

complaint

Mr and Mrs G are unhappy about the handling of their secured loan account by HSBC Private Bank (UK) Limited.

background

In 2007 Mr and Mrs G took out a multi-currency loan facility with HSBC, borrowing £2,100,000 over a five year term, on an interest-only basis. The loan was at an *“interest margin 1% p.a. over the Bank’s Cost of Funds as published from time to time”*.

Management of the multi-currency facility was provided by a third party. In February 2008 the amount of the loan increased, when it reached its trigger limit. In May 2010 the loan again exceeded its trigger limit and was converted into sterling. The multi-currency management agreement with the third party ended. By this time the loan was about £2.5 million, due to currency movement. Conversion of the loan to sterling meant that Mr and Mrs G were no longer at risk of their loan increasing due to currency fluctuations.

The facility ended in February 2012. Mr and Mrs G deposited £100,000 with HSBC as a gesture of good faith.

In February 2013, after HSBC had granted a year of forbearance, it agreed to re-arrange the facility over two years, to enable Mr and Mrs G to sell a property. The interest rate was set at 2.25% over Base Rate, for a fee of £25,000 (1%) payable on repayment, rather than in advance. HSBC also requested a charge over £68,750 of the cash deposit, to cover a year’s interest. In December 2014 HSBC reduced the rate to 1% over Base Rate.

Mr and Mrs G have now complained about HSBC’s actions. They are unhappy about the increase in the amount of the loan due to the management of the multi-currency facility. Mr and Mrs G have also complained about the increase in the interest rate when the loan was rearranged in February 2013. They consider HSBC has treated them unfairly in forcing them to take a higher rate of interest when they were already in financial difficulty.

HSBC didn’t uphold the complaint and so Mr and Mrs G referred it to us. HSBC objected to our considering part of the complaint – about the multi-currency facility.

The adjudicator explained to Mr and Mrs G that we couldn’t consider a complaint about the management of the multi-currency facility. It was a third party, not HSBC, which had provided this service.

The adjudicator was also satisfied that Mr and Mrs G had six years from February 2008 – the date when the multi-currency facility first exceeded its trigger limit – to raise any complaint against HSBC about the facility.

The adjudicator also thought that Mr and Mrs G should have realised by May 2010, when Mr and Mrs G decided to exit the multi-currency agreement, that they might have cause to complain. So Mr and Mrs G had three years from that date to complain.

Because Mr and Mrs G hadn’t complained until July 2014, the adjudicator was satisfied that the complaint was time-barred. She found no exceptional circumstances that would allow the time-bar to be waived.

The adjudicator was also not persuaded that HSBC had treated Mr and Mrs G unfairly when it offered to extend the facility for two years from February 2013. She was satisfied that HSBC was entitled to assess the risk to which it was prepared to be exposed and to price the product accordingly.

Mr and Mrs G disagreed with the adjudicator's findings. In summary they say:

- They didn't know foreign exchange markets were being rigged and so this is an exceptional circumstance which would enable us to consider their complaint about the multi-currency facility.
- In February 2013 HSBC knew they were struggling, but raised the interest rate when it extended the facility. This was immoral and unethical.
- HSBC put pressure on them to sell their property. They are trying to sell it but there has been no interest. They are looking into separating a cottage from the main property, which might make it more attractive to prospective buyers.
- This has been a very stressful time for them and has had an impact on their health.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

multi-currency facility – HSBC has objected to our considering this part of the complaint, for two reasons. It says that the management of the facility was carried out by a third party. It also says that the complaint is out of time.

I'm satisfied that I can't consider a complaint about the management of the multi-currency facility. HSBC had no involvement in any currency dealings relating to Mr and Mrs G's mortgage, or the management of the facility. Another company was appointed by Mr and Mrs G to do this for them. This complaint concerns only the actions of HSBC.

I understand Mr and Mrs G complained to that company, which has said the activity of managing a multi-currency loan is not regulated. I can't comment on this, as I can only consider this complaint in the context of HSBC.

