

## **complaint**

Mr L complains that HSBC Bank plc charged an unreasonable rate of interest on a loan to a company of which he was a director and that the bank would not agree to accept, in full and final settlement, an offered payment under his personal guarantee, of that company's outstanding debt.

## **background**

Mr L was a director and shareholder of a company which banked with HSBC. In 2008 he gave a £25,000 personal guarantee to secure that company's borrowing. As a result of trading difficulties, that company's debt was transferred to a managed loan, at 19.9% APR, in February 2009.

The company's trading position did not improve and in February 2010, Mr L wrote to the bank to say that it had ceased trading and would be dissolved. He offered to pay £15,000 in full and final settlement of the company's outstanding debt, which he says was just over £19,000 at that time. He placed that amount of money in the company's current account, but the bank rejected his offer. Instead, it allowed the loan to continue, even after the company was dissolved, taking repayments from the current account as usual and charging interest on the loan debt.

Our adjudicator recommended that the complaint should be upheld in part. He concluded, in summary, that it was for the bank to use its commercial judgement in deciding whether to accept the offered amount, in full and final settlement of the company's debt. He did, however, consider that the bank should have recognised that the company had ceased trading and was to be dissolved. As a substantial amount of money was available on the company's current account, it should have used its right of set-off to transfer this money to the loan and reduce the balance outstanding considerably. This would have lessened the interest which subsequently accrued on the loan. He recommended that HSBC reduce the outstanding guaranteed debt by £11,350.

HSBC accepted the adjudicator's recommendation. However, Mr L wants the bank to agree not to require him to repay, under his guarantee, the remaining balance of the company debt. He says, in summary, that he did everything he could to repay the bank and feels that it has not treated him fairly.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

HSBC was entitled to use its commercial judgement in deciding the interest rate upon which it was prepared to provide the managed loan, and whether the offered full and final settlement was sufficient. This service cannot normally intervene in matters of commercial judgement, unless there is evidence of an error or maladministration in reaching that judgement. I do not find any such evidence. I therefore consider it fair and reasonable for HSBC to have made those commercial decisions.

I agree with the adjudicator that HSBC did not act fairly and reasonably by allowing the loan account to operate normally after it knew that the company had ceased trading and was being dissolved. As a result, it charged interest unnecessarily, when it was instead

appropriate for it to use its right of set-off to reduce the outstanding debt. I therefore agree that the bank should refund this unnecessary interest before calculating the remaining debt, for which it wants payment under Mr L's personal guarantee. While I note Mr L's comments about how hard he has tried to repay the company's debt, I consider it fair and reasonable for HSBC to require him to repay the remaining debt under that guarantee.

### **my final decision**

My decision is that I do not uphold the parts of this complaint relating to the interest rate charged on the company's managed loan and the bank's unwillingness to agree to a partial settlement offered by Mr L.

However, I do find that HSBC Bank plc acted unreasonably in not using its right of set-off to reduce the interest that accrued. In full and final settlement of that part of this complaint, I order HSBC Bank plc to reduce the outstanding company debt, for which it is seeking payment under Mr L's personal guarantee, by £11,350.

Malcolm Rogers  
**ombudsman**