

complaint

Mr K complains that in 2011 HSBC Bank Plc registered a default in respect of his credit card arrears after previously registering a default for the same arrears in 2000.

background

Mr K held a HSBC credit card. In 2000, following non-payment of an outstanding balance, HSBC registered a default on the account – this remained on Mr K's credit file for six years.

Mr K made ad-hoc payments to reduce the outstanding balance on the account but stopped making them in 2010. A second default was registered on the account in 2011 and Mr K was pursued by a debt collector.

Mr K says his credit worthiness has been affected for six years by the default registered in 2000, and HSBC should not be able to default the same account again – effectively extending the period of adverse information on his credit file for the same debt.

Mr K initially contacted the Information Commissioners Officer (ICO) about the matter. HSBC indicated to the ICO that it registered the 2000 default in error, and that the 2011 default is valid.

Our adjudicator went on to consider the registration of the 2011 default and ultimately recommended that this complaint be upheld.

The adjudicator pointed out that the ICO said a default cannot be registered more than once in relation to the same debt. Therefore, she considered that HSBC had acted in error by registering the default in 2011. She recommended HSBC remove the 2011 default entry and all related adverse history. She also recommended it pay Mr K £250 to reflect the distress and inconvenience he has been caused by HSBC's error.

Mr K says he would accept the conclusions of the adjudicator if HSBC does. But he says he does not think the compensation is enough. He says that HSBC has been inconsistent and contradictory and has caused the matter to go on longer than it should have. Mr K has indicated a compensation figure of £750 would be more appropriate.

HSBC disagrees with the adjudicator's findings. In summary, it says that the default registered in 2011 does not relate to the same instance of arrears which prompted the registration of the default in 2000. It says that if a default is satisfied and the account falls into arrears again a further default may be issued.

my findings

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

As part of my decision I will be referring to the default registered in 2000. However, for clarity, I am not making a finding as to whether this default was correctly registered – Mr K does not appear to dispute this. I will only be making a finding in relation to Mr K's complaint about the registration of the 2011 default.

Also, later in his case Mr K has complained that HSBC gave him information in error which he says may have caused him to get involved in unnecessary legal proceedings with the debt collector. I consider this a separate matter to his original complaint, and as it relates to on-going legal proceedings any potential losses have not yet been quantified. Therefore, I will not be making a finding on this issue here – if Mr K decides he wants to pursue this matter as a new complaint he may do so.

Where the evidence is incomplete or inconclusive, as some of it is here, I make my findings on the balance of probabilities – which is to say what I find is most likely to have happened based on the evidence available and the wider surrounding circumstances.

HSBC has limited information available about the credit card account prior to 2007. Initially it indicated to Mr K that no default had been registered in 2000. However, it appears to now accept that a default was registered on the account in 2000 – and from the information available to me I am also satisfied this is the case.

The available account history appears to only show payments made to the account – which satisfies me that, on balance, Mr K has not incurred new spending on the credit card since the default in 2000. On balance, I am satisfied that the 2000 and 2011 defaults relate to the same debt. I am also satisfied from the information given to me that the balance payments Mr K made after the original default were not under a new formal arrangement to pay.

The ICO has made it clear that in these circumstances a default should not be registered again for non-payment. Because a default has already been registered on Mr K's credit file in 2000, I consider that HSBC has acted in error by registering the 2011 default.

HSBC has suggested to the ICO that the 2000 default was registered in error and that the correct default is the one issued in 2011. However, whether the first default was rightly or wrongly registered, I do not consider that it can be fairly disregarded here as Mr K has been subject to it on his credit file for six years.

If there had been no default registered on the debt in 2000 I am satisfied, on balance, that Mr K's non-payment activity on the account from 2010 onwards may have justified HSBC's registration of the 2011 default. However, in the circumstances, and in line with the ICO guidance, I consider that, as Mr K has already been subject to one default on the debt, it is not reasonable that he should be subject to another.

I find it fair and reasonable that HSBC remove the 2011 default from his credit file along with all adverse information relating to it. I also think it should pay Mr K compensation for the distress and inconvenience caused by its error.

I do not consider that HSBC has been consistent in its handling of this matter. Its responses to Mr K, the ICO and this service have been somewhat contradictory. I am persuaded that Mr K has been caused unnecessary distress and inconvenience by HSBC's handling of this matter and that any award of compensation should take this into account.

I appreciate that Mr K has indicated he thinks an award of £750 would be appropriate here. However, I am not persuaded that the distress or inconvenience in this instance would justify such an award. I remind Mr K that the awards this service recommends for distress and inconvenience are typically modest. In these circumstances, and having regard to the general level of award this service makes, I consider an overall award of £300 is fair.

my final decision

My final decision is that I uphold this complaint and direct HSBC Bank Plc to:

- remove the 2011 default and all adverse information in relation to it from Mr K's credit file;
- pay Mr K £300 for the distress and inconvenience caused by it applying the second default in error, and its overall handling of his complaint.

Mark Lancod
ombudsman