As far as time limits are concerned, our rules say that, where a business objects, I can't consider a complaint if it's brought more than six years from the event complained of or, if later, more than three years from the date when the customer realised they might have cause to complain.

I've looked at whether the complaint about suitability of the multi-currency facility is time-barred. The complaint was first raised in July 2014. The six-year time limit I've applied is slightly different from the adjudicator's.

The offer letter is dated 29 January 2007, so Mr and Mrs G had six years from that date to complain about the facility. The six years expired on 29 January 2013.

I now have to consider if it was only within three years of the complaint being brought in July 2014 that Mr and Mrs G might have realised they had cause for complaint.

Mr and Mrs G ended the multi-currency arrangement in May 2010. So the complaint should have been brought at the latest by May 2013. The complaint wasn't brought until July 2014, so I'm satisfied it is out of time.

I've noted what Mr and Mrs G have said about exceptional circumstances – that they didn't know the currency markets were being manipulated. But as I've explained above, HSBC had no involvement in managing the multi-currency facility. And in the context of our time limits, exceptional circumstances relate to such things as bereavement, serious illness or other incapacity that might have prevented Mr and Mrs G from bringing their complaint to us before the time limit expired in May 2013.

I'm aware Mr G in particular has had some health problems. But I also note that both Mr and Mrs G were actively running their businesses and were in contact with HSBC about their finances. So I'm not persuaded Mr and Mrs G couldn't have complained sooner, if they had wanted to.

increased interest rate – In 2007 Mr and Mrs G borrowed a substantial amount of money over a five year period. At the end of the term HSBC was expecting the facility to be repaid. Mr and Mrs G had various business interests that could be described as of a 'high end' nature. They'd been optimistic – as had HSBC - when they took out the facility in 2007 that their businesses would prosper and that there would be no difficulty in meeting their obligations.

The financial crash that happened from September 2007 onwards couldn't have been predicted, either by HSBC or by Mr and Mrs G. This had a world-wide effect on the property market in particular. Mr and Mrs G were also affected by fluctuations in the currency markets that resulted in the multi-currency facility reaching £2.5 million by the time Mr and Mrs G withdrew from it in May 2010.

By February 2013 the loan was overdue for repayment. HSBC had already granted a year of forbearance and had legitimate concerns about Mr and Mrs G's overall financial position. Expectations of how the facility was to be repaid hadn't been met. So I don't think it was unreasonable of HSBC to impose new terms that reflected the increased risk to which it was exposed.

I appreciate the options available to Mr and Mrs G were limited, given their level of debt and the decrease in their income. But I'm satisfied HSBC was entitled to offer commercial terms to Mr and Mrs G which they were free to accept or reject.

The February 2013 facility has now come to an end. HSBC has offered a new facility. Mr and Mrs G are unhappy about the special conditions HSBC has included. These don't seem to me to be particularly onerous, given that two previous loan facilities have not been repaid at the end of their terms. HSBC is entitled, as part of its legitimate commercial operations, to decide whether it will lend to customers, and if so, on what terms. If Mr and Mrs G don't want to accept HSBC's terms, they are free to rearrange their finances with another lender and repay the outstanding balance to HSBC.

I know this is not the outcome Mr and Mrs G were hoping for. I fully understand that they believe HSBC has treated them badly. But I don't think it has. Mr and Mrs G's finances have suffered for various reasons beyond the control of both them and HSBC – the financial

crash, currency fluctuations and Mr and Mrs G's loss of a substantial business asset. I don't underestimate the effect this has had on them.

But in all the circumstances, I'm not persuaded HSBC has done anything wrong in offering facilities to Mr and Mrs G on commercial terms. Neither the interest rates nor the conditions are, in my opinion, exceptional for this type of borrowing. If Mr and Mrs G feel that HSBC is trying to disadvantage them, they have the option of taking advice from an independent financial adviser about the alternatives available to them before deciding whether or not to accept any further facilities from HSBC.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 2 December 2015.

Jan O'Leary
ombudsman