

complaint

Mr M complains that the debt that he owes to HSBC Bank plc is unenforceable because it hasn't sent him annual account statements.

background

Mr M had credit agreements with HSBC and it says that he owed it £22,878.52 and £2,168.88 in 2003. The accounts were then defaulted and closed and were referred to its repayment services department. It says that the accounts ceased to be regulated under consumer credit legislation so it wasn't required to send annual statements to Mr M. Mr M made monthly repayments of £150 to his debt and by April 2014 the outstanding amount had reduced to £6,597.40. HSBC then assigned his debt to a third party. Earlier this year Mr M complained that the debts were unenforceable because he hadn't been sent annual statements and that he wasn't told when the debt was assigned to the third party. He wasn't satisfied with HSBC's response so complained to this service.

The investigator didn't recommend that this complaint should be upheld. He said that when the accounts were defaulted and closed the debt ceased to be a regulated debt (and that HSBC hadn't applied interest or charges since then). So he said that there was no requirement for it to send annual statements to Mr M. HSBC says that it would've let Mr M know who the debt was sold to in 2014 – but it continued to pass on his payments to the third party - and he couldn't see what Mr M would've done differently whether or not he received notice of the assignment.

Mr M has asked for his complaint to be considered by an ombudsman. He has responded in detail and says, in summary, that:

- HSBC has failed to provide annual statements in a timely manner so he doesn't know whether or not the debt has been repaid;
- HSBC hasn't contacted him despite the fact that he has contacted it on several occasions over the past 15 years;
- HSBC has sold his debt to a third party without his consent (and in breach of its data protection obligations); and
- he's been making payments of £150 towards the debt – and he asks when it will end and how he'll know when he's repaid the debt in full.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We offer an informal dispute resolution service. We try to resolve complaints by customers about financial businesses by looking at what we consider to be fair and reasonable in the circumstances. Although we do take account of applicable law and regulations we also consider the overall situation. So it's possible that a court would reach a different outcome to the decision that I make.

There doesn't seem to be any dispute that Mr M owed money to HSBC under credit agreements in 2003 – or that the accounts were defaulted and closed. When the accounts were closed the debt ceased to be regulated under consumer credit legislation – so there was no requirement for HSBC to send annual statements to Mr M. And HSBC stopped applying interest and charges to the debt. Mr M continued to make monthly payments of £150 to HSBC which have been used to reduce the amount that he owes. And HSBC would've been required to provide him with a statement if he'd asked for one.

HSBC's records show that it contacted Mr M various times between 2003 and 2006 and it asked him to increase the amount of his monthly payment – but he said that he was unable to do so. From March 2006 its letters to Mr M were returned undelivered. It tried to phone him and left a message but then the number went out of service in May 2007. Mr M contacted HSBC in April 2010 and asked for the amount of his balance – but its records show that he wouldn't give his new address.

HSBC assigned Mr M's debt to a third party in 2014. It says that it would've contacted Mr M about the assignment but it hasn't been able to provide any evidence to show that it did so. But any such letter wouldn't have been received by Mr M as HSBC's letters to him were being returned undelivered and it was unable to contact him. HSBC has continued to pass Mr M's monthly payments to the third party so his debt to the third party is reducing. I consider it to be unlikely that there's been a data protection breach in these circumstances – but that would be for the Information Commissioner to decide – and Mr M should contact their office if he wants to make a complaint.

I'm not persuaded that there's enough evidence to show that HSBC has acted incorrectly in its dealings with Mr M about this debt. Nor am I persuaded that the debt would be unenforceable – but that would be for a court to decide. So I find that it wouldn't be fair or reasonable for me to require HSBC to write-off Mr M's debt – or to take any other action in response to his complaint.

Mr M's debt has been assigned to the third party – so he should contact the third party if he wants a statement or if he wants information about the amount he owes and the number of repayments required before he has repaid the debt.

my final decision

For these reasons, my decision is that I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 December 2017.

Jarrold Hastings
ombudsman