

complaint

Mr G complains that HSBC Bank plc failed to refund unauthorised payments taken from his current account and unfairly applied account charges.

background

Mr G took a short-term loan and says that the short-term lender wrongly took repayments from his current account with HSBC. Mr G reported the payments to HSBC as fraudulent, and HSBC initially refunded them.

Mr G says he later discovered that HSBC had reversed the refunds and, because the account had gone into overdraft, had applied charges. This also led to adverse credit reference information.

Mr G says that this problem was largely caused by HSBC failing to update his address, which meant he did not receive the forms it sent him to complete in relation to the disputed payments. He also says he was wrongly advised not to pay the debt by a member of HSBC's branch staff, which made the problem much worse.

HSBC did not accept that it had received any address update from Mr G, or advised him not to pay the debt. As things remained unresolved, Mr G brought his complaint to this service where it was investigated by an adjudicator.

From the evidence, the adjudicator found it probable that Mr G had not told HSBC about his change of address. The adjudicator did not consider that any charge back request made by HSBC would have succeeded, given the circumstances of the disputed payments.

Whilst the adjudicator found that HSBC's administration could have been better in some respects, she was not persuaded that this had made any material difference to Mr G's situation and did not accept that he had been advised not to pay the debt. Overall, the adjudicator did not recommend that the complaint should succeed.

Mr G did not agree with the adjudicator's conclusions and sent further representations. These largely restated and expanded on points that he had made in his earlier representations. In particular, Mr G continued to say that he had given HSBC his new address – and that he had been told not to pay the debt by a named HSBC branch employee and would otherwise have repaid it much sooner.

Mr G also provided some third party statements in support of his complaint.

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 would first clarify that this complaint is about HSBC, and my review was to assess whether there was wrongdoing by HSBC leading to the loss and damage that Mr G cites. It follows that I am not able to consider and respond to the issues Mr G has raised about the conduct of the short-term lender.

Mr G has also provided statements written by his parents and by some close friends, which he has asked me to consider in support of his complaint. I have done so, though these are of limited evidential value since the individuals concerned – whilst able to say what Mr G has told them about what happened – were not direct witnesses to the events complained about.

Mr G gave the short-term lender authority to debit his HSBC account by a continuous payment authority on his debit card. Although Mr G initially seemed to be saying that he had already repaid the short-term loan when that company began to debit his HSBC account, he has since clarified that the majority of the loan was still outstanding at that point.

There was delay in Mr G receiving the forms HSBC sent him to fill in and return about the disputed payments, which had been temporarily refunded to the account because Mr G had reported them as fraudulent. Mr G says the delay in his seeing the forms was because HSBC had failed to register his current address, despite a number of attempts on his part to get it to do so, which meant he did not see them until after the disputed payments had already been re-applied to his account.

But the evidence is that Mr G was still using his old address in correspondence with HSBC in respect of other matters, long after the date he says he moved. He also gave the old address to HSBC during a telephone call to pass identification checks in the month in which the disputed payments were first debited to his account.

So Mr G must have known at that time that this was the address HSBC was using for him, and is where any correspondence about the disputed payments would be sent. I note that the address in question is a property owned by Mr G, which he presently lets out and visits from time to time to collect post. In the circumstances, I find that Mr G's failure to see the forms sooner was not HSBC's fault.

I have considered whether, had Mr G seen and responded sooner to HSBC's communications, things would have been different. I do not consider that the payments were, in fact, fraudulent. So HSBC would not have been obliged to refund them on that basis. Given that the short-term loan debt was genuinely owed, and Mr G had given his card details to the short-term lender to enable repayments, I find it improbable that a charge-back attempt through the debit card scheme would have succeeded.

So the position on Mr G's HSBC account would have been no better – in that the initial refunds would still have been re-debited and the account placed back into overdraft. I am not persuaded that there was anything about the original payments that should have caused HSBC to step in and stop the account, as Mr G has more recently argued.

The debt on the current account attracted charges and also led to credit reference information being registered. Mr G says that he could and would have repaid the debt at an earlier stage, but did not do so only because a named HSBC employee in the branch specifically told him not to do so and that she would, essentially, get the problem sorted out for him.

We have obtained the statement of the member of staff concerned. She says she asked Mr G whether he wanted to hold off closing the account until she had dealt with his complaint – but did not tell him not to pay the debt.

The email exchanges that Mr G has provided between him and the member of staff do not, in my opinion, say or suggest that he had been told not to pay the debt. It is difficult to see, on the face of it, what good reason HSBC would have to advise Mr G against repaying this outstanding overdraft debt.

I am not persuaded, on a balance of probabilities, that Mr G was told or advised by HSBC not to pay the debt. The evidence points to Mr G disputing that he should owe the debt at all, and I note that he repaid it only after HSBC had issued its final response on his complaint. So it seems far more likely to me that Mr G's belief that HSBC should not have re-debited the disputed payments was the reason for his not paying the debt earlier.

I agree with the adjudicator that there were some administrative shortcomings on HSBC's part, but I am satisfied that these did not cause or materially add to the problems in this case. I note that HSBC later refunded the bank charges as a goodwill payment.

my final decision

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

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G to accept or reject my decision before 20 April 2015.

Jane Hingston
ombudsman