

## **complaint**

Mr and Mrs C are unhappy that HSBC Bank Plc has recorded adverse credit information against them.

## **background**

Mr and Mrs C were business and personal banking customers of HSBC. Unfortunately they experienced some financial difficulty during the recession and HSBC called in its borrowing.

In September 2012 Mr and Mrs C sold their home. They had a first mortgage with another lender and a second 'all monies' charge in favour of HSBC covering their business and personal borrowing.

Through their solicitors, Mr and Mrs C negotiated a settlement with HSBC. This was detailed in a letter from HSBC dated 21 August 2012 ('the settlement letter'). The letter specified a number of accounts that would be closed '*in full and final settlement*' upon receipt by HSBC of a minimum amount of £244,715 out of the net proceeds of sale.

The amount was revised late in the day when it came to light that the redemption figure on the first mortgage was lower than first anticipated – so there was slightly more money available to pay to HSBC. In any event, HSBC only received about 50% of the actual debt due to it, and so sustained a substantial loss.

After the property was sold, Mr and Mrs C discovered that HSBC had registered adverse credit information against them from November 2012 showing an account in default from October 2012. They are unhappy about this as it's affected their ability to raise credit elsewhere. Mr and Mrs C believed the settlement agreement meant that the accounts would be marked as settled with no adverse information registered.

## ***provisional decision***

On 13 November 2015 I issued a provisional decision in which I made the following points.

Having considered what both parties have said, I think HSBC has recorded information incorrectly – but not in the way Mr and Mrs C believe.

Mr and Mrs C have provided information from Equifax, one of the credit reference agencies. They say this supports their argument that errors have been made by HSBC.

HSBC has registered adverse credit information against Mr and Mrs C from October 2012. But I don't think the date from which the information has been recorded is correct. I say this for the following reasons.

When it transpired that HSBC would receive slightly more than the '*minimum amount*' set out in the settlement letter, Mr C was unhappy and complained to HSBC. There was some correspondence back and forth, and the issue was resolved by the end of October.

I've looked at the exchange of correspondence between Mr C and HSBC in September and October 2012. From this correspondence I can see that HSBC was

suggesting that the whole agreement might be called off, because Mr C had queried the amount HSBC had received.

But I've seen nothing in Mr C's correspondence to persuade me that he was thinking about withdrawing from the agreement reached in the settlement letter. Indeed, his bargaining position was practically non-existent at this stage. It was HSBC that was threatening to call the agreement off, in a way that I think was unpalatable, given Mr and Mrs C's lack of options at that stage.

It's disappointing that HSBC took so long to reply to Mr C's queries. HSBC says that this was because the only staff member dealing with Mr and Mrs C's case was on holiday for three weeks. HSBC didn't reply until the end of October, rather than September. HSBC recorded adverse credit information from November onwards.

I think that's unfair. I don't see that Mr and Mrs C should suffer the consequences of HSBC's lack of planning in making sure duties are covered when members of staff are on holiday.

I'm satisfied that there should be an entry in the credit files in relation to the accounts that were included in the settlement letter. That's because those accounts weren't paid off in full. So the position is as follows:

- if there were any missed payments on any of the accounts before 2 September 2012, those missed payments should be recorded on those accounts.
- once the proceeds of sale were paid on 2 September 2012, all the accounts should have been marked as 'part settled' from that date.

HSBC says *'there was never a commitment to close off accounts within any specific time frame'*.

But the settlement letter says that Mr and Mrs C must pay cleared funds in the minimum amount of £244,715 *'...in full and final settlement of their liability in respect of the following accounts ...'* and that *'...This offer will expire on the 4<sup>th</sup> September 2012 and if the funds are not received by the Bank on or before that date, the full debt will become payable immediately...'* The funds were paid on 2 September 2012.

But I'm also satisfied that HSBC didn't make it clear – when it used the words *'full and final settlement'* in the settlement letter – that the accounts would in fact be considered part settled from a credit reporting perspective. HSBC also made no mention in the settlement letter that it might not settle those accounts until it thought fit to do so – at some point in the future unknown to Mr and Mrs C.

I think HSBC should have explained to Mr and Mrs C the implications for them of entering into the agreement insofar as it would affect their credit files. Although HSBC is entitled to register adverse information, its use of the words *'full and final settlement'* was misleading in this context.

I'm satisfied that there was a lack of clarity by HSBC in explaining the credit-reporting implications for Mr and Mrs C before they accepted the bank's terms in the

settlement letter. The settlement letter created a reasonable expectation on the part of Mr and Mrs C that the accounts would be settled from early September 2012.

I'm also satisfied that HSBC's handling of the complaint was poor and led to unnecessary delay, which in turn affected the date when HSBC decided to record the adverse credit information.

In summary:

- I'm satisfied HSBC is entitled to register credit information against Mr and Mrs C;
- the information registered with the credit reference agencies should show the accounts as being 'part settled' from 2 September 2012, the date when HSBC received the funds as per the settlement letter;
- HSBC should have explained that it would register information in the settlement letter. Its failure to do so has led to trouble and upset for Mr and Mrs C;
- HSBC's handling of the complaint has been below the standard I would have expected. This has caused upset to Mr and Mrs C.

I explained that I intended to order HSBC to:

- amend Mr and Mrs C's credit files to show the affected accounts as 'part settled' from 2 September 2012;
- pay Mr and Mrs C compensation of £500 for trouble and upset.

### ***response to provisional decision***

HSBC didn't respond to my provisional decision.

Mr and Mrs C's solicitors responded. In summary they say that, as far as they and Mr and Mrs C were concerned, 'full and final settlement' meant that the debts were repaid in full and so shouldn't be shown as 'part settled' on the credit file.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I don't intend to depart from the conclusions reached in my provisional decision.

As I said in my provisional decision, I think HSBC ought to have made Mr and Mrs C aware of the implications for their credit file of not repaying the whole amount due to HSBC.

I've noted what the solicitors have said. But agreeing to accept a payment 'in full and final settlement' is not the same as a debt being repaid in full. Mr and Mrs C did not repay their debts in full. They repaid only about 50% of what they owed HSBC.

In the circumstances, I'm satisfied HSBC was entitled to register the debts as 'part settled'. But the credit entries should be from 2 September 2012, when the payment was made.

I appreciate Mr and Mrs C feel strongly about this. HSBC agreed to write off the remaining balances and not try to recover the full amount it was owed. So the debts were part-settled, not paid in full. The credit files must reflect this.

If Mr and Mrs C still believe HSBC has registered incorrect data against them with credit reference agencies, they will need to pursue this with the Office of the Information Commissioner. This is the organisation responsible for the registration of data in England and Wales.

I'm also satisfied HSBC's handling of this matter was below the standard I'd have expected. So I think a payment for trouble and upset of £500 is fair and reasonable.

### **my final decision**

My final decision is that I uphold this complaint. In settlement I order HSBC Bank Plc to:

- amend Mr and Mrs C's credit files to show the affected accounts as 'part settled' from 2 September 2012;
- pay Mr and Mrs C compensation of £500 for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 4 January 2016.

Jan O'Leary  
**ombudsman**