

complaint

Mr M complains that HSBC Bank Plc won't accept that it should've defaulted his loan account sooner and won't change the information on his credit file to reflect this.

background

I set out the background to this complaint and my initial findings in my provisional decision, a copy of which is attached and forms part of this final decision. In that I explained why I was likely not to uphold Mr M's complaint and I invited both parties to respond with anything they thought was relevant.

HSBC said it had nothing more to add.

Mr M replied and in summary he said:

- there are inaccuracies in my report about when he first started making reduced payment and first went into arrears;
- he repeated the Information Commissioner's Office (ICO) guidance about registering defaults - *"As a general guide, [a default may be recorded] when you are 3 months in arrears, and normally by the time you are 6 months in arrears."*; and
- he repeated the fact that two of his other creditors defaulted him sooner and so the information has expired from his credit file – it's over six years ago.

my findings

I've reconsidered the relevant issues as I set out in my provisional decision as well as all the evidence from the outset in order to decide what is fair and reasonable in the circumstances.

Having done so, I've not changed my mind – I've reached the same conclusion as I set out in my provisional decision and for the same reasons.

As I set out in my provisional decision, I wouldn't expect HSBC to have defaulted Mr M's account immediately he fell into arrears. As I said Mr M continued to make payments to his account albeit of reduced amounts. And although his account was in some arrears, his payments were not so low or sporadic – such as minimal or token payments – to put his account significantly and quickly in arrears. And I remain of this view.

In relation to Mr M's comments about the ICO guidance – I can only repeat what I said before that I can't see HSBC acted contrary to this.

And finally as I've also said, it's not appropriate for me to pass comment on Mr M's other creditors' decision to default his accounts sooner.

my final decision

For the reasons set out in my provisional decision and as above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 February 2016.

Paul Featherstone
ombudsman

copy of provisional decision

complaint

Mr M complains that HSBC Bank Plc won't accept that it should've defaulted his loan account sooner and won't change the information on his credit file to reflect this.

background

Mr M says HSBC should've placed his account in default when he first got into financial difficulty and fell behind with the repayments on his loan - more than 12 months earlier than it did. Mr M says this is what his other creditors did. Mr M wants RBS to amend the date of the default on his credit file.

HSBC says it won't do that. It said it received a request to reduce his loan repayments from a third-party Mr M had sought help from shortly after he experienced financial difficulty. It said that it accepted this on the basis that the loan was restructured. It said despite sending out new loan agreement papers it didn't hear back from Mr M.

Mr M continued to make some payments to the existing loan account. But he accumulated some arrears. HSBC continued to send default notices. It then sent a final demand to Mr M about nine months after it received the reduced payment request.

But HSBC says it didn't take action at this point because Mr M continued to make payments – it reduced his arrears. It finally took action a couple of months later when Mr M's account was more than six months in arrears. It then registered a default on Mr M's credit file.

Our adjudicator thought the complaint should be upheld. While she disagreed with Mr M that HSBC should've placed his account in default when he first went into arrears, she thought HSBC could've acted sooner. She said it should've defaulted the account after the expiry of HSBC's final demand notice. She recommended HSBC change the default date on his credit file to reflect this.

She also said she felt HSBC should've chased Mr M for the restructured loan agreement papers. So because of this and because of the delay in defaulting his account, she recommended HSBC pay Mr M £150.

HSBC disagreed. It said the reason for the delay in defaulting Mr M's account was because Mr M wasn't six months in arrears. Only when he was did it decide to take action. It said it believes it acted positively and sympathetically towards Mr M and gave him every opportunity to rectify the situation.

It said it didn't think it was appropriate to chase Mr M for the restructured loan papers for fear of being seen to pressure him into it. It concluded by saying that the default is correct and it doesn't see how changing the default by a couple of months will have any impact on Mr M.

The complaint therefore comes to me to decide.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I agree with the adjudicator that it wouldn't be right to tell HSBC to backdate the default to the time when Mr M first fell into some financial difficulty as he's requested. I think this would've been too hasty.

While Mr M had sought the advice from a third party to help him manage his affairs and it had proposed a new repayment amount, I don't think this proposed amount was significantly lower to put

HSBC on notice that the relationship had broken down. Or to the extent that placing the account in default was the right thing to do at this stage – I don't think HSBC was making substantial concessions by accepting the lower amount.

Mr M continued to make payments to his account over the coming months. And although his account was in some arrears, his payments were not so low or sporadic – such as minimal or token payments – to put his account significantly and quickly in arrears. I've not seen any evidence to suggest HSBC should've taken formal action prior to it issuing Mr M with a final demand.

But should HSBC have defaulted Mr M's account at the expiry of the final demand notice?

I'm mindful of the fact and recognise the benefits of not allowing a deteriorating financial situation to drag on – that could be detrimental to a consumer. But equally defaulting isn't a decision that should be taken lightly.

So while I agree that HSBC *could've* defaulted Mr M's account at the expiry of the final demand notice, I'm not persuaded it would be fair to say that it should've done. It didn't have to. So I don't think it did anything wrong. And I'm mindful that changing the date by only a couple of months won't make a *material* difference to Mr M anyway.

I can see Mr M's referred to the Information Commissioners Office (ICO) technical guidance on registering defaults. But I've not seen evidence to indicate HSBC's acted contrary to this.

I know Mr M's also referred to his other creditors who took the decision to default his accounts sooner. But I don't know the specific circumstances of these and I don't think it would be appropriate for me to comment on them as part of this complaint about HSBC.

In relation to the restructured loan papers – I agree that HSBC might've followed this up with Mr M. But I don't think its failure to do so deserves a payment of compensation. I don't think that'd be fair. HSBC provided Mr M with a solution to help him, but Mr M chose – for whatever reason – not to accept it.

So overall because I don't think HSBC has done anything wrong – the information it's recorded on Mr M's credit file is fair and accurate, it doesn't need to do anything to put things right.

my provisional decision

For the reasons I've set out above, I'm likely not to uphold this complaint.

Paul Featherstone
ombudsman