

complaint

C, a limited company, complains it was misled by HSBC Bank Plc about the terms on which it would lend. C is represented by its director, who I'll refer to as Mr H. Mr H asks that HSBC cancels his personal guarantee and accepts its processes are misleading and unethical.

background

C took out an Enterprise Finance Guarantee (EFG) loan in 2013. Mr H says HSBC didn't tell him at the outset it would require a director's guarantee. He says by the time he knew about this he'd paid a deposit for a franchise. Mr H says he was told HSBC would only claim under his guarantee if the EFG scheme didn't cover the debt. In 2015 C's business was in difficulty and Mr H met with HSBC. He says HSBC failed to provide any proposals. He says the loan was settled under the EFG scheme. Despite this, HSBC is still trying to recover money from him and has appointed debt collectors.

The adjudicator didn't recommend that the complaint should be upheld. She said:

- this complaint is from C. We can look into C's complaint about the way HSBC dealt with the loan. We can't look into Mr H's concerns about his personal guarantee.
- HSBC told C about the terms of the loan, including the requirement for a director's guarantee, in enough time for it to consider whether to go ahead. While Mr H was in a difficult position after paying the deposit for a franchise, this wasn't HSBC's fault.
- HSBC sent demands for the debt to be repaid by C and under the guarantee. It made it clear it required repayment of the debt. It didn't get a response from C or Mr H.

C didn't agree. Mr H said HSBC should have told him at the outset it would require him to give a personal guarantee. He says if he'd known this he wouldn't have proceeded with the franchise application. He says he didn't enter into any discussions with HSBC about repayment of the loan after 2015 as he considers it was secured by the EFG.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I need to be clear that this complaint is from C, a limited company, about the loan it took out in 2013. I can't consider Mr H's concerns about his personal guarantee.

HSBC is entitled to make a commercial decision about the terms on which it lends. It says it requires a personal guarantee for all EFG loans to a limited company.

Mr H met with HSBC in early May 2013 – Mr H says it was on 8 May 2013. HSBC can't provide notes of this meeting. Mr H says HSBC explained how the EFG loan worked but didn't say it needed him to provide a guarantee.

I don't know why Mr H wasn't made aware of this at the first meeting in May 2013. It's unfortunate we don't have notes of that meeting. But if HSBC didn't request a guarantee at the first meeting I don't think this means it wasn't entitled to do so. At some point between 8 and 24 May 2013 Mr H was told that a personal guarantee would be required. Mr H signed a document dated 24 May 2013 stating he declined to seek independent legal advice about the guarantee.

An application was made for the EFG on 30 May 2013. HSBC sent a loan offer to C on 3 June 2013. This set out the terms of the loan, including that Mr H had to provide a guarantee. The loan documents were signed on 18 June 2013.

On 21 May 2013 Mr H had paid a non-refundable deposit to a franchisor. He says he'd paid this personally as C hadn't received the loan due to delays by HSBC. I haven't seen evidence of delays by HSBC, but I don't think this would change the outcome of this complaint. At this point, C hadn't received a loan offer. Mr H couldn't be certain that the EFG application would be successful. He couldn't be certain that the formal loan offer would be on terms that he found acceptable or that HSBC would offer a loan at all. I think it was for Mr H to make a decision whether to pay a non-refundable deposit in these circumstances.

While HSBC had the benefit of a guarantee from the government this doesn't mean C isn't liable for the debt. The government provides the guarantee on specific terms, including when the borrower should be pursued for the debt and the amount of the debt covered by the guarantee. The loan documents make it clear that C remains liable for the whole amount outstanding. HSBC sent demands to C and Mr H about the outstanding debt. I think HSBC is entitled to take steps to recover the debt.

Based on the available evidence, I don't think HSBC treated C unfairly. I think there was enough time between the loan offer and the date the documents were signed for Mr H to seek advice if he wasn't sure about the terms of the lending. I don't think HSBC was responsible for Mr H's decision to pay a non-refundable deposit for a franchise before he received the loan offer.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 25 August 2018.

Ruth Stevenson
ombudsman