It is entirely reasonable to rely on this, because when determining a complaint, as amongst other things, I am required to take into account good industry practice and in my view, these principles constitute good industry practice in this area.*

*The PRAAD states that a default would usually occur if the customer falls into arrears on their account, or they 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 somebody is three months in arrears, and normally by the time somebody is six months in arrears.*

*So I've considered whether I would have expected the defaults to be registered when they were. I can see that HSBC wrote to Mr K on 10 October 2018 to advise him that they no longer wished to provide him banking facilities. HSBC sent Mr K a default notice on 23 February 2019 for his credit card. I can see from the statements and the credit file that Mr K has sent us that he had been in arrears for a number of months from when they sent the default notice. And while Mr K made a payment only two days earlier, this did not clear the arrears or stop a default notice being sent out.*

*The default notice told Mr K that he needed to pay £206.38 by 16 March 2019, and if he didn't do so then further action may be taken against him, which included disclosing information about the default to the CRA's. The letter says they would not register a default for at least 28 days from the date of the letter. So I'm not persuaded that HSBC should have automatically registered a default on 23 March 2019 (28 days from the date of the letter) as the default notice shows at least 28 days. Given that Mr K had made a payment only two days earlier on 21 February, then I'm satisfied that there could have been a chance Mr K made a further payment to avoid a default.*

*But when Mr K did not act by the date given in the default notice and he continued not to make payments, then I'm satisfied they should have taken action to default the account in line with PRAAD when he was six months in arrears. So I'm not persuaded it was proportionate to register a default on 30 September 2022. I know HSBC have commented the collections activity had been halted due to the complaints that Mr K made, but it doesn't appear his complaints were related to his credit card. But even when the outcome of these complaints had been made then HSBC should have backdated the default based on what happened, instead of registering the default in September 2022.*

*I say this as the relationship had clearly broken down years before this date. The last date which Mr K made a payment when he was not in arrears on his account was on 6 September 2018. So I think it would be fair to backdate the default to six months after this date to be in line with PRAAD guidance. It would not be fair for the default to stay on Mr K's credit file until September 2028, when the default should have been registered in March 2019 (and therefore not be on his credit file from March 2025, and not 2028). So I'm satisfied that HSBC should backdate the credit card default to 6 March 2019 for these reasons.*

*I've then considered the date of the default on Mr K's bank account. Again I'm aware that HSBC paused collection activity while his complaints were ongoing, but I would still expect PRAAD to be followed and I wouldn't expect making a complaint to have an adverse effect on someone's credit file (in the sense that a default registered later than it should have will stay on a customer's credit file for longer than if a complaint had not been made).*

*I know HSBC issued a final demand on 6 September 2021 for Mr K's bank account. But I'm persuaded that HSBC should have acted long before this date. I say this because Mr K entered an unauthorised overdraft on 9 July 2019. He made no further payments into this account. So in line with PRAAD, I'm persuaded that a default notice should have been sent in late 2019 giving Mr K 28 days to clear the arrears to avoid a default. So again, I'm not persuaded that registering a default on his bank account on 31 December 2021 was treating Mr K fairly when there was no indication he could or would make payments to clear the overdrawn amount back in 2019.*

*So I'm persuaded that the fairest thing to do here is for HSBC to backdate the default on his bank account to 9 January 2020. This is when the account would have been six months in arrears, and it is in line with PRAAD that a default would be registered generally when a customer is six months in arrears. While there may be some circumstances where it is not appropriate to register a default after six months (based on individual customer circumstances), I'm not persuaded that it is proportionate for a default to be registered years after it should have been in this instance.*

*I've considered what Mr K has said about the defaults should be removed. This is a different outcome to what he's previously said that he wanted as an outcome of this complaint. But as Mr K has not made regular payments to either his credit card or bank account for a number of years, then it would not be proportionate for me to ask HSBC to remove the defaults. While Mr K has said he wasn't given the opportunity to make payment arrangements, I'm not persuaded by this either.*

*I say this because Mr K was sent letters regarding making a payment arrangement and making payments before his accounts defaulted. They are addressed to the same address that he provided us on HSBC's letter in April 2018 about the outcome of the disputed transactions investigation. So I'm satisfied that Mr K was given the opportunity to do this, but he didn't make any payment arrangement. HSBC also provided us an outbound phone call that they made to Mr K on 8 June 2021 – before both defaults were registered. The caller clearly identifies herself as being from HSBC. Mr K confirms she is speaking to him, and she confirms again she is from HSBC. Mr K asks the call handler to give him one sec(ond), but then it appears he disconnects the phone line. So Mr K would have been aware HSBC wanted to speak to him, but I've seen no evidence he called them back and wanted to make an arrangement plan. And the accounts were always likely to default when he made no payments for a prolonged period of time.*

*Mr K also ought to have been aware that he was in arrears on his accounts and that he hadn't paid for a number of years also. But I've seen no evidence that Mr K tried to put a plan in place. Even if he was unable to pass security on the phone, he could have written to HSBC with a proposed payment plan (or visited a branch to verify himself and go on the phone if his health permitted it). There were at least eight letters sent to him before the accounts defaulted with telephone numbers to talk to them. I would find it unusual for Mr K to not receive any of these letters when he had received their letter about the disputed transactions investigation. But even if he didn't receive these letters, as they were posted to his registered address, then I can't hold HSBC responsible for any postal errors as this would be outside of their control. So I'm not persuaded that HSBC should remove the defaults or that they didn't give him the opportunity to make a repayment plan.*

*But I do believe they should backdate the dates of the defaults for the reasons I've already given, so it follows I intend to ask HSBC to put things right for Mr K."*

*I invited both parties to let me have any further submissions before I reached a final decision. Mr K accepted the provisional decision. HSBC responded to the provisional decision, and they said they had no further points to add at this time.*

### **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 neither party have provided me with any further information to consider, then my decision and reasoning remains the same as in my provisional decision.

### **Putting things right**

In my provisional decision I said I intend to uphold this complaint in part. I said I intend to ask HSBC UK Bank Plc to backdate the default on Mr K's HSBC credit card to 6 March 2019, and to backdate the default on his HSBC bank account to 9 January 2020. I'm still satisfied this is a fair outcome for the reasons given previously.

### **My final decision**

I uphold this complaint in part. HSBC UK Bank Plc should backdate the default on Mr K's HSBC credit card to 6 March 2019 and they should backdate the default on his HSBC bank account to 9 January 2020.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 12 December 2023.

Gregory Sloanes  
**Ombudsman**