

complaint

Mrs S complains that HSBC Bank Plc (HSBC) closed a joint account she had with it without notice and unfairly recorded a default on her credit record.

background

Mrs S and her husband had a joint account with HSBC. In early August 2016 Mr S was made bankrupt.

After becoming aware of the bankruptcy, in early September 2016 HSBC says it issued a final demand for £468.73, which it said was owed on the account. The demand required her to either pay the balance within 18 days or reach an arrangement with the bank. The demand also referred to an earlier default notice it said it had issued.

Mrs S says she did not receive the demand so the amount outstanding was not paid at that time. In late September 2016 HSBC closed the account.

In late March 2017 Mrs S called HSBC to complain about the default marker it had recorded on her credit file in relation to the account. She said she wasn't aware of the debt. But Mrs S paid the amount outstanding and was informed that it would show as fully satisfied on her credit file in 30-60 days.

HSBC responded to her complaint by saying that it was sorry if she didn't receive the final demand, but that its records show it was sent. It said that the information recorded on her credit file was an accurate reflection of her account conduct. And that it had an obligation to ensure that the information on the credit register is correct and it would be unethical to alter it. Mrs S complained to us.

At first, our adjudicator said that HSBC hadn't provided any evidence that it had told Mrs S it intended to close the account prior to doing so. And that it hadn't been able to provide a copy of the default notice sent to Mrs S.

Our adjudicator thought that lenders should provide adequate warning of the intention to file information with credit reference agencies and of the date of the intended default. The date should allow the customer enough time to respond properly. But she couldn't find any evidence that HSBC had done any of this.

In our adjudicator's view, Mrs S had demonstrated her ability to pay the amount outstanding and that if she'd received notice of an intended default, she would've paid it. So she upheld Mrs S's complaint and said HSBC should remove the default registered on the account with all the credit reference agencies.

HSBC disagreed with our adjudicator's view. It said that it had sent a final demand and spoken to Mrs S on 11 October 2016 about the debt, and it wasn't repaid until March 2017. It said that as per the account terms and conditions, the overdraft was an on demand facility so it could withdraw the facility and demand immediate repayment, which is what it did. It was not required to send a notice in advance as that was the purpose of the final demand. It said the bank had acted in accordance with its procedures in its dealings with Mrs S.

After hearing from HSBC, our adjudicator issued a second view saying she was no longer upholding the complaint because Mrs S had been aware that the debt needed to be repaid

and she was satisfied HSBC had followed their process in applying the default. She understood that Mrs S was unhappy with the entry on her credit file but she didn't think HSBC had done anything wrong in reporting the account as defaulted, given Mr and Mrs S were jointly and severally liable for the debt.

Mrs S asked for a decision from an ombudsman.

provisional decision

On 19 March 2018 I issued a provisional decision. My provisional findings were:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Based on what I've seen I think that HSBC was entitled to close the account without giving Mrs S notice, so I'm not going to ask it to do anything about that part of her complaint. But I do propose to tell HSBC to ask the credit reference agencies to amend the entry for the account to show the default as being satisfied. Although I know it will disappoint Mrs S, I don't propose to tell HSBC to remove the default entry altogether.

Mrs S is concerned that HSBC didn't give her any notice that it was closing the account, and she wants it to acknowledge that it didn't do so. I've looked carefully at the terms and conditions for the account, and I don't think that HSBC was obliged to give Mrs S notice, so I can't say that it did anything wrong. Clause 13 of the terms and conditions of the account say that HSBC can close an account immediately and without notice where it's demanded that an overdrawn balance be repaid and the customer has failed to do so. I understand that Mrs S says she didn't receive the final demand dated 2 September 2017. But HSBC has provided a copy of the demand letter, so I can't say that it wasn't sent.

Currently Mrs S has a default recorded on her credit file in relation to the joint account. She wants that default removed. As she says she didn't receive the final demand, she feels she wasn't given a chance to repay the outstanding balance in the time that would've prevented a default being recorded. And by the time of the October 2016 call, it was too late.

I've listened very carefully to the call between Mrs S and the bank on 11 October 2016. What Mrs S says is that she thought that the outstanding amount came under her husband's bankruptcy. But the HSBC representative told Mrs S that as it wasn't a joint bankruptcy the account was still a liability for the other party. During the call Mrs S also said that when the account came off her internet banking she assumed it had been dealt with for that reason (the bankruptcy). The HSBC representative explained that the account had been closed by the bank. It was a short call, because Mrs S shortly had to go to a work meeting but at the end of it she said she'd call the bank back. As far as I know she didn't.

In my view, I think Mrs S's comments show that she was aware there was an outstanding balance on the account before the call. She says she thought that the bankruptcy of her husband cleared the debt. That's not correct. I've looked at the account terms and conditions. It's plain from them that liability for outstanding balances on the account is joint and several. So the bank was correct to tell Mrs S that she was responsible for the balance.

