

complaint

Mr H and Mr J guaranteed the debts of a company C to HSBC Bank plc. They say that the way HSBC handled C's accounts has increased the amount they owe under the guarantee.

background

Some years ago Mr H and Mr J signed a joint guarantee of C's debts to HSBC. When C went into administration and later into liquidation, the bank looked to them to cover some of the money it was owed. At first it said that Mr H and Mr J owed £65,000 – the limit of their guarantee; it accepted that it had asked for too much and reduced its claim to a little over £35,000.

Mr H and Mr J said however that the bank was still trying to recover around £25,000 more than it should have been. This was because:

- the bank had wrongly returned (to debtors of C) around £18,000 which had been paid into C's account shortly before its administration;
- in working out what C owed, it hadn't taken into account some cheques paid into the account shortly before the administration; and
- it had allowed wages to be paid from C's account after the administration.

HSBC accepted it had returned the payments in error. But that didn't mean that it should reduce its claim against Mr H and Mr J under their guarantee. Otherwise, it didn't think it had done anything wrong. The liquidator got back most of the money that the bank had returned in error; HSBC agreed to cover the shortfall and to pay it to the liquidator. It also offered a small amount for the trouble it had caused.

One of our adjudicators looked at the case but thought that the bank had acted correctly – having in mind the rules it had to follow when C went out of business. Mr H and Mr J didn't agree and asked for an ombudsman to review the case.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so though, I think the adjudicator's conclusions were correct.

The Insolvency Rules 1986 (and in particular rule 4.90(2)(b)) are relevant here. Rule 4.90 deals with the situation where a company goes into liquidation and both owes money to and is owed money by someone else. Usually, the two debts are combined to produce a single figure. But that's not the case where debts arise after notice of administration has been given. That should ensure fairness for all creditors.

Here, C owed HSBC money. Any money paid into C's account with HSBC would reduce the amount it owed the bank provided the payment pre-dated notice of administration. Unfortunately, the payments that the bank returned weren't in C's account at this time. The bank's error (in returning the payments) created a debt to C; but by then C had said that it was appointing an administrator. As a result, the money that HSBC owed C because of its error didn't have to be taken from the money that C already owed the bank. It would be dealt with separately in the liquidation.

In fact, even if the bank hadn't returned the payments, they wouldn't have been paid into C's account in time to reduce C's debt to the bank. To that extent, the bank's mistake didn't make any difference to the overall position.

The only real difference the bank's mistake made was that not all the payments were recovered. HSBC agreed to cover those that weren't. So C, and therefore Mr H and Mr J, are in the same position.

C paid some cheques into its account at about the time of the administration. But it takes a few days until cheques are actually paid – that is, until the payer's bank sends the money to the payee's bank. That wouldn't have happened until after notice of administration. That money wasn't therefore available to reduce directly C's debt to the bank (and with it the amount due under the guarantee).

The bank says that it couldn't stop the wages payments. But even if it could have acted to stop them, any refund of those payments would go to the company through the liquidator. This was because they were made after the administration. They wouldn't directly reduce the amount the company owed to the bank or, therefore, the debt due under the guarantee.

HSBC accepts that it made some mistakes here – not least in the time it took to correct the original demand. But I don't think that its errors made any real difference to the amount it's now claiming under the guarantee. And, to the extent it did, I think the bank's done enough to put things right. I don't require it to do any more.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr H and Mr J to accept or reject my decision before 9 April 2015.

Michael Ingram
ombudsman