DRN-5604648

The complaint

Mr and Mrs S complain that Handelsbanken plc, trading as Handelsbanken, misled them about the interest rates they have been charged on their secured loan and overdraft. They also complain that Handelsbanken wrongly treated the borrowing as unregulated.

Mr and Mrs S's son, Mr S1, brings this complaint on their behalf.

What happened

Mr and Mrs S have a multi-loan facility with Handelsbanken, secured on their home and the surrounding land. This complaint is about one of those loans and a secured overdraft facility.

The loan was taken out in 2015. Mr and Mrs S borrowed £300,000 at an interest rate of "Base Rate" plus a margin of 0.75% a year. In 2020 they took a £300,000 secured overdraft facility, at "Base Rate" plus a margin of 1.5% a year.

In July 2024, through Mr S1, Mr and Mrs S complained. Mr S1 said that the use of the term "base rate" in the facility documents was deliberately misleading, because his parents had understood this meant Bank of England base rate rather than Handelsbanken's base rate and that the rate they were getting would be more competitive than it in fact was. He said that Mr and Mrs S had understood "margin" to mean the profit Handelsbanken would make from lending to them, and that the interest rate clause was unfair and shouldn't be binding on Mr and Mrs S. Mr S1 also said that the loan and overdraft should have been treated as regulated mortgage products but were not.

Handelsbanken said it had done nothing wrong. It considered the terms of the loan and overdraft facilities were clear and fair, and it said it hadn't suggested to Mr and Mrs S that the interest rate they would pay would be the same as Bank of England base rate or track that rate. It also said that the facilities weren't regulated as Mr and Mrs S weren't using more than 40% of the land used as security as a dwelling, and they weren't therefore subject to the regulator's Mortgage Conduct of Business rules (MCOB).

Mr and Mrs S referred their complaint to us. Handelsbanken told us it consented to us investigating all of the complaint, even though time limits might apply to part of it.

Our Investigator didn't recommend that the complaint should be upheld. She concluded that the facilities probably should have been treated as regulated contracts and that the terms in the facility documents which entitled Handelsbanken to vary the interest rate were very broad. But she said the facility terms were clear that the rate wasn't linked to Bank of England base rate and Handelsbanken hadn't operated the facilities in such a way that Mr and Mrs S had been caused any detriment.

Mr and Mrs S didn't accept that conclusion and on their behalf Mr S1 asked for an Ombudsman's review. He still thought that his parents had been misled and treated unfairly.

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 so, I've come to the same overall conclusions as the Investigator, for the same reasons.

First of all, given the information available in this complaint, I think the secured overdraft and loan should be treated as regulated agreements. The PERG section of the regulator's Handbook of rules and guidance is relevant here. PERG 4.4 sets out the definition of a regulated mortgage contract.[1]

Mr and Mrs S's loan and overdraft met the first two conditions – the lender was providing credit to them as individuals and that credit was secured on land by a first charge. The third condition at PERG 4.4.1 G said at the time the loan was taken:

> (3) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling by the borrower […] or by a related person.

The same condition remained in force with very similar wording when the overdraft was arranged in 2020.

I've seen nothing to show that Mr and Mrs S were using less than 40% of the land and buildings on which the loan and overdraft were secured for anything other than their own domestic purposes. While PERG refers to a "dwelling", this does not only mean the building or buildings in which the borrower lives; it extends to the land associated with the building or buildings. PERG 4.4.7 G says:

> The expression 'as or in connection with a dwelling' set out in PERG 4.4.1 G (3) means that loans to buy a small house with a large garden would in general be covered.

It goes on to say that if more than 60% of the land associated with a house were to be used for commercial purposes (it gives the example of farmland), a loan secured on it would not be a regulated mortgage contract.

Mr and Mrs S were living in the mortgaged property and Mr S1 has explained that the property and land are used only for domestic purposes with no business operating from them, and this was the case when the borrowing was arranged in in 2015 and 2020. Handelsbanken hasn't been able to demonstrate otherwise.

Having found that the overdraft and loan should be treated as regulated agreements, I must consider rules and guidance which apply to regulated agreements, including MCOB, in deciding this complaint, alongside relevant law and what is fair and reasonable in all the circumstances. I have done that, but I don't consider that the fact Handelsbanken did not treat the loan and overdraft as regulated mortgage contracts makes a difference to the outcome of this complaint, for the reasons I'll explain.

The loan facility letter dated 17 June 2015 said, at clause 1.1, that Mr and Mrs S could borrow £300,000 secured on their property and interest was payable quarterly. It also said interest would be based on:

> **Interest Rate:** Base Rate.

[1] https://www.handbook.fca.org.uk/handbook/PERG/4/4.html

Margin: 0.75% (per annum).

And:

5 **Interest on the Loan**

5.1 The Borrowers will pay interest in arrears on the Loan on each Interest Payment Date at an annual rate which is the aggregate sum of (1) the Margin and (2) the Base Rate as that rate fluctuates from time to time.

