

## **complaint**

Mr V complains on behalf of H, a limited company, that HSBC Bank Plc wrongly took over £8,800 from H's current account.

## **background**

Mr V was the director of two companies, H and a second company. Both companies had accounts with HSBC. In September 2014 H's account was in credit, but the second company was overdrawn by over £8,800. So HSBC took money from H's account and used it to pay off the second company's overdraft, bringing the second company's account balance to zero.

Mr V complained. He said that although he was a director of both companies, the companies had nothing to do with each other, and he had never authorised HSBC to set off one company's credit against the other's debt. But HSBC pointed out that the two companies had a group overdraft facility and a composite company guarantee, both signed by Mr V, authorising HSBC to do exactly that.

Our adjudicator agreed with HSBC, so Mr V has asked for an ombudsman to decide his case.

## **my findings**

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

The group overdraft facility was first taken out in 2007, with a limit of £25,000. That limit was extended to £30,000 in 2008. Clause 7 of the terms and conditions of the group overdraft facility makes each company jointly and individually liable for the debts of the other. And clause 8 authorises HSBC to use the money in one company's account to pay the debts of the other, with or without notice. The 2008 terms and conditions are signed on behalf of each company by Mr V and another director (his wife). I have considered whether the terms are unclear or unfair, but I do not think that they are.

The most recent overdraft agreement does not appear to have been signed, but I don't think that matters. The terms are the same, and the companies continued to use the overdraft, which means that the previously agreed terms of the overdraft still continued to apply.

The composite guarantee was signed in 2004. It was originally made in connection with another loan, but it applied to all debts which either of Mr V's companies might owe HSBC in the future. That would include the group overdraft. It makes each company liable for the other's debts to HSBC. Clause 9 gives HSBC the right to set off the credit in one company's account against the other company's debt to the bank. The guarantee is referred to in the letter setting out the terms of the overdraft.

Mr V accepts that it is signed by him and his wife. He questions the fact that the guarantee is dated a few days after the date given for the minutes of the meeting of H's directors, and says that the dates are not written in his or his wife's handwriting. But I think that the later date refers to the date the guarantee became effective, not the date when the document was given to him to sign. It is likely that the dates were filled in for him by bank staff. In any case,

since he accepts that it has been signed, there is no dispute that he and his wife agreed to its terms on behalf of H.

Although HSBC did not have to tell Mr V that it was going to offset H's money against the second company's debt, it did tell him in a letter in August 2014. It also told his solicitors in September, when Mr V was on holiday. Mr V says he did not receive the August letter, so HSBC sent it again in September. It also sent him another letter explaining what it had done. I think that all of the letters are clear. The letters to Mr V spell out the authority HSBC relied on to do what it did.

So I think that HSBC was entitled to use H's money to pay the second company's debt, and that it did so in a fair and transparent way.

### **my final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr V on behalf of H to accept or reject my decision before 27 July 2015.

Richard Wood  
**ombudsman**