



The complaint

Mr G's complaint about HSBC UK Bank Plc (HSBC) relates to its attempts to recover a shortfall balance on his mortgage account following the sale of his property in March 2013.

What happened

Mr G had a mortgage secured on a property I shall call M Rd. This property was repossessed by HSBC and subsequently sold in March 2013 resulting in a shortfall on his mortgage account of over £30,000.

In February 2015 HSBC were in communication with Mr G and confirmed the amount of the shortfall and asked him to contact their legal representatives to arrange repayment.

When making his complaint to this service, Mr G said he had been contacted by a debt collection company regarding monies owed from 11 years ago. He said he had had no contact with HSBC for the previous eight years and was contesting the debt as he believed it to have been written off as 'toxic debt'. He also questioned the security address details which the debt had been based on, and also complained of HSBC's lack of progress.

HSBC dispute that it had written off the debt although it did accept correspondence had been sent to Mr G by its debt collection agents which recited an incorrect security address. It also accepted that it hadn't contacted Mr G for many years but nevertheless said the debt remained outstanding, and it was entitled to pursue it.

Mr G was unhappy with HSBC's final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that HSBC hadn't done anything wrong and had dealt with the complaint fairly. Mr G didn't agree and asked for the complaint to be passed to an Ombudsman 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.

My summary of what happened is brief and I know the parties went into a lot more detail. I'm going to focus on what I think are the key issues. Our rules allow me to do this, and it reflects the nature of our service as an informal alternative to the courts. So, if there's something I've not mentioned, it isn't because I've ignored it, it's because I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

I've taken account of both sides' views and I've looked at the issues raised and considered all the available evidence. Where evidence is not complete, I think about what is more likely to have happened in the light of the evidence which is available.

Mr G has not disputed that he once had a mortgage with HSBC on M Rd. Although he has made previous complaints about HSBC's actions and the debt itself, these have already been dealt with and rejected, and so I am not dealing with them here.

The starting point to this complaint is that there is an established mortgaged account shortfall balance which HSBC. This arose when the property was sold in March 2013. The next issue is whether HSBC agreed to write that balance off. From the documentation supplied to me there is no such evidence of any agreement. To the contrary, there is correspondence from HSBC's agents showing that the shortfall was being pursued. I cannot therefore agree that the shortfall balance was written off.

It is correct that correspondence Mr G received bears incorrect security details. HSBC have accepted that is an error on their part caused administratively when the account was transferred to their collections agent. The impact of this error is in my view minimal since, given the history to the matter, Mr G cannot be said to have been confused as to what the debt actually related to. He was sent a completion statement following the sale of the property in 2013 advising him of the debt. It is more than likely that despite the correspondence showing the incorrect security address, Mr G knew what the demand for repayment related to.

The chronology to the complaint shows that following the sale of M Rd, Mr G entered into an Individual Voluntary Arrangement in or around 2015. Mr G says this failed in 2016, although HSBC have said it wasn't informed of this until 2022 which is when they reinstructed their collection agents. Mr G has disputed this by saying that it was Step Change who notified them, but I haven't seen any evidence of that. I cannot be satisfied therefore that HSBC knew the IVA had failed sooner than 2022.

Even if I am wrong about that and HSBC did know that the IVA had failed in 2016, that delay in recommencing recovery does not mean HSBC are not permitted to do it. As our investigator has explained, a mortgage debt can be pursued up to 12 years following the date of the sale of M Rd, and quite clearly HSBC are within that time frame. So, in deciding to proceed with recovery action I can't say HSBC have done anything wrong.

I've also considered the Mortgage Conduct of Business rules which provide that a lender must inform a borrower of any shortfall debt as soon as possible, and also notify the borrower that it intends to recover the debt within six years of the sale. In this case HSBC did just that when providing him with a completion statement when M Rd was sold, and then in February 2015 when it asked him to contact their legal representatives to arrange repayment.

So, although Mr G will probably be disappointed with my decision, I can't say HSBC has acted unfairly or unreasonably here and I'm not upholding this complaint. HSBC have acted correctly here and are entitled to pursue the shortfall debt. I don't find that HSBC wrote the debt off and the incorrect security details on the correspondence Mr G received did not prejudice him.

My final decision

For the reasons set out above I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 November 2023.

Jonathan Willis
Ombudsman