

complaint

Mr T has complained that Honours Trustee Limited has continued to pursue him for a debt even though he has told them that he believes it is statute-barred.

background

Mr T took out a student loan many years ago. Payment was deferred until 24 July 2005. After that date he didn't make any payments or apply for a further deferral.

Honours Trustee Limited (HTL) sent Mr T notices of their intention to default in October 2005 and again in October 2010. They did not register any default.

In 2014 Mr T wrote to HTL advising them that he believed the debt was statute-barred. HTL did not agree as Mr T had breached his agreements by not telling them his correct address.

Mr T brought his complaint to the ombudsman service. Our adjudicator told Mr T that he could not uphold his complaint as he felt that HTL had continued to pursue him for the debt and therefore had not triggered the five year period as required under the relevant Scottish legislation.

Mr T disagreed and asked an ombudsman to review 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. Where there is a dispute about what happened, I have based my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in the light of the evidence.

Mr T's case is that under the Prescription and Limitation (Scotland) Act 1973, his debt is now statute-barred. Mr T currently lives overseas and wrote to HTL in June 2014 to confirm that *"the last payment or written acknowledgement of this debt was made over five years ago and no further acknowledgement or payment has been made since that time"*.

HTL do not agree. They believe that by not confirming his address to them, Mr T breached his loan agreements. They point out the clause within the 1973 Act which states that if Mr T caused an error which means HTL cannot make a relevant claim, then the time limits don't apply.

HTL believe they've not had Mr T's correct address since 2005. However Mr T has told us that he never changed address when he lived in Scotland, and I know that he wrote to HTL not that long after moving overseas in 2014.

Both parties appear to be asking this service to make a definitive legal judgement which I do not feel is appropriate. We review issues on a basis of what is fair and reasonable in the circumstances of the complaint and I have used this basis to come to a conclusion.

I have reviewed all the correspondence that has been shared with us showing what HTL sent to Mr T between 2005 and 2015. What I believe is worth mentioning is that HTL could have taken action back in 2005. They wrote to Mr T telling him that they intended to default

him. They believed they didn't have his correct address nor was he making payments so they would have been within their rights to register this default but they didn't.

HTL has told me that there is no obligation on them to register a default. I agree but I'm in no doubt that this would have been a true reflection of the state of Mr T's account. On balance I believe it does show that HTL did not take any action to pursue Mr T's debt then. And in fact, they repeated this in 2010.

I pointed this out to HTL as I believe it would have been fair of them to register a default back in 2005 to reflect Mr T's lending. They didn't do this and on balance I don't believe it is fair for them now to continue to pursue Mr T for this debt. I believe that they could, and should, have taken this action nearly ten years ago.

I suggested to HTL that they should write-off Mr T's debt because they never took action back in 2005 to pursue him. They believe that they took steps to locate him but were unable to trace him effectively. I consider that if the default had been registered, that may well have resulted in Mr T contacting them. As they did not take that action, I believe it would not be fair to now expect Mr T to pay off this debt. They should treat him as if they did register the default back in 2005. This would have come off his record some time ago. And under Scottish law the debt would have therefore been extinguished in 2010.

I appreciate this is not the decision that Mr T asked us to make but I believe the outcome is similar and I consider it to be fair and reasonable.

my final decision

For the reasons stated above, my final decision is to uphold Mr T's complaint and instruct Honours Trustee Limited to write off Mr T's student loan debt.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr T to accept or reject my decision before 25 May 2015.

Sandra Quinn
ombudsman