DRN-4875280

The complaint

A company, which I'll refer to as G, complains that Handelsbanken plc omitted to put hedging arrangements in place when the company's borrowing was renewed in 2021.

What happened

The background to the events in this case also involves two other companies, which I'll refer to as T and P. The three companies are connected by common ownership and management. T and P have also made complaints about their borrowing from Handelsbanken. The issues raised and the circumstances are largely the same for each complaint, so I've arrived at the same outcome. Formally, I'm issuing a separate decision for each, differing only in minor details where appropriate.

Since 2012, Handelsbanken has provided a series of loans to the companies. Interest rate hedging arrangements were also put in place in 2012, then again in 2017 when the lending was renewed. On maturity in June 2021, the lending was renewed again, but this time the interest was left on a variable rate. When the Bank of England base rate rose between December 2021 and August 2023, G's interest payments increased substantially.

G complained to the bank. G's director believed that hedging arrangements weren't put in place in 2021 because of an oversight by the bank's account manager. G's director said that from outset in 2012, he relied on the account manager to provide advice on lending and to manage the companies' loan accounts, so in 2021 he assumed that everything "*was done and in hand*" and that the account manager would have put hedging arrangements in place on G's behalf.

In response, Handelsbanken said that neither it nor the account manager provide an advisory service in relation to interest rate products or derivatives and that neither have assumed any advisory duty in regard to this.

Unhappy with the bank's response, G referred its complaint to us in November 2023. G would like the bank to put the company back in the position it would have been in if new hedging arrangements had been put in place in June 2021. In early 2024, G's director also said that in the light of the bank's omission in June 2021, a repayment for one quarter should be postponed.

Our investigator looked at the evidence and didn't recommend that the bank should be required to do anything further. He gave the following reasons, in summary:

- The loan facility wasn't a product regulated by the Financial Conduct Authority (FCA), and the bank was under no regulatory obligation to provide advice on hedging.
- G had previously entered hedging arrangements, so it would be reasonable to assume its director was aware what they are and how to go about getting them in place.
- But in any event, the account manager did discuss fixed rates with G's director

before and after the June 2021 refinancing, and he put forward some fixed rate quotes. So the investigator was satisfied G was made well aware of the option to fix the interest rate. Furthermore, the facility letter, which was signed by G's director in June 2021, clearly stated that the loan was going to be issued on a variable rate.

- The email records show that the bank's account manager provided G with some indicative variable rates early in 2021 and he also touched on what fixed rates were available and asked whether this was something G wanted to consider. However, G's director felt the rates offered by Handelsbanken were too high and so he suggested putting things off while he looked into the rates offered by other banks. The investigator couldn't see that he came back to the bank about fixing the rate after this.

- The next mention of a fixed rate was in October 2021, when the account manager gave an indicative quote for variable and fixed rates on possible further borrowing. Again, the investigator couldn't see that G's director asked for a fixed rate to be put in place.

- The investigator didn't agree that the account manager should have put hedging arrangements in place on G's behalf. Rather, the onus was on G to request that.

- Both the account manager and G's director later said they regretted that hedging arrangements weren't put in place, but it's clear that both parties were speaking with the benefit of hindsight after G's interest costs increased following the sharp rise in the bank rate. It's understandable that the account manager would be sympathetic to G's director after a ten-year banking relationship. But this wasn't sufficient for the investigator to conclude that the bank should have unilaterally put hedging arrangements in place for G, or advised G on them, during the June 2021 refinancing.

G disagreed with the investigator's conclusions. Its director made the following points, in summary:

- Previously in 2012 and 2016 the account manager advised and facilitated hedging products for the loans. This set a precedent – but in 2021, this service wasn't provided. G's director relied on the account manager for advice and to sort out and set up arrangements for him. The whole of the relationship should be considered, rather than just the specifics of individual emails.

- Because of Covid restrictions, G's director wasn't able to travel to meet the bank's account manager face to face. So he was unsure why a more professional approach wasn't taken, whereby he would have been asked whether hedging was to be included in the agreement again.

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.

Having done that, I've reached the same conclusions as the investigator, and for largely the same reasons.

The June 2021 agreement was for a commercial loan of £2,065,000 to G, a limited company. Such a loan doesn't come within the scope of FCA regulation, and therefore its sale wasn't subject to any rules for regulated advice. That means the bank wasn't required to provide advice, nor was it required to ensure that the product sold was suitable for the customer's needs – or even to make an assessment of those needs.

Having said that, I would expect the bank to have given clear information about the product and how it works. The loan agreement signed by G's director stated that the interest rate on the loan would be the Bank of England rate plus a margin of 2.65%, payable quarterly. The loan was for five years, repayable in full on maturity. I'm satisfied that the information was clear and not misleading – including the fact that the rate was variable. There's no suggestion in the agreement that the rate was fixed. Nor can I see that there was any new agreement between the parties setting up a free-standing interest rate hedging product such as a swap or a cap. I'm therefore satisfied that Handelsbanken gave G clear information about the loan and that it didn't say the rate was fixed or covered by an interest rate hedging agreement. I can't see anything in the loan agreement – or the loan agreements for the other companies – that would have suggested in June 2021 that any interest rate hedging was being put in place.

Earlier in 2021 there were discussions about possible new lending arrangements, during which the bank's account manager put some fixed rate figures to G's director. So I'm satisfied that G's director was aware that using a fixed rate to control interest costs was an option. G's director had experience of having free-standing interest rate hedging products for the companies, so I'm also satisfied that he understood that interest costs could be controlled in that way too. I'm not aware that G asked for either type of product to be put in place in June 2021.

G's director said the account manager had advised and facilitated hedging products for earlier loan agreements and should have given advice and sorted out and set up arrangements on this occasion. Whatever happened previously, I don't think the bank was obliged to give advice to G or to ensure product suitability, for reasons I've given above. In any event, the account manager had suggested a fixed rate as an option for the renewal, and G hadn't followed it up. So I believe G knew it had a choice.

I certainly wouldn't expect the bank to put new hedging arrangements in place without discussing it with the company and without getting a signed agreement. It would have been wrong to do so, and I don't think the evidence shows that the bank gave G any impression that it would set up new hedging arrangements without the company's express consent.

I appreciate that the rise in the bank rate has led directly to higher interest costs for G, and I understand why G's director now wishes that the account manager had pushed him to fix or hedge the rate on the loan. Like the investigator, I can imagine how the account manager would sympathise with G's director and express regret, with the benefit of hindsight. But I don't think the account manager or the bank acted unfairly in 2021, for the reasons given above, so I can't reasonably require the bank to compensate G for its increased costs.

I can see that Handelsbanken accepts that the account manager's communications have on occasion been overly familiar, and it has apologised and refunded three months' account management fees. I think that was a fair and reasonable response.

In all the circumstances, I don't think it was unfair or unreasonable for the bank to have agreed a variable rate loan with G in June 2021 without there being any interest rate hedging products in place.

My final decision

My final decision is that I don't require Handelsbanken plc to do anything further.

Under the rules of the Financial Ombudsman Service, I’m required to ask G to accept or reject my decision before 21 August 2024.

Colin Brown
Ombudsman