

The complaint

Mr P complains about the way HSBC UK Bank Plc have treated him in respect of his financial difficulties.

What happened

The detailed background of this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr P had an overdraft on an account he had with HSBC. In summary, Mr P complains that HSBC:

- would not continue a £1 a month token arrangement in respect of account arrears and instead defaulted and closed the account and passed it to a debt collection company
- did not send him a default notice and final demand letter

HSBC said it hadn't treated Mr P unfairly. HSBC said it put a token payment arrangement plan in place for Mr P in May 2023 for six months. This was Mr P's third token arrangement plan and was due to run until November 2023. Previous token arrangement plans had been applied to Mr P's account between July 2022 and May 2023. HSBC say because Mr P had a plan in place for along time it told him during a phone call on 23 May 2023, that he might receive a default notice, and a final demand notice. HSBC also say it told Mr P that his account would close and be passed to its collections team.

HSBC sent Mr P a default notice on 6 June 2023 and a final demand letter on 29 June 2023 telling Mr P that he needed to repay what he owed by 17 July 2023. As Mr P didn't pay the outstanding balance by 17 July 2023, HSBC closed Mr P's account with an outstanding balance of £2,477.87 and passed the account to its collections team on 22 August 2023.

On 29 August 2023, Mr P's account was passed onto a debt collection agency to collect the debt on behalf of HSBC.

Mr P brought his complaint to our service where one of our investigators considered it. She didn't uphold the complaint. So it has come to me for a final 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.

Having done so, I don't think HSBC acted unreasonably or treated Mr P unfairly here. I understand Mr P feels strongly about the situation and I'm sorry to disappoint him. But I'm not going to ask HSBC to do anything. I'll explain why.

In deciding what's fair and reasonable here I've taken into account guidance issued by the Information Commissioner's Office (ICO) which says when a consumer is at least three months behind with their payments then a default notice may be registered. And it would expect the default to be registered by the time the consumer is six months behind with their payments. I've also taken into account relevant rules and guidance that are contained in The Financial Conduct Authority's Consumer Credit Sourcebook, (CONC), which sets out that firms should treat consumers in default or in financial difficulties with forbearance which would include such things as accepting token payments for a reasonable period of time, waiving or cancelling any further interest or charges.

The key issue I need to decide here is whether HSBC has treated Mr P fairly in respect of a debt that appears to have resulted from use of his current account. Mr P had an overdraft debt of just under £2,500 that he needed to pay back and in order to do so was on a £1 a month token payment plan with HSBC. Mr P had three token arrangement plans put in place. The first one started in July 2022 and more recently another ran from May 2023 and was due to end in November 2023 before HSBC eventually decided to default the account, close it down and pass the debt to a collections agency.

From July 2022, Mr P was continuously in a token payment plan – he made monthly payments of one pound which was significantly less than what was needed to clear the debt he owed HSBC within a reasonable period of time. Therefore, as Mr P was unable to repay the entire overdrawn amount, and was only able to make token payments, he was in arrears.

From looking at all the evidence, including listening to a call recording of a phone conversation Mr P had with HSBC on 23 May 2023, I can see that Mr P had informed HSBC of his financial struggles. I can see that as a result of ongoing interactions with Mr P, HSBC continued to grant token payment arrangements on the account for a several months. Yet the overdrawn balance still wasn't cleared, and things did not improve significantly.

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 time it'd be clear they weren't able to clear what they owe. When a consumer is only able to make token payments towards a debt the creditor is entitled to continue with its usual collection and recoveries process and treat the account in default if it is sufficiently in arrears.

Mr P says HSBC didn't make it clear to him that his account could be defaulted. He says he never received a default notice or final demand letter from HSBC. And he says HSBC shouldn't have defaulted him because he was making his agreed token payments.

Looking at the circumstances of this complaint, HSBC could have defaulted the account even sooner than it did here. Things had gone on for some time under several temporary arrangements without the balance being paid down. In June 2023, I think it was reasonable for HSBC to view the account as in default. I say this because of the level of arrears, the continued arrangements to pay over a long period of time (nearly a year), the fact that Mr P wasn't able to increase the payments and there was no arrangement in place to clear the arrears. It follows that in the particular circumstances here, despite Mr P's understandable desire to avoid a default, I don't think HSBC acted unfairly in its eventual decision to default the account and pass it to a collections agency. And I don't think this was not treating him fairly in accordance with CONC or relevant ICO guidance.

I've seen copies of numerous letters HSBC sent to Mr P about his overdraft – including

- Letter sent 6 July 2022 setting out details of the token arrangement plan between 31 July 2022 and 31 December 2022
- Letter sent 18 November 2022 setting out the token arrangement plan between 15 December 2022 and 15 May 2023
- Letter sent 9 November 2022 due to a missed payment and asking Mr P to get in touch with the bank
- Letter sent 31 May 2023 setting out token arrangement plan between 14 June 2023 and 14 November 2023
- Default notice dated 6 June 2023
- Final demand dated 29 June 2023

From looking at the letters I've mentioned above, I'm satisfied that HSBC sufficiently communicated with Mr P about the plans it put in place for his account, the need to get his balance down and the action it was taking in respect of the outstanding debt (including issuing the final demand and default notice). So, I don't think it acted unfairly in this respect.

HSBC has also provided screenshots showing that the letters above were sent to Mr P's address. Mr P says he never received the default notice and final demand letter. But I can see that the letters are all correctly addressed. Mr P hasn't made this service aware of any problems he was experiencing with his post, so I think it's likely that the letters were received by him. Therefore, I'm satisfied that HSBC gave Mr P notice of the default, and the chance to stop this by paying off his overdraft, before it then went ahead with the default.

In summary, bearing in mind the above mentioned FCA and ICO guidance, I think HSBC have treated Mr P fairly, and with forbearance and due consideration. I say this because when Mr P couldn't pay off his overdraft, HSBC took his circumstances into account, and agreed to take token payments of only £1 for more than six months. They also suppressed all charges and interest during this period. And explained the implications, including the impact this would have on his credit file. So, when I weigh everything up, I am satisfied that the actions HSBC have taken are in line with ICO guidance and CONC rules. So, overall, I don't find HSBC has treated Mr P unfairly. And I won't be asking HSBC to do anything more to resolve Mr P's complaint.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 12 August 2024.

Sharon Kerrison
Ombudsman