

The complaint

Mr M complains that HSBC UK Bank Plc (“HSBC”) defaulted his loan account, even though he was making repayments each month.

What happened

Mr M has held a loan account with HSBC for several years. In 2020, HSBC agreed a deferral of his monthly repayments due to the covid-19 pandemic. After the deferral arrangement ended, HSBC agreed numerous payment plans and periods of breathing space with Mr M as he wasn’t able to make the full contractual repayment each month. A token payment plan was in place from November 2022. At around the same time, HSBC told Mr M that it planned to default his account.

Mr M was very unhappy about this as he had kept up payments under each of the plans, including the latest token payment plan. He wanted to keep making the payments until the debt was fully repaid and asked HSBC not to default the account.

But HSBC said it couldn’t stop the collections process given Mr M’s circumstances and the level of arrears, which equated to around 18 missed payments. It said it would send him a Final Demand, requiring payment of the full outstanding balance. HSBC said that, if Mr M’s account was defaulted, it would back-date the default to December 2020.

The Final Demand was sent to Mr M on 20 January 2023. His account was defaulted in February and is currently with HSBC’s Repayment Services team. Mr M is very unhappy about this and asked this service to look at his complaint. He would like HSBC to remove all adverse entries about the loan from his credit file and allow him to continue making payments under the payment plan until the loan is repaid in full.

Our Investigator thought that HSBC had acted reasonably and didn’t ask it to do anything. But Mr M didn’t agree and asked for the complaint to be reviewed by an Ombudsman.

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.

Having done so, I don’t think HSBC acted unreasonably here. I realise Mr M feels strongly about the situation and I’m sorry to disappoint him. But I’m afraid I’m not going to ask HSBC to do anything. I’ll explain why.

Under Mr M’s loan agreement, he is required to make a repayment each month. The amount of that monthly repayment is fixed. Mr M’s loan statements show that he made the contractual payments in full by way of one payment to the loan account every month up until February 2015. From March 2015 until March 2020, Mr M continued to pay the contractual amount each month, but as two separate payments rather than one.

Mr M says that the problems began before March 2015, when he tried (unsuccessfully) to find someone at HSBC who could make a decision to allow him a bit of leeway on the loan repayments so that he could recover from an operation. I don't doubt what Mr M says about this and I can appreciate it was frustrating if he wasn't able to have a meaningful conversation about his situation with anyone at the bank. But I don't think the current issue with the default is related to anything that happened in 2015 or earlier. I'll explain why.

The covid-19 payment deferral was in place until July 2020. HSBC didn't expect Mr M to repay the missed payments until a later date and said his credit file wouldn't be adversely affected by the deferral. I think that was fair. Mr M resumed payments in August 2020. But the payments he made from this time onwards were all less than the contractual amount.

From August 2020, Mr M was continuously on a payment plan or breathing space. He made monthly payments and kept to the payment plans. The amount which he was paying under these plans varied from time to time, but it was always significantly less than the contractual payment. So, although Mr M made monthly payments from August 2020 onwards, they were all less than the amount he was obliged to pay under the loan agreement. Therefore, arrears began to build up and continued to do so over this period of time.

A default occurs when a customer fails to meet certain obligations under their loan agreement. This is usually when arrears have built up to an unacceptable level, generally between three and six months. Where a customer enters into a short-term arrangement to pay less than the contractual amount each month, I wouldn't necessarily expect the business to treat this as a default. Here, Mr M entered into several such arrangements, in the form of payment plans of three or six months. HSBC accepted lower payments for these periods, but Mr M's obligations under the original loan agreement didn't change. HSBC didn't treat the account as being in default while these arrangements were in place and maintained contact with Mr M, agreeing new plans from time to time and writing to him to confirm these. I think that was reasonable.

But, where the payments under such arrangements are substantially less than the contractual payment, or are for a token amount only, I think it's reasonable for a business to treat the account as being in default. Here, Mr M made a new arrangement with HSBC in November 2022, under which the amount he was going to pay each month was reduced again. HSBC treated this as a token payment arrangement. This is the point at which HSBC appears to have decided to follow the default process. I think that was reasonable.

By this time, the account was around 18 payments behind schedule. I think it was fair that HSBC had worked with Mr M up to this point and hadn't defaulted the account. The information I've seen indicates that it had suppressed Default Notices during this period, which I think was fair. But, in November 2022, I think it was reasonable to view the account as being in default. I say that because of the level of arrears, the continual arrangements to pay over a long period of time, the fact that Mr M wasn't able to increase the payments and the fact that there was no arrangement in place to clear the arrears.

I would usually expect a business to treat an account as defaulted by the time a customer is six months in arrears with no arrangement in place to clear them. As I have said, I think it was reasonable that HSBC didn't default the account before, allowing Mr M plenty of opportunity to bring it back on track. But, by November 2022 it was looking unlikely this would happen, so I think it was reasonable for HSBC to proceed with its collections process, ultimately defaulting the account in February 2023. As Mr M hadn't been able to make the contractual payments since mid-2020, I think HSBC's decision to backdate the date of the default to December 2020 is fair.

Mr M says that HSBC didn't make it clear that his account could be defaulted even though it was agreeing payment plans with him. I find that HSBC sent Mr M seven Notices of Sums in Arrears under the Consumer Credit Act 1974 in the period from June 2020 to December 2022. I have also seen copies of numerous letters it sent him over the same period, many of which said that, if he didn't make payments to bring his account up to date, it would continue its collections process which may involve sending a default notice. So, I'm satisfied that HSBC provided Mr M with details of the arrears and made him aware that the account could be defaulted if they weren't cleared. And I find that it gave him notice of the default, and the chance to stop this by paying off the arrears, before it went ahead with the default.

In conclusion, I think HSBC acted fairly and reasonably here. I realise Mr M will be disappointed by my decision and I'm sorry for that. But, in the circumstances, I'm not going to ask HSBC to do anything.

My final decision

For the reasons 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 15 December 2023.

Katy Kidd
Ombudsman