DRN-4757531

The complaint

A limited liability partnership, which I'll refer to as L, complains that HSBC UK Bank Plc failed to inform it correctly about changes to its account. L says that as a result it suffered considerable losses in interest.

What happened

L had a client account with HSBC, on which it received a negotiated rate of interest.

In May 2022, the bank's relationship manager (RM) called L to say that the bank would be moving L's accounts to Business Banking, with a new RM.

Nine days later, the bank confirmed by letter that the accounts would be moved on or after 10 August 2022. The letter said there would be changes to the services and pricing. In the list of changes, the letter said that if L had a negotiated credit interest rate, it would move to a standard rate or a non-interest-bearing current account, which may result in a reduction in interest.

During June and August, L had two meetings with bank representatives – first with the outgoing RM, then with the both the outgoing and incoming RMs together.

L says that in the phone call and meetings with the RMs, the partnership was reassured that nothing would change, with the exception of a monthly account fee and an increase in the charge for CHAPS payments, and there was no mention of any change in the interest that it would receive.

L noticed early in September 2022 that the interest being paid on the client account had diminished. The partnership queried this with the new RM, and a formal complaint was registered in the same month. In October 2022, the bank said it wasn't upholding the complaint, because L had been informed in the May letter that the negotiated interest rate would come to an end. L moved its client account funds to a different bank early in 2023.

Unhappy with the bank's response to its complaint, L referred the matter to us.

L said that during the phone call before the letter and the meetings after it, the bank's representatives reassured L that nothing would change except for the fees and a new RM. L said these were misrepresentations, on which it had relied. L said that interest rates weren't discussed at the meetings because of the RMs' reassurance that nothing would change. L also said that when it noticed the reduced interest paid and raised it with the new RM, it was clear that he and the previous RM had no idea that interest payments would materially reduce.

I issued a provisional decision in which, for reasons that I give below, I proposed that HSBC should pay £32,000 compensation to L, being half the interest that I estimated L had lost, plus £2,000 interest for loss of use of the funds.

I invited both parties to submit any further comments or evidence.

HSBC said it accepted my provisional decision.

L didn't agree with my provisional findings and submitted a number of points, which I summarise below.

What I've decided – and why

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

There's little dispute between the parties about the core events in this complaint. As I understand them, they are as follows:

- HSBC moved the management of L's accounts to a different department and, as part of the move, changed L's client account to one with a lower interest rate. The bank gave L advance notice of these changes, in a letter.

- The RMs responsible for L's accounts spoke to L, before and after the letter, about the change to the new RM and new account. They didn't mention the change in interest rate, and there was no discussion at all about interest rates.

- L didn't act on the information in the bank's letter.

- Neither of the RMs were, at the time of these events, aware that the interest rate would change.

The dispute here is about the nature of the reassurances given by the RMs, and the relative weight that should be given to those reassurances and to the written notice received by L.

L says that in the call and the meetings, the partners were reassured by the RMs that the customer could carry on as before and shouldn't see any differences, except for some fees. Our investigator asked the bank for comments from the RMs on this point. In response, the new RM (who was present at the second meeting) said that to the best of his recollection, that was an accurate description. The previous RM (who made the phone call and was present at both meetings) said "*This was a long time ago but I would not have given an assurance that savings rates would have remained unchanged (how could you). The issue here is that we weren't advised that BB segment would only pay standard rates on client moneys. This wasn't at that time included in the handover letter. (I noticed that it was included in the latest tranche of migrations and we had to advise clients.)*"

In my view, the RMs' statements confirm that the interest rate wasn't specifically discussed, that neither RM knew the interest rate would change, and that L was told that it wouldn't see any differences other than the new RM and some additional charges. I believe that both RMs would have been aware that L had around £30m deposited in the account and, had they known that the interest rate would fall, they would have realised that L would receive some £30,000 less per month. Given that the other changes were minor, I imagine that, had they known about the forthcoming change in the interest rate, the RMs would have alerted L to it.

Having said that, I must acknowledge that L was notified by letter that the interest rate would change. L didn't act on it, though I'm not clear whether this was because the letter wasn't read or read fully, or the content wasn't taken seriously, or the content was taken seriously but was later consciously regarded as being superseded. In its complaint to us, L referred to this notification as "*a clause on the second page of their letter dated 31 May 2022 about which we were unaware as we had been advised that nothing would be changing by both*

accounts managers." Later, L argued that what the RMs said in the meetings "*were representations and as such were an amendment by them of the written notification we received and on which representations we were entitled to rely*." I note that L didn't mention the prospect of the change in interest when it met with the RMs. Given the large sums involved, I would expect the partners to have raised the matter, had they read the letter.

Having considered the evidence, it's my view that responsibility for what went wrong lies with both parties. The bank failed to inform its own RMs about the change in interest rate, and as a result they gave L reassurance that nothing material would change, when in fact the imminent financial impact was substantial. While the RMs were giving these reassurances, L ignored a letter from the bank explaining that the interest rate would fall. Given the bank's error, it wouldn't be difficult to construct a chain of events that led to L failing to pay due attention to the letter. But L is a firm of solicitors, and I would expect it to understand the importance of formal letters.

