

The complaint

Mr E said he owed some money on a credit card, but when he went to a branch of HSBC UK Bank Plc to pay it off, he was told it had been written off. Mr E says he doesn't have the money now, but he's being chased to pay this debt. He doesn't think he should have to pay.

What happened

Mr E was living overseas from early 2015. Mr E said that he got statements to his overseas address, but no correspondence about his credit card.

Mr E said he'd gone into a branch of HSBC in July or August 2016 to pay off his outstanding credit card debt, of a little under £10,000. But he said he was told then that the debt had been written off. Mr E said that he had an accident after this, and the money was used to pay medical bills, so he didn't have the money any more.

Mr E said he'd since found out that, sometime in mid-2016, HSBC went back on its word and sold his debt to a third party. Mr E said that he'd had no contact from this third party until summer 2020, when this third party wrote to his UK address and asked him to pay the debt. Mr E said that given what had happened, he didn't think he should have to pay.

Mr E then wrote again to say that he thought that there had been a mix-up, with HSBC writing to him under a different name. He has shown us that he has changed his name. Mr E thought that HSBC may have written off his debt, under one name, and then sold the debt under a different name.

Mr E also wrote to say that HSBC had referred to the credit card account using two different numbers, so again, he thought that HSBC must have written off the debt under one number, and reinstated it under another.

Mr E said that this debt had affected his application to remortgage, and had stopped him from moving house. So he said that he wanted HSBC to pay sizeable compensation. HSBC said it could find nothing to suggest it had cancelled Mr E's debt. It told us that it doesn't cancel debts of this size. It showed us letters it had sent to Mr E, asking for payment.

HSBC has said to Mr E that it's sorry if any communication in branch was unclear, but it had already asked a third party to help it recover Mr E's debt in July 2016. It's since shown us it has actually sold this debt to a third party, in 2017. HSBC wouldn't waive this debt now.

Our investigator didn't think this complaint should be upheld. He said that it would be very unusual for HSBC to cancel a credit card debt of this size. He said that whatever was said back in 2016 when Mr E was in the branch, it was likely that the staff just meant that the debt was no longer being pursued by HSBC, not that Mr E didn't have to pay. And if Mr E had understood he didn't need to pay, that didn't mean HSBC needed to waive this debt now.

Our investigator looked at the confusion around Mr E's name, and said he was satisfied the two names used in correspondence about the debt were the same person, and both names had been used by Mr E. So he thought if Mr E had received post sent to his old name, he

should have realised this was for him.

Our investigator said that although two account numbers had been used to refer to this account, that was just because one was the number on the card, the other was the number for the account. So he couldn't agree with Mr E that a balance outstanding was written off on one account number, or under one name, and then reinstated under a different account number, or with a different name.

Our investigator said he was satisfied that HSBC had acted fairly in closing Mr E's account, reporting its performance to the credit reference agencies and transferring any outstanding debt to a third party. He said there was no dispute that Mr E's account fell into serious arrears, so HSBC did have the right to close the account and demand full payment of any amounts outstanding.

Our investigator said that in these circumstances HSBC is also allowed to sell the debt on to a third party. And he thought that Mr E had been warned that this could happen, when HSBC sent Mr E a final demand. Even if Mr E didn't get the final demand letter of 3 April 2015, it was sent to the right address. And Mr E had spoken to HSBC only a couple of weeks before that, on 13 May 2015, so he knew the status of his account, and was aware of the arrears.

Our investigator said he understood what Mr E had said about going into the branch to pay off the debt, but HSBC had said a year earlier that it may sell this debt to a third party.

Our investigator didn't think HSBC had to do any more.

Mr E didn't agree, he said that our investigator's summary and view were both biased. He said that the statement that his debt was written off was made in front of a witness, although he didn't name this witness or offer any statement from them. He wanted to know why we hadn't got a statement from the HSBC staff member who told him the debt was written off.

Mr E said he didn't get any correspondence about his debt. But HSBC did write to him at his overseas address, sending him statements there. He said he'd received no correspondence about the debt from any third party until summer 2020, and HSBC had acknowledged that it had sold this debt without informing him first. Mr E said if HSBC hadn't written to him about this, then it should be prevented from enforcing the debt.

Mr E said that HSBC knew about his change of name, but it later reverted to using his old name. And he repeated that it wasn't using his overseas address for credit card correspondence.

Mr E said that we'd ignored two HSBC letters which confirmed the debt had been written off, and hadn't got a statement from a senior member of staff. Mr E said HSBC had been negligent, which was another reason why he didn't need to pay. He felt that the statement he has told us HSBC made, when he was in the branch, would be a negligent mistake, so HSBC would be liable because of this.

Mr E said that it defied logic for a credit card account to have a separate number to the card number.

