

## **The complaint**

Mr H says that HSBC UK Bank Plc, who I'll call "HSBC", were wrong to default his loan account.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

## **What I've decided – and why**

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

I know it will disappoint Mr H, but I don't think HSBC have been unreasonable here. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When Mr H called HSBC and an agreement was reached to extend his token payment plan of £30 per month towards his debt, the agent wrongly told him that a default notice and final demand wouldn't be issued.

Mr H says he didn't notice that the standing order the agent had told him was coming out of his account wasn't being taken. I understand that may have been the case given the relatively modest sum involved.

But a few days after Mr H's call with HSBC in June 2022 they did send him a default letter. That default notice said:

*"Thank you for getting in touch about making lower monthly payments - we encourage you to pay what you can afford, but unfortunately these payments aren't enough to pay off the overdue amount within a reasonable time."* And the letter went on to explain the account would be defaulted unless the arrears were paid off.

As Mr H had been told he wouldn't be issued with a default notice and as the default notice explained his token payments weren't enough, I think it would have been reasonable for Mr H to have contacted HSBC at that point and question why he had received a default notice.

I've considered whether that would have changed anything, but I don't think it would have.

The Information Commissioner's Office (ICO) says when a consumer is at least three months behind with their payments then a default may be registered. And it would expect a default to be registered by the time the consumer is six months behind with their payments.

Generally speaking, we're likely to take a similar view as the ICO whilst considering what was fair in the individual circumstances of the complaint. We think it wouldn't be fair if the business didn't record the default by the time the consumer is between three and six months in arrears, as by this point it'd be clear they weren't able to make their contractual payments.

When a consumer is only able to make token repayments towards a debt the creditor is entitled to continue with its usual collections and recoveries process and treat the account in default if it is sufficiently in arrears. So, while HSBC may have made a mistake when explaining a default wouldn't be applied they didn't need to stand by that mistake, and if they had I think they'd likely be in conflict with the ICO's guidance, as they'd be allowing the debt to persist when the evidence suggested Mr H was unlikely to be able to meet his contractual obligations and he was already over six months in arrears.

But it's only fair that HSBC compensate Mr H for the mistake it made as the mistake has clearly caused Mr H some distress and inconvenience. HSBC paid Mr H £150 compensation, and, in the circumstances, I think that was reasonable.

Mr H has suggested there were other calls with HSBC after the account was defaulted that could assist with this investigation, but I've not been provided with those calls and don't think they'd be likely to be helpful. There's no dispute that the account was significantly in arrears and that in those circumstances HSBC would be expected to default the account and I'm satisfied they have compensated Mr H sufficiently for the poor advice they provided.

### **My final decision**

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 August 2023.

Phillip McMahon  
**Ombudsman**