

complaint

Mr S complains that HSBC Bank Plc has not treated him fairly in that it did not properly apply an inhibit to a joint account he held with his ex-partner. He says a payment was wrongly made from the account in 2009, leading to the account going into arrears and then defaulting. He says he has been pursued over the debt by debt collectors, despite believing the matter had been resolved in 2011. He would like HSBC to confirm to him in writing that he does not owe the debt.

background

Mr S says that in 2008 he asked HSBC to apply an inhibit to an account he held with his ex-partner. He says that as part of this, he asked the bank to transfer all direct debits and standing order payments which he was responsible for to his personal current account. But he says that one payment was not transferred, and that in 2009, a payment was made from the joint account to his HSBC gold visa card, even though he also made the same payment from his personal account.

Mr S says that when he became aware that the payment had been made, causing the account to go into arrears, he asked the bank to fix the error. He says he was told in 2011 that the bank would undertake a full investigation and come back to him but that he didn't hear anything further until 2015.

HSBC has said that it is difficult to know what Mr S' instructions were in 2008 as records no longer exist, but that the information it does have shows that a block on collections activity was placed on the account, not a block on payments.

Our adjudicator did not recommend that this complaint should be upheld. She considered that the passage of time meant it was not possible to know what Mr S had asked HSBC to do in 2008, and what it had undertaken to do. Based on information provided by HSBC, she considered that an inhibit had not been placed on the account, only a block on collections activity. Because of this, she considered that HSBC had been able to take a payment from the account in March 2009, and to then pursue Mr S for repayment of the debt.

my findings

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

There are several key issues in Mr S' complaint, and I have dealt with these in turn, below.

whether HSBC was able to make the payment and raise the debt on the joint account

Mr S says that in 2008, he asked HSBC to place a block on a joint account he held with his ex-partner. He says that at the same time, he transferred all standing orders and direct debits which he was responsible for to his separate current account, held in his own name. So he was dismayed to learn a payment had been made in March 2009 to a gold visa debit account, and that this had caused the joint account to become overdrawn.

The passage of time has meant many records from 2008 and 2009 are no longer available. Banks aren't required to hold records for longer than 6 years, and I can't find HSBC acted unreasonably in destroying records older than this. But the lack of evidence means I can't

conclude with any certainty that Mr S did ask HSBC to place a block on the account, or that he did ask it to transfer all his payments to his personal account.

HSBC has provided evidence that a more limited block was placed on the account at that time, to stop collections activity and calls on the account. Without further evidence, I can't conclude that this was an error, or that a more comprehensive block should have been placed on the account.

Without that full inhibit, payments were able to be made from the account, and I consider this is why the payment to the gold visa card account was allowed to happen. Mr S has said that as he'd transferred his other payments, this should add weight to his argument that the gold visa payment should also have been transferred. But that card was in his ex-partner's name, which would explain why the standing order on it wasn't transferred with the other payments.

Because I haven't seen any evidence that Mr S did ask for a full inhibit, or for the gold visa payments to be transferred to his own account in 2008, I can't conclude that HSBC made an error in taking the actions it did at the time. This means that I consider it was able to process the payment, and to take action when the account became overdrawn to seek repayment of the debt. As Mr S was jointly liable for those debts, I consider HSBC was able to seek repayment from him, and that the debt collector which later purchased the debt was equally able to do this.

whether the bank sent mail to an incorrect address

Mr S has said that he received only one letter from HSBC about the debt, after he attended the Northampton branch on 2 March 2011 to complain about it. He says the letter was sent to his Milton Keynes address, and that it confirmed that the bank was investigating his complaint. He says he didn't receive any other correspondence from the bank about the joint account or the debt, meaning he wasn't aware of it, and therefore unable to take action in relation to it.

It does appear that letters about the debt and the Final Demand Notice of 14 March 2011 were sent to Mr S' previous address. But HSBC has provided evidence that the joint address which it held on file was unchanged from 2007, and reconfirmed in 2012 when the full inhibit was added to the account. So while I appreciate that this meant Mr S didn't receive those letters, I can't say that this was the bank's fault. It doesn't appear that the address details which the bank held for Mr S were changed for correspondence on the joint account, even though they had been updated for his other accounts with the bank.

I appreciate that Mr S is very upset about what has happened, and that a sequence of events has meant one payment on a joint account caused him to be being pursued by a debt collector. But I'm afraid I can't safely conclude that this sequence of events was the result of any errors by HSBC. Due to the passage of time, there isn't the amount of evidence which would normally be available for this sort of complaint, and what there is does show that the bank acted reasonably. Because of this, I'm not able to uphold this complaint.

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 Mr S to accept or reject my decision before 3 April 2017.

Catherine Wolthuisen
ombudsman