

## **complaint**

Mr N complains that HSBC Bank plc should remove a default from his credit file and pay him compensation.

## **background**

Around the time their marriage broke down, Mr N and his wife had an overdrawn joint account with HSBC. Mr N says that - without warning - HSBC registered a default which damaged his credit rating. He says that this cost him a great deal, including increased interest on his credit card debts with HSBC itself and with two other card providers.

### *our adjudicator's view*

The adjudicator recommended that the complaint should be upheld in part. He concluded that, due to an error by HSBC, Mr N had not received its final demand. The adjudicator considered that Mr N would have cleared the balance if he had received the demand. The adjudicator said it was reasonable to assume that - if Mr N had had a clear credit file - he would have found a one-year 0% balance transfer for his HSBC credit card debt. The adjudicator said that one of the other two card providers had said that it had increased Mr N's interest rate due to a change in his credit file. HSBC said in its letter of 7 June 2013 that it would remove the default within a few days. The adjudicator recommended that HSBC should pay Mr N:

1. £500 for distress and inconvenience;
2. compensation for the interest on his HSBC credit card balance transfer for a further six months after the expiry of the initial six-month period; and
3. (conditional on Mr N providing his credit card statements showing the extra interest) compensation for the increased interest on Mr N's other two credit card accounts arising from the default on his credit file until the last statement prior to the removal of the default.

### *my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr N and to HSBC on 31 October 2013. I summarise my findings:

- I was not satisfied that Mr N would have paid the overdraft debt if he had received the final demand about six weeks sooner than he did. Therefore, I did not consider that it would be fair and reasonable to order HSBC to compensate him for any financial consequences relating to his credit rating.
- I accepted that HSBC's handling of the final demand and Mr N's complaint could have been better. I accepted that this had caused Mr N some extra anxiety and trouble at an already difficult time for him. Overall, I concluded that £300 was fair and reasonable compensation for this.

Subject to any further representations by Mr N or HSBC, my provisional decision was that I was minded to uphold this complaint in part. I intended to order HSBC Bank plc to pay Mr N £300 for distress and inconvenience.

HSBC says that it has nothing further to add.

Mr N disagrees with my provisional decision. He says:

- he and the bank made an arrangement while divorce proceedings were pending;
- the court made a consent order;
- he would have obtained a re-mortgage, but for the default on his credit file;
- he got HSBC's standard 0% interest offer;
- he had to sell his house in November 2012.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I have seen a copy of a letter from HSBC dated mid-January 2011 addressed to Mr N at the address from which he later made his complaint. That letter said that non-payment might lead to the registration of a default with credit reference agencies within 28 days of that letter.

I accept that Mr N made some monthly payments of £50. But I am not persuaded that the bank had agreed not to demand immediate repayment of the full amount of the overdraft, until the divorce proceedings were concluded.

I see from its letters that HSBC apologised that it had sent its final demand in February 2011 only to the new address of Mr N's estranged wife. Therefore, I am not satisfied that the bank gave Mr N fair warning before it told credit reference agencies in mid-March 2011 that he was in default.

I see from the bank's records that Mr N visited a branch in late March 2011. I place weight on his letter addressed to the bank's collection agency dated 4 April 2011. In it, Mr N concluded:

*" ... I do not take any responsibility of non payment of this debt, neither is it my intention not to pay it, it is just the circumstances, in which any demand of full or partial payment may not be met, before the ancillary relief proceedings between me and my ex wife are concluded.*

*If still you would like to issue legal proceedings, it's up to you but I will apply for an order of cost against your agency and or your client HSBC bank within those proceedings, citing the circumstances, in which I do believe that it will be highly likely that a order of costs will be made against your agency or your client i.e. HSBC.*

*I also enclose a copy of the final demand letter which I have now got hold of, which clearly is addressed to me at an address which cannot be associated with me."*

So he had obtained a copy of the final demand. That demand said that the registration of a default might make it more difficult for him to obtain credit. But Mr N's letter took the stance

that he could not pay the amount demanded until the outcome of the financial matters in his divorce proceedings.

I have seen two HSBC mortgage illustrations for Mr N in September 2011. These show a rate of 2.99% per year including a £30,000 home-owner loan. But the covering letter said that the illustrations were not mortgage offers. I bear in mind his credit report, which contained details of the unresolved overdraft with HSBC and considerable debts to others. Therefore, I cannot conclude that he would have obtained a remortgage but for the default.

I have seen the consent order dated February 2012 in the divorce proceedings. I see that Mr N gave a number of undertakings to the court. He signed a form saying that he understood that if he broke his promises, he might be sent to prison for contempt of court. One of his undertakings was to discharge the joint overdraft to HSBC by early May 2012.

Another undertaking was that his former wife would have a charge over 50% of the equity in his home. But this was subject to a condition that she could not realise that charge until February 2017 or Mr N's earlier sale of the house. I find it more likely that it was this – rather than HSBC's actions – which deterred Mr N from selling the house and moving closer to his place of work.

HSBC's final response letter in mid-May 2012 said that if he cleared the overdraft by mid-June and told the bank that he had done so, it would remove the default. But I note from his credit file that HSBC did not remove the default. I infer that Mr N paid the balance due but did not draw this to the bank's attention. I see that Mr N says that the bank removed the default in about June 2013.

From the events set out above, I am not satisfied that Mr N would have paid the overdraft debt if he had received the final demand about six weeks sooner than he did. I conclude that he had decided not to pay the overdraft unless and until it was a part of the financial arrangement in the divorce. Therefore, I do not consider that it would be fair and reasonable to order HSBC to compensate him for any financial consequences relating to his credit rating.

But in fact I am also not satisfied that the registration of the default caused Mr N to pay increased interest on his credit cards. I accept HSBC's recent statement that its card gave Mr N a 0% interest rate for a period of over a year until 29 October 2013. And Mr N now agrees that the default was not the reason for the interest rates on his other two credit cards.

I accept that HSBC's handling of the final demand and Mr N's complaint could have been better. I accept that this has caused Mr N some extra anxiety and trouble at an already difficult time for him. Overall, I conclude that £300 is fair and reasonable compensation for this.

### **my final decision**

For the reasons I have explained, my final decision is that I uphold this complaint in part. I order HSBC Bank plc to pay Mr N £300 for distress and inconvenience.

Christopher Gilbert  
**ombudsman**