

complaint

Mr O complains that HSBC Bank plc didn't follow the correct procedures when it put his personal loan account into default.

background

In 2008, when Mr O began experiencing some financial difficulties, he entered into a debt management plan. He'd taken out a personal loan with HSBC at the start of that year and was able to continue making the contractual monthly payments towards it.

But his personal circumstances changed in early 2013 and he started making reduced payments to the personal loan. This meant that arrears began to build-up on the loan.

HSBC wrote to Mr O with the details of the arrears. He carried on paying the reduced payment each month and the amount of the arrears on the loan grew. In October 2013 Mr O was sent a default notice which set out the amount that was owed. Mr O's loan account defaulted in mid 2014.

Mr O complained that HSBC hadn't met the relevant guidance from the Information Commissioner's Office, and the default notice it had sent him was defective. He said HSBC hadn't rejected any repayment proposal and the customer relationship hadn't broken down as he made all his monthly payments in accordance with his debt management plan.

HSBC said that it had correctly issued Mr O with a default notice and final demand. It said the information it had reported for Mr O's personal loan was a true reflection of the way he'd managed his account, and it would still report that it wasn't receiving the full contractual repayments for a debt while a customer was in a debt management plan.

Our adjudicator didn't think HSBC had acted unfairly. She said that some of the monthly payments hadn't been made through the repayment plan. She said HSBC was entitled to record a default if the contractual payments aren't made towards a debt.

Mr O didn't accept the adjudicator's findings. He'd made the agreed payments to his debt management plan provider each month and this was distributed to his creditors. The missed payments were administrative errors made by HSBC when it made changes to its processes and he shouldn't be held responsible for this. He doesn't accept that the account fell into arrears because of missed payments and doesn't think the default should've been registered against him.

my findings

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 carefully through all of the background here – the payment history and letters that were sent. And I've taken into account what Mr O has told us about HSBC's actions.

Mr O believes that HSBC's default notice was defective as it didn't comply with the requirements of the Consumer Credit Act 1974. He's also said that he was given confusing and misleading advice about the final demand it sent him.

If there's been an arrangement that a consumer may pay reduced amounts towards a debt then that'll be reflected in their credit report. But a repayment arrangement doesn't mean that the contractual repayments due under the original agreement have changed. HSBC has a responsibility to report accurate and up-to-date information to credit reference agencies, and I think that's what it has done here.

It has said that Mr O's arrangement through his debt management plan may have been agreed on a temporary or informal basis, as it doesn't have a record of him being on a formal managed loan plan. It doesn't seem to have been a permanent change to the loan agreement he originally made.

I appreciate that there was a change in the payment history in early 2013. This was when Mr O began making reduced payments to his loan account. The records suggest that the reduced loan payment was made to Mr O's current account rather than directly to the loan account, and then this was moved across. Mr O cancelled his direct debit from the current account to the loan at this time, so no charges would be incurred because the payment left his account before his direct debit was due.

Mr O's loan history shows the arrears began accruing on the account at this time. Although Mr O was making payments towards the plan, these weren't for the full amount of the contractual payment agreed to pay the loan balance off. HSBC may have agreed for these reduced payments to be made, but it's told us that this wouldn't necessarily have stopped its recovery procedures.

HSBC gave Mr O notice that it intended to register a default against him. The notice specifies the nature of the breach of the agreement; what action is required to remedy it; the amount to be paid and the date this should be paid by. This default notice was enclosed with a headed letter explaining that the payment for the loan couldn't be paid that month because there was no balance in Mr O's current account.

At the time this was sent to Mr O, his loan account was the equivalent of over three months in arrears.

The records I've seen don't show what Mr O was told about the final demand letter, and what he needed to do after receiving this. He's said he was told not to worry about it as he was on a debt management plan. But HSBC had sent him arrears letters before this which set out the amounts that his agreement was behind by. By the time it received a further repayment offer from Mr O's debt management plan provider in 2014, the loan account had already been closed.

In the particular circumstances here, I don't think HSBC has acted unfairly or inappropriately in registering this default on Mr O's loan account.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 14 December 2016.

Cathy Bovan
ombudsman