

complaint

Mr J complains about the withdrawal of his overdraft facility on one of his current accounts by HSBC Bank plc. When he then closed the account, he says HSBC agreed to clear the small overdrawn balance on the account and not to treat it as having defaulted. But he complains the bank then did register a default, which caused a number of subsequent problems.

background

In 2011 HSBC wrote to Mr J about the fact that an account was overdrawn by a small amount (but within the limit). He had not paid anything into the account for a couple of months and the bank said that money should be paid into the account regularly. After he still did not pay money into the account, the bank cancelled the overdraft. Mr J had been away from home and not received the bank's letters. When he spoke to bank staff on his return home, he understood that it then agreed to clear the small amount owed and that the events would not affect his credit score. The account was closed.

Several months later Mr J contacted the bank to request an extension to an overdraft on a second account for a short period. That request was refused. Mr J spent a long time on the telephone to the bank trying to resolve that issue. He says he was not told there was any problem with his credit score.

A few months later, in 2012, Mr J had some contact with the bank about taking out a loan: it was only then that he checked his credit score and found it was showing a default on the first account. Following a complaint from Mr J, HSBC agreed to remove the record of the default. Mr J says he found the situation extremely distressing. He had had to make multiple calls to the bank and incurred huge phone charges, and the problem with his credit score affected not just the terms of the loan HSBC had offered but also an application to amend a mortgage with another bank.

our adjudicator's view

The adjudicator did not recommend that HSBC should take any further action on the complaint. He said the terms of the account required that regular payments should be made when the account was overdrawn and said that the overdraft facility could be withdrawn at any time. He said that the bank's records indicated that it intended to default the account and that at one point Mr J had said he would not make any payment. In light of that, when the bank was required to record a true reflection of the conduct of the account, it had not made any error.

Mr J disagreed strongly. He said HSBC had never explained what it meant by 'regular' payments. While the bank might be commercially entitled to remove his overdraft facility and default the account, that was not done for any purposeful reason and had a significant detrimental effect on him. That was not a fair and reasonable way to treat a long-standing customer like him.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr J and to HSBC on 30 July 2013. I summarise my findings.

First, for the reasons explained by the adjudicator, I considered that the bank was entitled to withdraw the overdraft facility. It did not seem to me to be unreasonable for the bank to regard the lack of any payment into the account for two months as failure to make regular payments. Mr J had been away from home when the bank wrote to him and after he discovered the situation he contacted the bank. He understood that it agreed to clear the small amount owed and that the events would not affect his credit score.

However I had concerns about the subsequent defaulting of the account. It was difficult to get a clear account from HSBC of whether and how that came about. At one point the bank said that, although it could not provide copies of actual letters sent to Mr J regarding the proposed default, those had been sent. It provided the templates used. Then it said such letters had not been sent, because there had not been any credit agreement, which it said meant default notices were not required. Finally HSBC had confirmed to us that, because the small amount owing was written off, the bank had not registered a default on Mr J's file at all.

However from the evidence I had seen I was satisfied that that was incorrect and the bank *did* register a default:

- Mr J provided an extract from a credit reference report from early 2012 showing that a default was registered;
- some records copied by the bank to Mr J, who sent them to us, show that a default was registered in March 2011;
- records sent by the bank to us show that it arranged to contact credit reference agencies to remove the default in February 2012.

It was clear to me that Mr J did have a formal overdraft agreement and that the terms of the Lending Code, which require notice to be given before a default is registered, applied to his situation. The letters sent to him about the overdraft made no mention of the possibility of a default being registered and I had not seen any substantive evidence to show that he was ever given proper notice of a planned registration of a default. That was not fair or reasonable.

It appeared that no default was registered now, which was consistent with the bank having asked for the record to be removed after Mr J complained in February 2012. However in the interim the default, which Mr J was unaware of, was likely to have affected his ability to access credit. When I had not seen a full copy of his credit report and it appeared that there were some missed payments due to lack of funds in his other HSBC account, it was difficult for me to be sure what difference the default would have made. However I had seen a letter from another bank indicating to Mr J that it was the default which had caused a severe delay in dealing with an application regarding his mortgage.

Subject to any further representations by Mr J or HSBC my provisional decision was to uphold the complaint in part. I intended to order HSBC to pay Mr J £300.

HSBC said that it had nothing further to add.

Mr J said he broadly agreed with my provisional decision. However he clarified various points including:

- the fact that while he was away from home, after the bank had first written to him, it had made repeated automated calls to his phone. When he returned those he was

told his account was overdrawn, and he said he would deal with that on his return. But he was never told the bank intended to default the account;

- when he contacted the bank on his return it had agreed to set aside the debt because of his concern about the repeated calls;
- it was only somewhat later that he declined to pay the money, because he had previously been told the bank would waive the debt;
- he emphasised that he closed the account rather than the bank closing it as a result of dormancy.

He said that he had probably spent at least twice as much as £300 on phone calls to the bank to try to resolve matters. He had also spent an enormous amount of time on the matter, suffered considerable distress and had probably had increased borrowing costs. HSBC should have resolved matters much quicker.

my findings

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

I have taken careful note of Mr J's response to my provisional decision, but it has not changed my view about what is a fair and reasonable outcome to his complaint. Without clear evidence to confirm actual expenses or the impact on his borrowing costs, I cannot see grounds to increase the compensation. Awards by this service for distress and inconvenience are generally only modest.

my final decision

My final decision is that I uphold this complaint. In full and final settlement, I order HSBC Bank plc to pay Mr J £300.

Hilary Bainbridge
ombudsman