complaint

T, a limited company, complains that Bank of Scotland PLC (BOS) has overcharged interest and it won't agree to refund the amount overpaid. The complaint is brought on T's behalf by its director, Mr T.

background

T's borrowing was restructured in 2006, with part of the debt being placed on a term loan over 10 years and the balance left outstanding (dormant debt) to be repaid as and when the company was able to do this. The bank also agreed to offset the interest charged on the outstanding balance against the credit balances held on two other accounts. This arrangement continued until 2011, when BOS told the company that it couldn't group the accounts or offset interest any more.

T says that BOS isn't entitled to make these changes because it has maintained the agreement. And it doesn't agree that the bank is entitled to charge interest on the debt from 2011.

The adjudicator didn't think this complaint should be upheld. She agreed that BOS didn't set a date for the repayment of the debt but she didn't believe that it intended the facility and arrangement to run indefinitely. In early 2011 BOS had given T notice that it wasn't going to continue to allow the offsetting of interest and it made clear each year the terms on which it was prepared to continue to lend.

T responded to say, in summary, that it had negotiated the arrangement from a position of strength and it had operated on that basis until 2011. There wasn't any evidence to show that this wasn't a long term agreement and BOS couldn't change the agreement.

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 there is a dispute about what happened, I have based my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in the light of the evidence.

I accept that BOS agreed in 2006 that T could repay the dormant debt on an 'as and when' basis and it agreed to group this debt with two other accounts for interest purposes. In February 2011 BOS told T that it wasn't able to group accounts anymore and it wouldn't continue to offset the company's credit balances when calculating interest on the dormant debt. T told the bank that it thought it should continue to honour the agreement about interest. But BOS refused to do so. It sent the company overdraft facility letters each year setting out the terms and the renewal fees from 2011. The company replied each year saying it wouldn't sign the facility letters because it didn't accept that the debt was an overdraft facility and it wanted the bank to continue to honour the interest set-off arrangement.

type of account

I can see, from correspondence in 2008, that T's account was an old dormant one. T had told the bank that its directors would repay the outstanding debt themselves rather than through T's trading. I accept that T didn't look on the account as a trading overdraft. But I

find that the account statements show that the debt was on a current account with an overdraft limit. And there wasn't an agreed structured repayment plan or maturity date. It was to be repaid on an 'as and when' basis. I see that, at that time, T's directors had said it was their intention to repay the debt in 12 months (so by the end of 2009). So I'm not persuaded that this was a long term arrangement. It was also clear from this letter that the bank was reviewing the account at least annually.

In the circumstances, I'm satisfied that the debt wasn't placed onto a loan. The debt was on a current account, which had an overdraft limit. So BOS was entitled to carry out regular reviews and to change the terms on which it was prepared to lend at each review. Whilst I accept T's point that an overdraft is repayable on demand, so it considered the debt as a loan, a bank wouldn't generally call in the debt unless the terms and conditions had been broken. T hadn't done this and was repaying the overdraft as agreed. The bank's 2008 letter also shows that T's directors had signed facility letters in the early years.

interest

T had the benefit of the interest being offset over a number years. I wouldn't expect the bank to have agreed to such an arrangement if the debt had been formalised as loan. In 2011, following a tightening of its lending policies, BOS decided that it wasn't prepared to do this anymore. The bank is entitled to decide for itself the terms on which it was prepared to continue to lend the money. I consider this was the legitimate exercise of its commercial judgement, with which I can't properly interfere, though it is required to treat T fairly. Given that I'm satisfied that the facility was an overdraft, which was repayable on demand, I find, by giving T six months' notice of the change in terms, it acted fairly. By continuing with the facility, T accepted those terms. If it didn't want to do so then I consider it could have made alternative arrangements.

BOS accepts that it should have responded to the letters T had sent about the annual facility letters it received far sooner than it did. It has apologised and paid £250 for the confusion this caused to T, which I consider to be reasonable.

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 T to accept or reject my decision before 4 May 2017.

Karen Wharton
ombudsman