

## **complaint**

Mr and Mrs F complain that HSBC Bank Plc is acting unfairly in taking legal action to enforce security it says they gave for their son's borrowing. They ask that HSBC reduces their liability and removes the charge over their house.

## **background**

In 2007 Mr and Mrs F provided a legal charge over their house as security for a personal guarantee provided by their son, who I will call Mr B. The personal guarantee supported borrowing by a limited company of which Mr B was a director (which I will call W). In early 2010 W went into liquidation and HSBC called on the security provided by Mr and Mrs F to repay a debt of about £170,000. They were unable to agree a repayment proposal and, in 2013, HSBC instructed solicitors to start proceedings to recover the debt. Mr and Mrs F say:

- Mr B exercised undue influence over them and they signed the mortgage under duress.
- The security is not valid as there was no consideration. They raise other issues about the structure and management of W's business and the validity of the underlying debt.
- They were not able to take independent legal advice. The advice was provided by a solicitor recommended by HSBC, was biased and did not explain the implications of providing the security. HSBC did not provide the solicitor with relevant financial information, particularly about the value of W's business that they say HSBC was aware of through providing banking services to the previous owners. They say the solicitor was also acting for W, Mr B and the other guarantors and HSBC.
- HSBC lost the mortgage deed and they were asked, via their solicitor, to sign a replacement mortgage in 2008, without legal advice. This was backdated to 2007. They say the certificate provided by the solicitor that they received legal advice is not correct.
- Did not treat them fairly and did not agree to their repayment proposals.
- Did not provide information they requested promptly, including a breakdown of the debt owed.

The adjudicator did not recommend that the complaint should be upheld. He said:

- HSBC received confirmation that Mr and Mrs F had received legal advice before they provided the security. HSBC could not have known that there were problems with the advice they received.
- The security was to support borrowing by another party. There was no need for consideration between Mr and Mrs F and HSBC.
- HSBC has a duty to treat Mr and Mrs F fairly. It considered Mr and Mrs F's proposals and is not obliged to accept them. It had allowed three years for them to raise the money. He did not consider it had acted unreasonably.
- HSBC had sent the information it was expected to provide. It could not provide all of the information requested because it related to other people. Some of HSBC's responses

had been sent to Mr and Mrs F's solicitor as this was its policy when a customer has appointed a representative.

Mr and Mrs F did not agree. They say that HSBC was reckless in lending to W. They ask that HSBC reduce their liability and enforce the personal guarantee given by others. They also say HSBC had confirmed to the land registry their secured liability was £50,000.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), 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.

There are a number of parties involved here. I should be clear at the outset that my decision relates only to Mr and Mrs F's complaint about HSBC.

#### *execution of the mortgage*

At the heart of this complaint is that Mr and Mrs F say they did not understand the risks of providing the security and that HSBC should have been aware of this.

I can understand that Mr and Mrs F felt under emotional pressure from Mr B to provide the security. I make no findings here whether Mr B exercised duress or undue influence over Mr and Mrs F. My role is to decide what HSBC was, or should have been, aware of.

I am not persuaded that HSBC had any reason to suspect that the mortgage was signed by Mr and Mrs F under duress or undue influence. I do not consider it out of the ordinary for a parent to give financial support to an adult child. I am not persuaded from the evidence available to me that HSBC was or should have been aware of any issues that would have required it to make further enquiries about Mr and Mrs F's reasons for providing the security.

Mr and Mrs F raise concerns about the legal advice they received before providing the security. Again, I make no findings about the quality of the advice provided by the solicitor to Mr and Mrs F. I am satisfied that HSBC received a certificate of execution from Mr and Mrs F's solicitor confirming the risks of providing the security had been explained to, and understood by, them. I am not persuaded, from the evidence, that HSBC had any reason to suspect appropriate advice was not provided to Mr and Mrs F.

#### *recovery of the secured debt*

Mr and Mrs F say they have limited means to repay the debt owed. The security is on their home. Given their ages and income, it is unlikely Mr and Mrs F will be able to re-mortgage to pay the debt.

HSBC has a duty to treat Mr and Mrs F sympathetically and positively. It has allowed Mr and Mrs F several years to repay the debt or agree a repayment plan. Unfortunately, it seems Mr and Mrs F are unlikely to be able to repay the debt within a time frame acceptable to HSBC. The purpose of the security was to enable HSBC to recoup its lending. In the circumstances, I am not persuaded HSBC has acted unreasonably in seeking to enforce the security.

The letter from HSBC to the land registry referred to by Mr and Mrs F relates to the calculation of fees payable to the land registry. I am not persuaded it says that Mr and Mrs F's liability is limited to £50,000.

*information and communication*

Mr and Mrs F find themselves liable for debts originally incurred by W, but do not have any right to see W's records. They do not know what action, if any, is being taken by HSBC to recover these debts from other guarantors and security providers. I can understand how frustrating this is for them.

HSBC cannot provide all of the information Mr and Mrs F would like to see without breaching its duty of confidentiality to other people. I am satisfied that Mr and Mrs F have copies of the facility agreement and the personal guarantee and are aware of the amount owed.

*other issues*

Mr and Mrs F and their solicitors raised a number of legal issues about the validity of the guarantee and the underlying debt. I have considered their comments.

While I appreciate that this is not the answer Mr and Mrs F hoped for, I am not persuaded that HSBC had any reason to believe the guarantee and the supporting legal charge were not properly executed. For the reasons given I consider HSBC is entitled to rely on the guarantee. Mr and Mrs F are entitled to reject my decision. If they do reject it then it is not binding on themselves or HSBC. And it is then open to them to raise these issues afresh in response to any legal proceedings.

**my final decision**

My decision is that I do not uphold this complaint.

Ruth Stevenson  
**ombudsman**