

complaint

Mr and Mrs E complain that HSBC Bank plc is wrongly pursuing them for payment under a personal guarantee. They ask that it stops contacting them.

background

Mr and Mrs E were directors of a limited company, which I will call Z. They gave a personal guarantee limited to £25,000 to HSBC for Z's borrowings. Z provided a debenture to HSBC. Z entered into a creditors' voluntary arrangement (CVA). It then went into liquidation and was dissolved in 2010. Mr and Mrs E say HSBC should have sought repayment from the liquidator. They also complain that HSBC wrote to them at the wrong address, passed the debt to a debt collection agent and is mainly writing to Mrs E.

The adjudicator did not recommend that the complaint should be upheld. He said:

- Mr and Mrs E do not dispute providing the personal guarantee.
- As HSBC was a secured creditor, it did not have to submit proof of debt to the liquidator.
- There were no assets to repay Z's debt under the debenture.
- HSBC was entitled to ask Mr and Mrs E for payment under the guarantee.
- HSBC had written to Mr and Mrs E at Z's address in its records, which was not unreasonable.

Mr and Mrs E did not agree. They said assets were available if HSBC had claimed during CVA and the liquidation.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I am satisfied that Mr and Mrs E signed the personal guarantee. I am also satisfied that, under the terms of the guarantee, HSBC is entitled to call on Mr and Mrs E to pay Z's outstanding debt.

I can understand that Mr and Mrs E would have preferred that HSBC had been repaid from Z's assets during the liquidation. While Mr and Mrs E say HSBC should have submitted a proof of claim to the liquidator, I am not persuaded it was required to do so or that this means it cannot seek payment under the guarantee. I am not persuaded from the evidence that assets were available to repay the debt under the debenture.

Mr and Mrs E's liability under the guarantee is joint and several. As HSBC can ask for payment from Mr E or Mrs E or both, I do not find it made an error in addressing letters to Mrs E.

I am satisfied that HSBC wrote to Mr and Mrs E in 2011 calling on the guarantees. I do not consider HSBC acted unreasonably in taking steps to recover the debt or passing the debt to a debt collection agent.

HSBC wrote to Mr and Mrs E at Z's address in its records. I do not find it acted unreasonably in doing so. Mr and Mrs E may find it more convenient to contact HSBC and ask it to update their contact address.

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 and Mrs E to accept or reject my decision before 2 March 2015.

Ruth Stevenson
ombudsman