

complaint

Mr L complains that HSBC Bank Plc has not treated him fairly in that it recorded a default on his credit file without having sent him a default notice. He says the bank is not able to provide proof he owes the debt, and it should remove the default listing.

background

Mr L says HSBC contacted him in 2012 regarding a debt which it says was raised in 2007. He says he paid the debt but as he did not receive a default notice or proof that he owed the debt, considers the bank should remove the default listing from his credit file.

Our adjudicator did not recommend that the complaint should be upheld. She noted that bank records showed that correspondence and statements regarding the debt were sent to the address on Mr L's credit file, and that he had acknowledged to her that he was aware of the debt, but thought it had previously been repaid. She considered that the bank had made it clear in letters to Mr L that failure to repay the debt would result in adverse information being reported on his credit file. She further considered that it was Mr L's responsibility to advise the bank of his new address, so that if he didn't receive correspondence, this was not the bank's fault.

Mr L does not agree, saying that he had tried to find out more about the debt but the bank hadn't responded to his letters, and that in repaying it, he had not accepted that he owed the debt but was responding to the strongly-worded letters the bank had sent him.

my findings

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

Mr L has raised several issues in his complaint, and I've dealt with these in turn, below.

whether Mr L owed the debt

Mr L has said that he is unsure whether he owes the debt in question, and that as the bank is not able to produce the original agreement, it should remove the default listing from his credit file. Where the evidence is incomplete, inconclusive or contradictory – as some of it is here – I make my decision on the balance of probabilities, that is, what I consider is most likely to have happened in light of the available evidence and wider circumstances.

As the loan agreement was created more than six years ago, it's not unreasonable that the bank is no longer able to provide it as banks aren't expected to keep documents indefinitely. HSBC has been able to show that it sent statements regarding the debt to the address it held for Mr L. I consider this shows that Mr L was the owner of the debt according to the bank's records. Mr L has also confirmed to our adjudicator that he had been aware of the debt, but believed it was no longer owing. I also consider it likely that if Mr L did not believe he owed the debt, then he would have raised more questions when contacted by the bank by telephone, rather than repaying it. Based on the available evidence, I consider it most likely that Mr L did owe the debt in question.

whether the default was correctly recorded

Mr L has also complained that the bank did not issue a default notice, and therefore should not have recorded the default on his credit file. HSBC has provided copies of letters which it sent to Mr L at the address it held on file for him. These make it clear that if he does not repay the debt, it will take action to recover the debt and that this may be recorded on his credit file. So while the bank has not been able to show it sent a default notice, I consider that the letters it did send performed the same function, in requesting repayment, setting out the terms of that repayment and the consequences of not repaying according to those terms.

Mr L has said he did not receive those letters, but I don't consider this was HSBC's fault. The bank has shown it sent the letters to the address it held for Mr L at the time. Mr L has said he had changed addresses and was having his mail redirected. I consider it was Mr L's responsibility to update his address details with the bank, and if the redirection facility did not ensure the letters reached him, this was not because of any error by HSBC.

Banks are expected to ensure that a customer's credit file accurately reflects the status of the account. As Mr L had not repaid a debt he owed after receiving a demand to do so, the default listing was a correct reflection of his management of the account. I therefore do not consider it should be removed.

Mr L's 2015 correspondence

Mr L has provided copies of letters which he says he sent to HSBC in 2015 regarding the debt, asking the bank to produce proof of the debt and to remove the default listing. HSBC has said it has not received any letters from Mr L. For the reasons set out above, I consider that the bank's failure to produce the original agreement is explained by the passage of time, and that sufficient proof exists that Mr L is the owner of the debt. Because of this, I don't consider that these letters alter my finding that the default was correctly recorded.

my final decision

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 L to accept or reject my decision before 24 June 2016.

Catherine Wolthuizen
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