In response to my provisional decision, the partners have said they didn't ignore the bank's letter – they say they always had a trusted relationship with the RMs up to that point and took their reassurances at face value. In the partners' view, "*that negated the reference in the letter about the possibility of interest rates changing*." But L still hasn't clarified what the partners did or thought when they received the letter. The letter clearly stated that the interest rate would move from a negotiated rate to the bank's standard rate or that of a non-interest-bearing account. This had substantial implications for L's income, but the partners didn't mention it in either of the two meetings with the RMs. If L's argument is that the partners had read the letter but said nothing about interest rates in the meetings because of the RMs' general reassurances, then I'm not persuaded by the argument – nor can I see how it fits with L's original assertion that the notification was "*a clause on the second page of their letter dated 31 May 2022 about which we were unaware".* I'm not persuaded that the partners initially expected, having read the letter, that the interest rate would fall but then had their expectations changed by the assurances given by the RMs.

For these reasons, I think the bank should compensate L, but for only part of its losses. It's not possible to make an exact calculation of the respective responsibilities of the parties for what went wrong. What they each contributed to the problem was qualitatively different. In the circumstances, I believe that a fair and reasonable outcome would be for the bank to pay L for half its losses.

In response to my provisional decision, L has said that it's disappointing to note that even though the partners might read and understand documents sent to them, then if they are misled by the bank's employees, the only reason for halving the award is that they are solicitors. L asks if this is not simply discriminatory, as the same decision would clearly not have been made for an ordinary consumer or another type of business.

Here I should make three points. First, I'm awarding half the losses not because L is a firm of solicitors, but rather because both parties, in my view, share responsibility for what went wrong. In coming to that view, I've taken into account that the bank didn't inform its own RMs about the interest rate change, but I've also taken into account that the bank did inform L about the change, by letter, and L took no action in response. I've considered whether it's fair to expect L to have read and paid due attention to the letter and I've concluded that it is fair to expect a firm of solicitors to have done so.

Secondly, I'm required to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. I think it's reasonable to take into account the professional capacity and resources of the complainant as part of the circumstances of a complaint where relevant. For the reasons given above, I think it's fair to do so here.

Thirdly, I make no findings in this decision about any other case which may involve any other complainant, whether a consumer or another business. Each case is determined on its own merits and its own circumstances.

In calculating L's losses, my starting points are as follows:

- In practice, it was in early September 2022 that L first realised that the interest rate had fallen. The bank gave two months' notice in its letter, but in recognition of the lost period, I believe the notice should run from the beginning of September to the end of October. The loss should therefore be calculated from the start of the new HSBC rate on 10 August 2022 to the end of October 2022.

- Although L didn't move the funds to the new bank until early 2023, it could have moved them earlier. I don't think L needed to wait for its complaint to HSBC to be answered. I therefore don't think the period after October 2022 can be reasonably regarded as giving rise to losses that flow from the bank's errors.

- L's losses result from its funds remaining on the lower HSBC rate longer than otherwise would have been the case, and not receiving the new bank's rate. In other words, the comparison should be with the new bank's rate, rather than the previous HSBC negotiated rate. From figures provided by L, my understanding is that the new bank's rate was 0.55% below base rate.

- During the final month in which L actually held substantial funds in the HSBC account, the balance ran down from about £30m to less than £1m. The amount of interest paid on the accounts (HSBC and new bank) should therefore reflect that declining balance during that month.

Taking these points into account, I believe the losses that I should consider are equivalent to the difference between the interest that would have been received at the new bank's rate and the interest that would have been received at the actual HSBC rate, during the period given above, adjusting the balance during the last month of the period as described above.

In response to my provisional decision, L has said it doesn't understand the reason for the adjustment for the declining balance in the final month. It has pointed out that in its own loss calculations, which it had previously supplied to us, L didn't include January 2023, when it started transferring money to the new bank. But my calculations are for losses which L would have suffered during the period between 10 August and the end of October 2022, assuming L would have been able to move to the new account entirely by the end of that period. I believe that in the final month of that period – October – L would have run down the balance, as actually happened in January 2023. That's why I've adjusted the lost interest in October to reflect a declining balance.

On this basis, my own calculation is that L suffered a loss of about £64,000 which can be attributed to the events in this complaint – being the difference between about £80,000 interest that would have been received from the new bank and about £16,000 that would have been received from HSBC.

In response to my provisional decision, L has also queried the calculation of the loss between 10 August and 31 October. L's own calculation, previously sent to us, was that the interest lost over that period would be over £84,000. L suggested that my calculation had been made from 1 September, rather than 10 August. My calculation was in fact made from 10 August, but the result is lower than in L's original calculation because of the adjustment

made in October, as discussed above, as the HSBC balance would have been reduced during the month by transfer to the new bank.

For reasons I explain above, I believe a fair resolution of the complaint would be for the bank to pay L half of the £64,000 losses. I therefore conclude that HSBC should pay £32,000.

I'm awarding the compensation as an absolute amount, rather than setting out the redress in a formula for the bank to calculate, in order to make things simple and to save the parties time and argument over sums that would be derived with spurious accuracy. I say this in recognition of the necessarily wide approximation in my allocation of responsibility between the parties, and in the assumptions underpinning the choice of time period for the loss. In my view, it wouldn't be possible to reach a meaningful and precise formula for accurate calculation of the compensation to be paid. I think the figure I've awarded is fair and reasonable.

I also conclude that the bank should pay simple interest on the £32,000, for the loss of use of the funds, from the end of October 2022 to the date of settlement, at the rate given by the new bank. I've calculated that this would be about £2,000, and for reasons of simplicity as described above, I require that this also should be paid as an absolute sum.

For the above reasons, having considered L's arguments, I haven't departed from my provisional decision.

My final decision

My final decision is that HSBC UK Bank Plc should pay £32,000 to L, plus £2,000 in interest for the loss of use of the funds.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 21 May 2024.

Colin Brown
Ombudsman