Mr E said that if he'd been contacted about the debt, he would have explained the arrears had built up because he couldn't check statements, as they weren't being sent to him. He stressed that he had been paying his mortgage at the same time as this credit card debt was falling into arrears. And that, although the address HSBC wrote to about his credit card was the one on his mortgage, HSBC knew he wasn't living there at the time, from his card usage.

Mr E denied discussing his credit card with HSBC in early 2015.

Because no agreement was reached, this case was passed to me for a final decision.

My provisional decision

I issued a provisional decision on this complaint and explained why I did not propose to uphold it. This is what I said then:

Before I begin, I ought to stress that our service can only look into a complaint if Mr E has previously raised that point with HSBC, then brought it to our service. The complaint Mr E raised with HSBC was in two parts –

- that he was now being asked to pay this debt by a third party HSBC had sold the debt to, although HSBC told him in branch in 2016 that it had written off the debt.
- that he was also told during this 2016 branch visit that HSBC would forward post to him at his overseas address, but it didn't send him post after that.

That is the complaint that HSBC has previously had the opportunity to consider, and the only complaint I can address here.

I cannot consider the additional points that Mr E has sought to include now, such as why the arrears on his card built up, or that the account was closed without reference to him, or that the debt was sold without prior notice, or that his card account shouldn't have two numbers, or that HSBC wrongly reverted to using his old name. That's because our service isn't able to consider points that HSBC hasn't already had a chance to respond to.

I'll look at Mr E's complaint about his address first. Mr E said that HSBC told him it would forward post to him overseas, during his branch visit in July or August 2016. He said he was already living overseas at the time, but after this visit he still didn't receive post to his new address for this card.

Mr E has told us that he did receive other post from HSBC, including for his mortgage, but nothing for the card.

I can see that the final demand for Mr E's credit card debt was sent to his UK address on 4 April 2015. HSBC says it did then start to use his overseas address, because it sent correspondence to that address, starting 14 April 2015. But it appears that HSBC was unsure if Mr E was receiving this correspondence, because it wrote again to his UK address in July 2016, saying it had been having difficulty contacting him about his accounts, and asking him to get in touch.

HSBC says it has notes from October 2016 asking it to change Mr E's contact details back to a UK address, although different from his previous residence.

Mr E has told us he was getting information about his mortgage and other HSBC correspondence while he was overseas. But he said he didn't get information about his credit card. He's complained that this still didn't change, after he had been into the HSBC branch in July or August 2016, and asked HSBC to send further post to him overseas.

Mr E's credit card account had been closed for just over a year, by the time that Mr E has told us he went into the branch. HSBC says it can't see if it sent any

correspondence to Mr E after this, because of the passage of time. But it doesn't seem likely that HSBC would be sending statements or other regular account correspondence to Mr E after this date. I think that's most likely to be why Mr E didn't get further correspondence about his credit card whilst he was overseas. So I don't think Mr E's complaint on this point should be upheld.

HSBC has told us that Mr E's card debt wasn't sold to a third party until early 2017. And by this time Mr E had apparently asked HSBC to start using a UK address again.

Now I'll turn to what Mr E says he was told about this debt. Mr E has always said that a member of HSBC staff told him his debt was "written off". And he has assumed that, if he was told that his debt had been "written off" then this means that he has no further responsibility for paying any part of this debt.

I don't know if HSBC's staff member did say to Mr E that his debt had been "written off". I don't think it would be helpful now to ask this staff member, as they are unlikely to have a clear and specific recollection of a single interaction around five years ago.

But even if this was said to Mr E, I wouldn't assume that this meant HSBC had to cancel this debt now.

Firstly, I would have to be able to see that Mr E had relied on what HSBC told him. I know Mr E has told us he doesn't have the money now, but he said that's because he had an accident, and medical bills used up his savings. It's not because Mr E relied on what HSBC said, and chose to spend this money elsewhere.

And I'd have to be able to say that what was said was wrong, as well as that it was reasonable for Mr E to rely on this. I don't think I could do that either, and that's because this term just doesn't have one agreed meaning. In my experience, banks use the term "written off" in different ways. Some will use it to mean a debt never has to be paid by anyone. Others will use it in the accounting sense, so it simply means that the bank is no longer expecting that it will receive the full amount in repayment, and has made the relevant accounting adjustment.

So even if Mr E could show that this was exactly the statement made to him in 2016 by an HSBC staff member, that his debt had been "written off", I don't think that would mean HSBC has to take steps now to prevent the third party who has bought this debt from enforcing it.

I have seen no other evidence to suggest to me that HSBC didn't intend Mr E to have to pay any part of this debt. And HSBC has been clear that it doesn't cancel debts of this size.