Mrs S's incorrect view isn't the bank's fault. There's nothing to show that she made any enquiries with the bank in August or September to check the status of the account. In mid-August she made a payment on the joint account. But she didn't make a payment on the account in September 2016 - perhaps because of her incorrect view that the bankruptcy had

cleared the debt. But I don't think it's because there was a problem with a direct debit, as Mrs S suggests. I've looked at the statements for the joint account and Mrs S's personal account with HSBC and it shows her making payments of varying amounts, sometimes several times a month, to the joint account from her personal account by internet transfer and not direct debit. And the account wasn't closed until 26 September 2016 so Mrs S would've been able to view her statements before then.

The terms and conditions of the account do say that HSBC will share information with credit reference agencies about how an account is managed, so I can't say that she had no way of knowing that HSBC could report to credit reference agencies.

I've no doubt that by the end of the October 2016 call Mrs S was aware that in the bank's view, the bankruptcy hadn't cleared the debt and she owed the amount. Yet Mrs S still didn't pay the outstanding balance until March 2017, after she became aware of the default recorded on her credit file.

In these circumstances, I don't propose to tell HSBC to remove the default from her credit file. I understand Mrs S says she didn't receive the final demand, but if she'd made enquiries with HSBC in September, she would've had an opportunity to do so. Instead she relied on her own incorrect view of the effect of her husband's bankruptcy and didn't take any steps, including not making a payment in September. So although I appreciate it will disappoint Mrs S, I'm not going to ask HSBC to remove the default.

But I do propose to tell HSBC to ask the credit reference agencies to amend the entry to show the debt as 'satisfied' as at the date she made the payment, and not as 'partially settled' as it stands at the moment. HSBC told us that where it is a joint account it is its policy to do this. But it's not what it told Mrs S it would do in March 2017 when she paid the outstanding balance, and it's not fair either since she's paid the whole amount.

My provisional decision was that I proposed to tell HSBC Bank Plc to contact all the credit reference agencies and ask that the default sum be recorded as fully satisfied and include the date of satisfaction where the credit reference agency records such information.

HSBC accepted my provisional decision and said that it had already taken steps to notify the credit reference agencies accordingly. Mrs S didn't accept the decision. She failed to understand HSBC's statement that the default was an accurate statement of her account conduct when she was still a Premier customer with them and hadn't been barred from having an account with them. She thought that a default was when an account had consecutive missed payments and she didn't think failing to make a payment on one occasion was a reflection of her conduct.

She asked why, if the bank thought the debt was due by her, she hadn't been pursued by it for payment. She also asked why her sole current account wasn't used to pay the amount due on the joint account. Finally, she asked that I note she spent a long time trying to contact the correct department at HSBC dealing with the default and they were most unhelpful.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, and having carefully considered the comments from Mrs S on the provisional decision, I still think my decision was the right one.

Mrs S thinks that a default is when consecutive payments are missed. But in this case, due to the bankruptcy of Mr S the bank requested that the amount overdrawn be repaid immediately in one payment. As I said in my provisional findings, under the terms and conditions of the account HSBC was entitled to do this. So the failure to make that one payment was sufficient for a default to be recorded. And for the reasons given in my provisional findings I'm satisfied Mrs S knew the debt was due. And I'm also satisfied that she paid the debt in March 2017.

Mrs S thinks that HSBC could have set off the debt on the joint account with funds from her HSBC current account that was in her sole name. She is right that the terms and conditions do allow for funds from one account to be used to pay a debt on another account. She says HSBC has done that in the past. Although HSBC can do this, it doesn't have to. So I don't think it did anything wrong in not doing so.

Mrs S says she spent a long time trying to contact the correct department at HSBC about the default and they weren't helpful. I'm not sure when this was. But as I said in my provisional findings, Mrs S knew that she hadn't made a payment on the account in September 2016. And she also knew after the 11 October 2016 phone call that HSBC considered that the bankruptcy hadn't cleared the debt and she owed the whole amount. For whatever reason, Mrs S didn't pay the balance until March 2017. So for the reasons given in these findings, and my provisional findings, I'm not going to tell HSBC to remove the default from her record.

I understand Mrs S will be disappointed by this, and finds it difficult to accept given she is still a Premier customer of HSBC's. But the default is relevant only to the joint account.

As I said in my provisional findings, it wasn't fair of HSBC to record the default as only partially satisfied when Mrs S had paid the amount outstanding. HSBC has accepted this, and says it has already taken steps to have the entry in her credit files amended to show it as satisfied. But since this may not yet be displayed on her records, I will still make a final decision telling HSBC to do this, in case of any difficulties.

my final decision

My final decision is that HSBC Bank Plc must contact all the credit reference agencies it reports to and ask that the default sum be recorded as fully satisfied and include the date of satisfaction where the credit reference agency records such information.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 16 May 2018.

Helen Wheatley
ombudsman