

## **complaint**

Mr E complains that HSBC Bank Plc failed to send him a copy of his credit agreement. He says that until he is sent it, his credit card debt is unenforceable.

## **background**

In 1982 Mr E obtained a credit card from HSBC. In 2011 he wrote to HSBC to request a copy of his credit agreement. HSBC replied to say that after 29 years it no longer had it. Instead it sent him a "reconstituted agreement." This means a copy of what it thought the terms of the agreement were in 1982.

Mr E was not satisfied with that response for a number of reasons. His date of birth on the agreement was wrong, and the card number was wrong. It had his current address on it, but that was not the address he was living at in 1982. HSBC has since apologised, and has paid Mr E £200 compensation for that and for taking too long to respond to Mr E's complaint.

But most importantly to Mr E, it was not the original agreement which he had signed at the time. He stopped his payments to HSBC, saying that it was not entitled to enforce his debt unless it sent him the original agreement. He relied on sections 61, 61A, and 78 of the Consumer Credit Act 1974.

HSBC did not accept this. It said that as the original agreement was no longer available, it was allowed to send a reconstituted agreement. It did not have to provide a copy with Mr E's signature on it. HSBC said that it had complied with the law. In 2012 it started court proceedings against Mr E to recover the debt. In 2014 Mr E complained to our service, alleging fraud and harassment. Shortly afterwards both parties agreed to adjourn the court case indefinitely.

Our adjudicator did not uphold the complaint. She pointed out that our service cannot decide whether a debt is enforceable or not, as this is for the courts to decide. But she decided that HSBC had not done anything wrong by asking Mr E to repay the money. She did agree that HSBC had made a mistake in putting the wrong date of birth, address and account details on the reconstituted agreement. But that was not relevant to whether he owed HSBC money. And she thought that an apology and £200 were fair and reasonable compensation.

Mr E did not accept the adjudicator's view. He thought that having the wrong address on the agreement was a serious flaw. He referred us to the above sections of the Consumer Credit Act, and a leaflet from the Office of Fair Trading which HSBC had sent to him. And he maintains that the bank has committed criminal fraud and harassment.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

As the adjudicator has already said, the Financial Ombudsman Service cannot decide whether a debt is unenforceable. Our role instead is to decide whether HSBC has done anything wrong.

*the wrong details*

I agree that HSBC was wrong to send Mr E a document with the wrong address, date of birth, and card number on it. This was lower than the standard of service Mr E was entitled to expect. But I do not think that this is evidence of deliberate fraud by HSBC. I think it is just a mistake. So I think that an apology and £200 makes up for it. That money was paid to Mr E by crediting it to his account. So although he says that he refuses that compensation and will not spend it, I do not need to order HSBC to send it again. Mr E still has it and is entitled to use it if he wishes. Spending it does not imply that he agrees with my decision.

*the reconstituted agreement*

Although I am not considering whether HSBC's failure to send Mr E the original agreement makes the debt unenforceable, I can still consider whether it is poor service. But I do not think that it is. When the original document is no longer available, HSBC is allowed to send a reconstituted agreement instead. I'm afraid it is not possible for me to decide – after 33 years – whether or not it accurately states the terms that Mr E agreed to in 1982. But as this would only be relevant to whether the debt is enforceable, I do not need to decide that. It is enough for me to say that I cannot order HSBC to provide a document which it no longer has.

HSBC did not have to provide a reconstituted agreement either, although it did so voluntarily. Regulation 9 of the *Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983* covers what happens if an agreement made before 19 May 1985 is lost. It says that the bank can comply with the Consumer Credit Act by sending the *current* terms of the agreement instead. So I will not find fault with HSBC for doing more than they had to do.

*fraud*

I do not think that HSBC has committed fraud. This is an account which Mr E does not deny is his. He made payments to HSBC until 2011 without disputing the debt. And he has had the benefit of having used that money. So whether or not the debt is unenforceable, he still owes it. *Unenforceable* is not the same thing as *void*.

*harassment*

I have read the guidance from the Office of Fair Trading. It says on the second page:

**“What does unenforceable mean?”**

This does not mean your debt is wiped out. You still owe the money, and if you don't pay you can be charged interest on what you owe, be charged for not paying (these are called default charges) and it could affect your credit record.”

It also says:

“However, they can still:

- ask you to pay what you owe
- send you a letter called a default notice if you miss any payments
- pass your information on to a credit reference agency, which might affect your credit record [...]
- take your case to court, although they won't be able to get a court judgement against you unless they give you the information you're entitled to.”

I consider that this guidance accurately summarises the law. So whether or not the debt is enforceable, HSBC is allowed to ask Mr E for the money. It can ask more than once. It is allowed to claim interest and charges. It is allowed to take Mr E to court. (It did not get a court judgement against him.) And it can register the unpaid debt on his credit file. So I do not think that HSBC's actions amount to harassment.

I have also taken into account that in August 2014 HSBC offered to settle the debt if Mr E paid £7,000 at a rate of £195 per month. Given that by then he owed nearly £12,000, I think that this was a reasonable attempt by HSBC to resolve matters amicably.

**my final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr E to accept or reject my decision before 6 July 2015.

Richard Wood  
**ombudsman**