

complaint

Mr M complained because he said that HSBC Bank Plc had transferred money from his personal account to his business loan without telling him. He said that £1,300 of overdraft fees should be waived as he didn't owe them, and complained that the bank's calls to his mother distressed her. He was also unhappy because he said the bank proceeded to court action while his complaint was still with this service.

background

Mr M had limited company and personal accounts with HSBC. Mr M's personal current account exceeded his overdraft limit, so in autumn 2011, HSBC wrote to tell Mr M it had removed his overdraft limit, and asked for payment of the outstanding balance. Mr M didn't pay, and HSBC first transferred the balance to its internal debt recovery agent in December 2011, and finally sold the debt in January 2013.

In response to Mr M's complaint, HSBC said it hadn't transferred money from either Mr M's personal account or his other company accounts in the form of a set-off, and the balance was accurate. It said that the phone numbers used when calling about the debts were made to numbers supplied by Mr M, and that as soon as Mr M first complained about this in July 2012, it deleted the number and arranged for its debt collection agency to do the same. Mr M remained unhappy and complained to this service in February 2014.

Our adjudicator looked at the statements for Mr M's accounts, and couldn't find any evidence that HSBC had transferred money between his accounts. She said that interest and charges applied to the overdraft were in line with the terms and conditions of the account. So she found it wasn't correct that the balance owing on Mr M's personal current account was mainly caused by interest, charges, or money taken to fund his business accounts.

She also looked at the phone records and saw that HSBC had phoned Mr M's number because it was a number it held on file for Mr M's records, but that the bank had removed the number, so that only Mr M's personal phone number remained.

Mr M wasn't satisfied with this and said the bank had broken the law. He added that HSBC was proceeding to court and shouldn't have done while his case was still with this service.

my findings

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

I have looked at Mr M's account statements and, like the adjudicator, I can see no evidence that HSBC transferred any money from Mr M's personal current account to his company account. The biggest part of that debt for around £1,300 was money spent by Mr M, and in fact HSBC had refunded a number of charges.

I think it's possible that Mr M might be thinking of an agreement he and HSBC made in 2009, where two different debt accounts for one of the companies were consolidated into one. The bank said this was done to avoid one of the accounts defaulting, which would have been recorded against the company and Mr M as director. Mr M signed to accept this offer. But no money was taken out of Mr M's personal current account, either then or later.

Looking at the phone calls made to Mr M's mother's phone number, I can see that she might have been distressed, and HSBC agreed with this. It said that the phone number would have been provided by Mr M, and was also on his credit record. HSBC said it removed the number after Mr M complained in July 2012, but Mr M said the bank continued to use it.

Where the evidence is contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. Here, I can see that HSBC only had one remaining number for Mr M. I can't look at every outgoing call HSBC or the debt recovery agent made, but I note that recovery agents would look at credit reference agency records for possible phone numbers, if an account holder didn't reply to them. On the balance of probabilities, I think that HSBC did remove Mr M's mother's phone number from its records as it said. I agree with HSBC that it would have been up to Mr M to remove the number from his record with credit agencies. So I don't uphold Mr M's complaint.

Recently, Mr M complained that HSBC shouldn't be taking court proceedings while his case is still with this service. I don't have details of the court action he mentions, but his complaint to us was about the personal account he had with HSBC. That account was sold to another company in January 2013, so I think it's unlikely that any court proceedings are now being brought by HSBC in relation to that closed account.

my final decision

My final decision is that I do not uphold this complaint.

Belinda Knight
ombudsman