

complaint

Mrs S complains that HSBC Bank Plc transferred money from one account to another without her permission. She also complains that a default was unfairly added to her credit file.

background

In 2010, Mrs S paid three cheques from her HSBC business account into her HSBC savings account. Because there were insufficient funds to cover these cheques, the bank returned the first two as unpaid and charges were applied.

Although there were insufficient funds to cover the third cheque (for £14,860), this was processed and that sum paid into the savings account. On that same day, 2 June 2010, Mrs S wrote further cheques from her business account totalling £1,904.68. Because all her funds had been paid into the savings account, there was no money to cover these in the business account. HSBC used the right of set off to take money from the savings account back into the business account to cover these two cheques.

Mrs S complained to this service in May 2016 that the bank should not have done that without her permission. Although HSBC initially considered that this complaint may have been made out of time, as it was made within six years after the incident occurred, this service can consider it.

The adjudicator did not recommend that part of the complaint should be upheld. He explained the right of set off in detail and said this was included in the terms and conditions Mrs S had agreed when she opened the accounts. He said the bank had acted in accordance with those terms and conditions and had not made a mistake.

The bank then returned the full amount of the £14,860 cheque that had been paid into the savings account back into the business account. Because the bank had paid £1,904.80 out of the savings account, that account was overdrawn by this amount. Interest was added each month. The interest in the savings account was about £1 per day, had this debt been in the business account it would have been about £8 per day.

Mrs S has told this service that she contacted HSBC in 2011 and 2012 to complain about the right of set off. She says she was happy to pay off the £1,905 debt in instalments but not the added interest.

HSBC has provided details of a default notice it sent to Mrs S in May 2013. Mrs S says she never received this letter.

The adjudicator did not recommend the default should be removed from Mrs S's account. He said this was added in accordance with the terms and conditions of the account and the bank had sent a letter to inform Mrs S about it.

Mrs S did not agree. She said she had never been allowed to take money directly from her savings account to her business account, so the bank made a mistake when it did that. She said she had written to the bank to offer to pay the £1,905 without interest, but had received no reply and had never received any demands for payment..

my findings

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

I know it will disappoint Mrs S, but I am satisfied the right of set off that was used to transfer £1,904.68 was done in accordance with the terms and conditions she had agreed to. The bank did not have to give Mrs S advance notice of this, but I have seen note on its system which I am satisfied shows it did send a letter after the event, to inform her what had happened. This was in accordance with the terms and conditions.

I appreciate that Mrs S was not able to transfer money directly from her savings account to her business account. However, the adjudicator has explained that the bank transferred money in that way under the right of set off. This allowed the bank different options than were available to Mrs S as a customer.

Whilst I agree with the adjudicator that it was unusual that HSBC allowed the cheque for £14,680 to clear into her savings account from her business account when there were insufficient funds, I am satisfied this did not result in a loss to Mrs S. The interest charged in the savings account was considerably less than the interest that would have been charged in the business account.

Mrs S does not dispute that she knew about the £1,904.68 debt, nor that she owed that money. She says the bank should have done more to chase her to get the money back. The adjudicator has explained that customers are expected to repay debts they owe.

I am satisfied the bank had made Mrs S aware of the debt and applied interest in accordance with the terms and conditions of the account. I am satisfied it sent statements to Mrs S in which the debt was clearly set out.

Mrs S says she sent a letter to the bank making an offer to repay the sum without interest. The bank has no record of this letter and Mrs S did not make further attempts to contact the bank when it did not respond. She made no repayments to bring the debt down.

I am satisfied on the balance of probabilities that the bank's records are accurate and it sent the default notice it has on its system. I appreciate that Mrs S says she did not receive this. I cannot now say why this happened, but as I am satisfied the bank sent the letter, I am not persuaded the bank made a mistake. I am satisfied the default was correctly entered and in accordance with the terms and conditions of the account. It fairly reflects what happened and it would not be reasonable for me to ask the bank to remove it.

I know it will disappoint Mrs S, but for the reasons stated above it would not be reasonable for me to require the bank to write off the interest charged on the debt nor to remove the default registered on her credit file.

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 Mrs S to accept or reject my decision before 3 October 2016.

Charlotte Holland
ombudsman