

complaint

Mr S complains that HSBC Bank plc recorded a default on his credit file unfairly.

background

In July 2012 a debt management company contacted HSBC on Mr S's behalf. It explained that he'd sought its advice on dealing with his financial situation, and said it was likely that Mr S would need to enter a supervised informal arrangement. It asked HSBC not to take any further action, and it said it expected to be able to send repayment proposals within six weeks.

Ten days later, HSBC wrote to Mr S saying it had reviewed his overdraft limit to make sure it was appropriate to his circumstances. It noted that his account was more than £1,800 overdrawn and recommended that he pay at least £760 into his account within the next month to help ensure that it could maintain his overdraft limit at the existing level.

A couple of weeks after HSBC wrote to Mr S, the debt management company sent HSBC details of his income and expenditure, and offered to make payments of a little over £50 per month to the account. It started making the payments a few days later.

In February 2013 HSBC wrote to Mr S to say he hadn't made the recommended monthly payments to his account. His overdraft facility would be cancelled a month later and he'd be required to keep the account in credit for at least 12 months. It said that if Mr S thought the removal of the facility would leave him unable to meet essential living expenses, he should complete an affordability form and contact it immediately. It could then work out how soon he could afford to reduce his overdrawn balance and might be able to find a solution that would enable him to use his account while reducing his debt. It enclosed a leaflet about sorting out financial difficulties, and provided details of free debt management organisations.

In March 2013 HSBC wrote to Mr S to say his formal overdraft facility had been withdrawn. The debt management company continued to make monthly payments of more than £50 to the account on Mr S's behalf. And it increased the amount by a few pounds from June 2013. This would have cleared the balance outstanding at that stage within 2.5 years.

In July 2013 HSBC sent Mr S a notice warning him that as it hadn't received a satisfactory payment proposal, it would demand full repayment of the balance and terminate any overdraft facility after seven days unless he made payment. And it warned him that if he didn't make payment it might pass his details to a credit reference agency and transfer his account to a debt collection agency.

In August 2013 HSBC sent Mr S a final demand, explaining that it hadn't had a satisfactory response to its previous letter. It gave him 18 days to repay in full. And it said that it would provide details of the default to credit reference agencies if Mr S didn't provide a satisfactory response.

The following month, HSBC wrote to Mr S to tell him that as his balance hadn't been settled, his account was being referred to a debt collection company. It closed the account with an outstanding balance of more than £1,400 and recorded a default on Mr S's credit file. It marked the default as satisfied in April 2015, when Mr S cleared the outstanding balance. But HSBC has explained to Mr S that it will remain on his credit file until September 2019.

Mr S says that in 2011-12 he experienced severe problems with his health and his finances. He set up a debt management plan with the debt management company. He says the plan lasted for three years, and he paid the most that he could afford, and increased his payments each year. He never missed a payment. By early 2015 he'd repaid the debt in full. He thinks it's unfair that HSBC recorded the default, as it knew about his circumstances, and he was paying the debt off. He says his relationship with HSBC didn't break down and he kept in contact with it through the debt management plan.

HSBC acknowledges that payment arrangements were agreed and that Mr S made payments under them. But it says the arrangements were informal, based on what Mr S could afford. So the account was still subject to its collections procedures.

our adjudicator's view and HSBC's response

Our adjudicator recommended that the complaint should be upheld. In summary, he said HSBC knew that Mr S was in financial hardship. And it shouldn't have been in direct contact with him about the debt, as he'd been making payments through a debt management company from August 2012. He thought Mr S had made the agreed payments throughout, and that HSBC had been happy to accept them. And he wasn't satisfied that HSBC had sent a default notice. So he recommended that it remove the default from Mr S's file and pay him £100 to reflect the trouble and upset he'd been caused.

After the adjudicator issued his view, HSBC explained that it doesn't send default notices for current accounts. The pre-demand and final demand letters serve the same purpose in relation to current accounts. And it's required by law to send them to the customer at the latest known address and not send them through a third party. It says it has no record of any correspondence from a debt management company, and they'd usually show on its systems. It still believes that the default shouldn't be removed, because it sent the pre-demand and final demand letters correctly, and allowed Mr S enough time to repay the debt.

But our adjudicator explained that he was still concerned that HSBC had no record of what had been agreed with the debt management company. And although he accepted that it might have written to Mr S about the situation, he said he'd have been told by the debt management company to ignore any letters he received. He thought HSBC ought to have been aware that Mr S was vulnerable and struggling financially. Given that Mr S maintained payments under the plan throughout, his view remained unchanged.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr S and to HSBC on 22 June 2016. I summarise my findings:

- HSBC asked Mr S to reduce the overdraft by £760 in July 2012 and he hadn't done so a year later. Overdraft facilities are payable on demand. So HSBC was entitled to withdraw Mr S's overdraft facility at any time. Mr S offered to reduce the overdraft by monthly payments. I acknowledged that he was struggling. And I accepted that he offered all that he could afford. But it would have taken more than two years to clear the balance outstanding at that point, unless Mr S was able to increase his payments. And interest was still being applied to the account.
- It wasn't clear whether HSBC told the debt management company that the payments Mr S was offering weren't enough for it to set up a formal repayment arrangement. But

even if it had explained this, I thought it unlikely that Mr S would have been able to increase the payments significantly.

- Given the time it was likely to take Mr S to clear the overdraft, I found it was reasonable of HSBC to default the account when it did. The default was an accurate reflection of the state of the account. I accepted that HSBC gave Mr S appropriate notice that it was going to register the default. And once the account was defaulted, HSBC stopped applying interest to it. This was to Mr S's benefit.
- It's not unusual for banks to send letters to an accountholder who's using a debt management company. It's unfortunate that HSBC wrote directly to Mr S, asking him to pay a lump sum into his account so soon after the debt management company had told it he was experiencing financial difficulties. I thought it should have been clear that repayment of a significant lump sum was unlikely to be realistic at that point. But although HSBC was aware that Mr S was experiencing financial difficulties, he's explained that he didn't tell it about his mental health problems. And although I could understand that this may have made the impact of receiving correspondence from HSBC worse, I didn't find that I could fairly require HSBC to pay Mr S compensation for writing to him directly.
- Mr S had pointed out that HSBC didn't record a default against his credit card, even though it was part of the same debt management plan. But HSBC had explained that the debt on the card was small enough that it was willing for the repayment plan to continue without the need to pass it to its debt recovery team, and without defaulting the account. And the fact that HSBC didn't register a default on the credit card account didn't alter my view that it was reasonable to record a default against the current account.
- I was sorry to disappoint Mr S. I realised he'd worked hard to clear his debt. And I didn't underestimate how strongly he feels about the way HSBC dealt with him. But having considered everything that had been said, I didn't find that I could reasonably require HSBC to remove the default or compensate him.

further submissions

Neither HSBC nor Mr S has made any comment on my provisional decision, or provided any further information.

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 see any reason to depart from the conclusions in my provisional decision.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 September 2016.

Juliet Collins
ombudsman