

complaint

Mr and Mrs D complain that HSBC Bank plc pressured them to consolidate existing debt and take out and provide security for a loan that was repayable on demand.

To resolve this complaint Mr and Mrs D told us they wanted HSBC to:

- hold off taking further action in relation to the secured property
- pay them compensation,
- agree a sensible payment arrangement, and
- replace the existing borrowing arrangements with a standard mortgage (so it's not a loan repayable on demand.)

Mr and Mrs D are being represented by a third party I'll call "R".

background

Mr and Mrs D are long standing customers at HSBC. Their banking arrangements have included various accounts and overdraft facilities over a number of years. They're unhappy about the way HSBC handled their borrowing. Mr and Mrs D have mentioned two key concerns about the way HSBC dealt with them. They say they're particularly concerned that HSBC coerced them into giving it a legal charge over property as security for their previously unsecured borrowing. And they feel HSBC shouldn't have forced them into agreeing to change overdrafts into loans.

HSBC had only limited information about meetings and discussions that had taken place in 2006/2007. But it didn't accept that it ever put Mr and Mrs D under any unfair or improper pressure as they'd alleged. In 2008 Mr and Mrs D had both signed up to a loan. The purpose of that loan was to restructure their existing facilities. After taking independent legal advice, Mrs D had signed a legal mortgage giving the bank security in respect of that loan. In 2010, Mr and Mrs D took out a loan for the purpose of repaying all their obligations to HSBC. They'd since had some money problems and a number of failed payment arrangements with HSBC. So HSBC said it was entitled to proceed with the planned sale of the property they'd put up as security for their borrowing.

Our adjudicator investigated Mr and Mrs D's complaint and considered all the available information. He felt that HSBC had responded fairly and reasonably to the issues raised.

On behalf of Mr and Mrs D, R strongly disagrees. R says (in brief summary) that:

- our adjudicator hasn't referred to some obvious key points, namely the pressure applied on Mr and Mrs D to have the loans secured rather than remain unsecured
- even though HSBC has no details of meetings prior to 2006, earlier events are crucial to Mr and Mrs D's present position – if they'd been properly handled then they wouldn't be in the situation they face now
- our adjudicator has misinterpreted the action of giving advice – solicitors were appointed just to complete a legal transaction, not comment on whether it was the right decision for Mr and Mrs D to consolidate their liabilities and secure them against a house.

R has asked for an ombudsman to review what's happened, so this complaint has been passed to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And I've read the adjudicator's assessment as part of my overall review. But I've looked at everything afresh before reaching an independent view myself. And I've also carefully considered R's detailed further representations sent in response to the adjudicator's assessment.

I sympathise with Mr and Mrs D. I can see that they're in a difficult financial position. And there's some disagreement about exactly what's happened here, so I can understand why this is such a frustrating situation for Mr and Mrs D. But, like the adjudicator, I'm not persuaded this is a complaint I can fairly and reasonably uphold. That's because I don't consider HSBC has done anything wrong – or that it's acted in a way that isn't fair and reasonable. Here's why I say this.

Given the passage of time, there's only limited information available about what was said in meetings in 2006.

R is satisfied that Mr and Mrs D are very clear that they were pressured by HSBC into the position they find themselves in now. But I can't reasonably uphold this complaint just on the basis of what Mr and Mrs D say. And financial businesses aren't generally required to keep records for longer than six years. So I can't draw any conclusions about the merits of the complaint just because HSBC can't provide evidence to refute what Mr and Mrs D say.

I've given careful thought to R's assertion that Mr and Mrs D's true financial position was never considered and the loans were unaffordable. It seems to me that both loans were offered to enable Mr and Mrs D to restructure *existing* debt rather than provide any significant *additional* borrowing. And it seems reasonably clear from the available information that Mr and Mrs D had plans in place that they expected would enable them to repay debt. External events unfortunately led to cash flow difficulties and, ultimately, longer term money problems. So, on balance, I don't find these circumstances suggest the loans were unaffordable when Mr and Mrs D took them out.

I think it's fair to say that Mr and Mrs D had access to independent legal advice in 2008 when Mrs D signed the legal charge. I take R's point that he wouldn't expect their solicitor to act as financial adviser. But I can't fairly say that Mr and Mrs D didn't have any opportunity to seek advice on their position if they'd had any worries or concerns about the significance of the legal charge. And I can see that HSBC recommended in its offer letter that Mr and Mrs D should seek independent advice before accepting the offer. So I don't find that HSBC acted unfairly or unreasonably in relation to obtaining the legal charge.

HSBC's 2010 loan offer gave Mr and Mrs D an opportunity to consolidate their debt. The terms of the loan make clear that HSBC could withdraw the loan and/or demand repayment at any time. HSBC's offer letter included a recommendation to borrowers to seek independent advice before accepting the offer. So I can't fairly say that HSBC didn't make Mr and Mrs D aware of the loan terms and conditions. Or that Mr and Mrs D didn't have an opportunity to ensure they understood and agreed the loan terms before signing up to these.

Lenders must treat customers in financial difficulty fairly. But this doesn't mean I'd expect HSBC to hold off enforcing its security or that it should agree Mr and Mrs D's payment proposals. As far as I can see, HSBC has engaged constructively with Mr and Mrs D over the years and tried to accommodate their financial difficulties. It has allowed Mr and Mrs D ample time to bring their loan account up to date and it's entitled to take the action it has to enforce its security.

In coming to my decision, I've concentrated on dealing with what seem to me to be the main points of concern and dealt with things that make a difference to my decision. I appreciate R feels that I should deal specifically with the points of complaint he considers are central to my decision and not be distracted by factors he considers are irrelevant. And I've taken into account that R feels we haven't addressed some aspects of this complaint. But my role is to consider whether HSBC has acted fairly and reasonably overall towards Mr and Mrs D. And, based on the information I've seen, I'm satisfied I do have sufficient information to make my decision.

my final decision

For these reasons, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask R on behalf of Mr and Mrs D to accept or reject my decision before 8 April 2016.

Susan Webb
ombudsman