

complaint

Mr U, a director of a company, T, complains that HSBC Bank plc wrongly closed the company's account without giving the required two months' notice. As that closure prevented the company from continuing to trade, he wants the bank to agree that it cannot require repayment of the outstanding debt.

Mr U is assisted in this complaint by solicitors.

background

T had a business current account, with an overdraft facility. Since 2011 HSBC had issued several letters of concern to the company about the outstanding debt. Various short term extensions of the existing overdraft facility were agreed by the bank, but the company failed to provide various requested information or proposals for how it would repay its debt. In November 2012 the bank issued formal demand for repayment of the outstanding debt. An acceptable proposal for repayment of the overdraft was not received by the 15 December 2012 deadline set by the bank. It then transferred the account to its Collections department, and subsequently to a debt collection agency.

Mr U, and the solicitors advising him, say the bank's terms and conditions state that it must give 60 days' notice of account closure, and that this was not done. Therefore the bank is in breach of those terms and conditions, and has caused the company to be unable to continue trading to clear its debt. They therefore consider that the bank should not be able to require repayment of the outstanding debt.

Our adjudicator did not recommend that the complaint should be upheld. She concluded, in summary, that HSBC had given ample warning that it wanted repayment proposals for the outstanding debt, and that the formal demand issued by the bank had given the company a reasonable period to respond before the account would be passed to Collections.

The solicitors, responding on the company's behalf, did not accept the adjudicator's conclusions. They said, in summary, that the adjudicator had confused the complaint about the closure of the account with the bank's making of a demand for repayment of the outstanding debt. They continued to believe that the account has been closed without the required two months' notice being given.

my findings

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

HSBC had been dissatisfied with the conduct of T's account for more than a year, and had issued several warnings to the company about what would happen if satisfactory repayment arrangements for the overdraft were not agreed. Such an agreement was not reached, and the bank was therefore entitled to issue formal demand for repayment of the debt. It was therefore also entitled to place the account in default when repayment was not made within the stated time period.

It is the nature of this placing of the account in default which is at the heart of this complaint.

By doing so, HSBC closed the account to new transactions and prevented it continuing to be used for on-going trading by T. I do not, however, regard this as being the same as closing the account itself. It continued to exist in the bank's books, under the management of its collections team.

The term and condition to which the solicitors refer say:

"7.1 If we wish to close your account, we will give you at least 2 months' notice in writing unless there are circumstances in which we can justify ending our relationship earlier."

I do not find that HSBC breached that term and condition – because it did not close the account. It only changed the basis on which it was operating the account – something I consider it fair and reasonable for it to do given the long period over which it had been trying to negotiate acceptable repayment arrangements with the company.

In addition, I do not consider it fair and reasonable to interpret that term and condition as meaning that the bank must wait two months after issuing formal demand for repayment before closing an account to new transactions. It is usual banking practice to give a period of around two weeks for repayment to be made after formal demand is made, which is consistent with certain parts of insolvency law.

I remind Mr U's solicitors that the rules, set by Parliament, for the operation of the Financial Ombudsman Service require us to reach our decisions on the basis of what we believe is fair and reasonable. In doing so, we have to take account not only of the law but also codes of conduct and good practice in the financial services industry.

I therefore conclude that HSBC did not act wrongly in closing T's account to new transactions, and that it is entitled to require the company to repay its debt.

my final decision

My decision is that I do not uphold this complaint.

Malcolm Rogers
ombudsman