Schedule 4 of the agreement set out the definitions and interpretation of the terms, as follows:

"Base Rate" means the sterling base lending rate of the Bank in the UK from time to time as determined by the Bank in its sole and absolute discretion."

"Margin" means the percentage set out in Clause 1.1.

The facility letter defined the "Bank" as Svenska Handelsbanken AB (publ).

Svenska Handelsbanken AB (publ) transferred its UK banking business to Handelsbanken plc with effect from 1 December 2018.

I have also seen a copy of the indicative terms of the multi-loan facility which Handelsbanken issued to Mr and Mrs S on 11 May 2015. That says that the loan in question here – described as "Loan 2" in the indicative terms – would be subject to interest at a "0.75% margin over Handelsbanken Base Rate (currently 1.5%pa)".

The secured overdraft facility letter dated 15 January 2020 said, at clause 1.1, that Mr and Mrs S could borrow a £300,000 overdraft. The letter defined the "Bank" as Handelsbanken plc. Interest was payable monthly, at a margin of 1.5% a year. It said at clause 5:

5 **Interest on the Overdraft**

5.1 The Borrowers will pay interest in arrears on the sums outstanding under the Facility on each Interest Payment Date at an annual rate which is the aggregate sum of (1) the Margin and (2) the Base Rate, as that rate fluctuates from time to time.

Schedule 2 of the agreement set out the definitions and interpretation of the terms, as follows:

"Base Rate" means the sterling base lending rate of the Bank in the UK from time to time as determined by the Bank in its sole and absolute discretion."

"Margin" means the percentage set out in Clause 1.1.

I'm satisfied that the facility documents were clear that the loan and overdraft interest rates would be Handelsbanken's base rate – not Bank of England base rate – plus a margin. None of the documents said that Handelsbanken's base rate would be the same as or would follow Bank of England base rate. The indicative terms dated 11 May 2015 said what Handelsbanken's base rate was at that time: 1.5%. Bank of England base rate at that time was 0.5%. So it was clear from the outset that the two were not the same.

I don't agree with Mr S1 that Handelsbanken's use of the term "Base Rate" was misleading, or that all other lenders mean Bank of England base rate when they refer to base rate. Lenders will define what they mean by base rate in their loan documents; it does not necessarily mean Bank of England base rate. I also don't accept that Handelsbanken's use of the term "Base Rate" meant his parents were unable to compare what Handelsbanken was offering with rates available from other lenders. Handelsbanken's base rate was in the indicative terms and the margins were in the facility letters, and if Mr and Mrs S wanted more information about the rates they could have asked.

I'm also satisfied that "margin" was clearly defined as the percentage over base rate applicable to the loan and overdraft. It wasn't defined as the profit Handelsbanken would make on the lending.

The terms of the loan and overdraft say that Handelsbanken can change its base rate at its own discretion. They don't set out any of the reasons why it might change the rate, and I can see why Mr S1 considers this to be unfair. I've considered the relevant sections of the Consumer Rights Act 2015 (CRA) Mr S1 has referred to, as well as the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR). Mr S1 has argued that an unfair term should not be binding on Mr and Mrs S, as provided for by both the UTCCR and the CRA, and so Handelsbanken should make a refund of interest.

However, if a court were to find the interest rate term unfair, I think it most unlikely that the court would remove the term altogether. The loan and overdraft facility letters were both clear that Mr and Mrs S would pay interest on the facilities and that the interest rate was variable, and Mr S1 has said that Mr and Mrs S in fact expected the interest rate to vary - albeit in line with Bank of England base rate rather than Handelsbanken's base rate. In these circumstances, I think a court is most likely to imply a fair term permitting the interest rate to be varied for good reason.

I've looked at how Handelsbanken has operated its base rate. When Mr and Mrs S took out the loan in 2015, Handelsbanken's base rate was 1.5%. This was 1% above the Bank of England base rate at the time. That differential reduced over time and in 2022 the difference between the Handelsbanken base rate and Bank of England base rate was 0.5%. The differential has remained at around 0.5% ever since.

In practice, therefore, while the Handelsbanken base rate has consistently been higher than Bank of England base rate, the difference between the two rates halved during the term of Mr and Mrs S's borrowing. And other than the difference between the two rates reducing, Handelsbanken base rate has changed broadly in line with Bank of England base rate – falling when Bank of England base rate fell and increasing when Bank of England base rate increased.

It was clear from the outset that the interest rates on the loan and overdraft wouldn't match Bank of England base rate, and the Handelsbanken base rate was set at 1% above Bank of England base rate when Mr and Mrs S took out their loan in 2015. The difference later halved but the rate has otherwise moved broadly in line with Bank of England base rate, plus the margin appropriate to each tranche of borrowing as provided for in the facility letters.

In all the circumstances, I don't find that Handelsbanken misled Mr and Mrs S about the basis of the interest rates on their borrowing, and I'm not persuaded that the way it has operated the interest rates on the loan and overdraft has resulted in Mr and Mrs S losing out or otherwise being treated unfairly. I make no order or award.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 3 July 2025.

Janet Millington
Ombudsman