Again, that fits with what I would expect, and my previous experience. So I don't think that was ever HSBC's intention.

I don't think that HSBC has to cancel this debt now.

I know Mr E will be disappointed, but I don't think this complaint should be upheld.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both parties replied.

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.

HSBC simply said it had nothing further to add.

Mr E said he felt HSBC should be estopped from enforcing this debt, because, if it was its intention not to write off this debt, then it could have sent him an electronic encrypted message to say so. He sent us evidence that HSBC is able to send messages like this promptly when he misses a mortgage payment.

Mr E said that this late payment notification from HSBC was wrong, and that showed HSBC does make mistakes.

He said similarly, when a senior HSBC bank official says that a debt is written off, then HSBC shouldn't be allowed to take that back. Mr E didn't agree with me that there was no one agreed meaning of this term, he thought it only meant the debt was unenforceable.

Mr E said that HSBC could always have taken money from his other account to make the payment, and he wanted me to consider that it failed to do so.

Mr E said that I had been remiss in not considering that he was unable to audit his credit card account while he was away from home. Mr E said he felt deprived of legal rights, and I hadn't been fair and even-handed.

Mr E also said that I'd made a mistake in what I'd said about whether he'd spent the money allocated to repay the credit card on medical bills. I said it didn't look as if he had relied on HSBC's statement when he spent this money, but Mr E said that the distinction was hollow and void as the end result is the same. He said this was all the after effect of HSBC's pronouncement to write-off the debt. He said he had relied on that.

And Mr E also said that I wasn't correct to say that HSBC hadn't written off large sums. Mr E mentioned news items when large sums had been written off, and he said that the reality is that HSBC along with other banks constantly write off bad credit card debts with bankruptcy and company liquidation running into millions if not billions. He wanted to know why he was treated differently.

Finally, Mr E wanted me to look at the big picture, he said that there was a litany of failures on the part of HSBC over a lengthy period of time. He said that this was contributory negligence, and it was indefensible, as was the right to audit the credit card transactions. He quoted a famous legal saying about estoppel, that it is a shield not a sword. He asked me to follow this, and uphold his complaint.

I think I should start my response to what Mr E has said, by setting out again that I'm only allowed to consider the complaint that Mr E has already asked HSBC to respond to. The complaint Mr E raised with HSBC was in two parts –

- that he was now being asked to pay this debt by a third party HSBC had sold the debt to, although HSBC told him in branch in 2016 that it had written off the debt.
- that he was also told during this 2016 branch visit that HSBC would forward post to him at his overseas address, but it didn't send him post after that.

So I can't consider what Mr E says about how this debt built up, and in particular that he didn't have the opportunity to check his credit card transactions while he was overseas, or that HSBC could've taken money from a different account to pay his card. That's simply

because those points weren't part of the complaint that Mr E asked HSBC to look into, then referred to us.

I know that Mr E disagrees with me about the meaning of "written off". But I still think that it has the meanings I set out in my provisional decision. So I don't think that HSBC ever made a clear statement to Mr E that it intended to cancel his debt, or that it had done so.

Mr E said that HSBC should've sent him an electronic message on his account if it didn't intend that this debt would become unenforceable. But I haven't been able to see that HSBC did ever state clearly to Mr E that it did intend to cancel his debt, or that it had already done so. In other words, I don't think HSBC had said one thing, then later changed its mind about this. And because of that, I don't think HSBC had to tell Mr E that it had changed its mind.

Mr E also said that I was wrong to say he hadn't relied on HSBC's word, when he spent money on medical bills. But what I had understood from Mr E was that this wasn't an optional expense. He had to pay these bills. So it still seems most likely that he didn't spend this money elsewhere because he thought HSBC didn't want him to pay his card back. He spent this money because he had an accident, and needed to cover the financial costs of his medical care overseas.

Mr E also wanted to know why he was treated differently to companies or people who are in bankruptcy and company liquidation. I think that is simply because Mr E isn't in bankruptcy. That's a legal process through which people who can't repay debts can seek relief from some or all of their debts. And as far as I am aware, Mr E hasn't been through that legal process. So I don't think that HSBC has to treat him the same as someone who has.

Mr E wanted me to look at the big picture. I don't think I'm able to use this argument to circumvent the rules of our service, which restricts me to considering what Mr E has complained to HSBC about. But, within the constraints of the points I am able to consider here, I haven't seen anything which makes me think that it was unreasonable or unfair for HSBC to have sold this debt, rather than cancel it. I do accept, as Mr E has stressed, that HSBC does sometimes make mistakes. But I haven't been able to see that it made a mistake here.

I know Mr E will be disappointed, but I haven't changed my mind. I still don't think his complaint should be upheld.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 6 October 2021.

Esther Absalom-Gough

Ombudsman