

complaint

Mr J complains that HSBC Bank Plc has not treated him fairly, in that it used the proceeds of a cheque which had been incorrectly paid to Mr J's closed account to repay a debt he owed. Mr J says the debt was mainly made up of excessive fees it had applied to the account, and that the bank should have allowed him to repay it in an affordable way. He would like compensation for the distress and inconvenience the bank's actions have caused him.

background

When Mr J opened his account with HSBC, he was employed, and able to keep the account within its limits. However, by late 2010, the account was in substantial arrears, and HSBC issued a default. Around the same time, Mr J's employment came to an end, and he had expected to receive a final payment from his former employer by cheque. Rather than sending it to him, as Mr J had expected, the employer sent it to HSBC, which applied it to the now-closed and defaulted account, to repay the debt in full. Mr J says this caused him considerable financial hardship and distress, as he had been relying on that final payment to meet basic living expenses. He would like HSBC to compensate him for the difficulties it caused him.

Our adjudicator did not recommend that this complaint should be upheld. She considered that while it appeared the cheque was sent to HSBC in error, this did not mean HSBC could not process it and use it to repay Mr J's debt. She also noted that a Supreme Court decision of 2009 means she is not able to consider whether the fees which Mr J says formed the bulk of that debt were unfair.

Mr J does not agree, saying the bank should not have been able to process the cheque through a closed account, and should have allowed him to repay his debt through an affordable arrangement.

my findings

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

I can understand why Mr J was so upset to learn that his final cheque from his employer had been sent to HSBC, rather than to him directly, and that this meant it was put towards his debt with the bank, rather than being available to cover his living expenses. But I'm afraid I don't agree that the bank has acted unreasonably.

Where a customer owes money, a bank is able to take payments made to it, and apply them towards the debt. So HSBC was able to treat the credit from Mr J's former employer as being repayment of the debt. It doesn't matter that the account was closed for Mr J's purposes, as the debt was still active, and able to be recovered by the bank.

Mr J has referred to the financial difficulties this caused him, and says that the bank should have let him repay the debt in an affordable way. This might have been the case if the bank had been aware of his situation. But evidence from the bank shows that Mr J only told it of his financial difficulties in 2016, well after HSBC took the cheque to repay the debt. Because HSBC wasn't aware of Mr J's financial difficulties, I can't say it needed to take account of them in how it allowed the debt to be repaid. So I don't consider that the bank acted unreasonably, and I can't uphold this part of Mr J's complaint.

Mr J has also complained that the debt was largely made up of what he considers to be excessive fees. I can't consider those fees which were applied before 2009 because I can't look at matters which arose more than six years before the complaint. But I'm also restricted in what I can consider in relation to the fees after that date. This is because of a 2009 Supreme Court decision that means I can only look at whether fees were applied in line with the account terms and conditions. From the evidence, HSBC acted in line with its terms and conditions, so I can't find that it acted unreasonably here.

I realise this will be a very disappointing outcome for Mr J, and I appreciate that the bank's actions did cause him distress and financial loss, but I can't say the bank acted in error or unreasonably in the circumstances.

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 J to accept or reject my decision before 10 June 2016.

Catherine Wolthuizen
ombudsman