

The complaint

A company, which I'll refer to as K, complains that after months of negotiations, HSBC UK Bank Plc didn't restructure the company's lending into fixed rate term loans.

What happened

K had a number of commercial loans from HSBC. In January 2022, the bank approved a temporary overdraft facility of £350,000 for K to repay some other existing borrowing. At the time, the bank's relationship manager said in an email to K's directors that HSBC hoped to formalise the funding as part of a wider restructure.

The parties were in detailed negotiations for the rest of 2022 about how the lending could be restructured, including loans on fixed rates for both the company and the directors personally. Various options and proposals were considered. Valuations were carried out and solicitors were engaged to prepare documents for loan security.

At the end of 2022, the bank assigned a new relationship manager to K. In January 2023 the bank said that after reviewing the latest business projections and other financial information for K, it wouldn't proceed with the restructuring. Discussions continued during 2023, during which K tried to find lending elsewhere.

In December 2023 K complained to HSBC about the failure to agree a restructure to consolidate its borrowing. Unhappy with the bank's response, K referred the complaint to us.

Our investigator looked at the evidence and concluded that HSBC hadn't acted wrongly by ultimately deciding not to lend to K. She gave these reasons, in summary:

- Banks can decide to lend or not depending on considerations of risk, and that's their commercial decision to make. The bank said that it wouldn't proceed with the restructuring, and therefore no formal credit application would be prepared, because it considered the lending structure too challenging.
- The first relationship manager, who invested much time in trying to make the restructure happen, came across as optimistic and so may not have managed K's expectations enough. But it was always clear that the lending would be subject to approval by the bank's credit team.
- Either party could have walked away from negotiations at any stage. Even if the formal credit application had been prepared and submitted, there would still have been no guarantee that it would be approved by the credit team.
- The investigator noted that HSBC had reimbursed K for some of the professional fees it incurred.
- K also complained recently that it should have been allowed to move its Flexible Business Loan to a fixed rate product, regardless of the failed loan restructure

negotiations. The investigator said she could see that K asked to move to a fixed rate product and was presented with options. But she couldn't see that K asked HSBC to proceed with any of the options. So the investigator said she wasn't able to uphold this complaint point.

K didn't agree with the investigator's conclusions and asked for the case to be reviewed by an ombudsman.

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.

I'm sorry to disappoint K's directors, but I've reached the same conclusions as the investigator and for largely the same reasons given above.

There's been extensive correspondence on this case. I'd like to reassure the parties that I've looked at all the arguments and evidence with care. In this decision I'll concentrate on the key points that are material to my determination of the complaint.

In my view, the most important fact in this case is that although both sides hoped that a restructure would be possible and took steps towards that end, no restructured lending agreement was signed. In those circumstances, neither party was obliged to go ahead with the deal.

From the time that the temporary overdraft was agreed in January 2022, the parties endeavoured to work towards a restructure of the borrowing that could eventually be approved by HSBC. From looking at the emails between the parties, I believe it was clear throughout that any deal would need to be approved by the bank in detail. K was an established business and its directors had previous experience of obtaining finance, and I therefore believe they would have understood that the lending application would need to be approved at a level higher than the bank's relationship manager. Negotiations went on throughout the year. It follows that there was always the possibility that an agreement might not be reached and the bank might therefore decline to make a formal offer. In other words, the restructuring wasn't guaranteed or promised by the bank.

I don't think the relationship manager's enthusiastic and optimistic pursuit of terms that could be agreed by both K and the bank's credit department amounted to a new lending contract, or to a promise by the bank. Both sides devoted time, energy and resources to preparing the ground for a new agreement, including the drafting of new security documents. At times the relationship manager indicated which elements of a possible restructure would be preferred by the credit department – which, in my experience, isn't unusual during negotiations over revised lending terms. But I haven't seen any evidence that suggests the deal as a whole was at any time formally approved by the credit department, or that the relationship manager said that it had been.

At the end of 2022 and in early 2023, HSBC reviewed the situation using updated figures and projections for K's finances. The bank then concluded that it didn't wish to go ahead with the restructure on the terms discussed so far, and that the application wouldn't be put to the credit department. The bank has said that its assessment couldn't establish affordability of the consolidation proposals.

I don't think HSBC was wrong to review the lending proposals. A bank is entitled to make an assessment of the risks presented by any potential lending – both to itself and to the borrower. I would expect a bank to take care in assessing whether a borrower will be able to

repay the lending. If it concluded that there would be affordability problems, I wouldn't expect the deal to go ahead. For these reasons, I don't think that HSBC's actions were unfair or unreasonable.

I appreciate that K's directors are deeply disappointed that the terms of the restructuring deal under discussion in 2022 didn't become a formal offer. However, for the above reasons, I don't think that HSBC acted unfairly or unreasonably.

I also agree with the investigator regarding the interest rate on K's Flexible Business Loan. I haven't seen evidence that K instructed the bank to go ahead with any of the options the bank offered, so I don't think the bank acted unfairly or unreasonably by not changing the rate.

My final decision

My final decision is that I don't require HSBC UK Bank Plc to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 24 December 2024.

Colin Brown
Ombudsman