

## **complaint**

Mr and Mrs B complain that HSBC Bank Plc wrongly pursued them for debts of a company that has been dissolved. They also complain that HSBC did not treat them fairly in connection with a mortgage.

## **background**

Mr B was a director and shareholder in D, a limited company. Mr B gave HSBC a personal guarantee limited to £50,000 for D's debts. Mr and Mrs B also gave a second charge over their house as security for D's debts. D went into administration in 2007 and was dissolved in 2010.

Mr and Mrs B took three loans from HSBC in 2005 secured by a mortgage on their house and another mortgage in April 2006. Mr B says:

- He does not dispute two of the mortgage loans taken out in 2005. He disputes the third (for £30,000). He says he and Mrs B unwittingly signed the loan agreement and the money was paid into D's bank account without their authorisation or knowledge. HSBC has asked them to repay the loan, which they do not consider they are liable for.
- In 2006 HSBC loaned £135,000 to D. Mr B says HSBC was acting in its own interest in making the loan as it hoped to reduce its exposure to another company. Mr B says HSBC did not investigate the circumstances around the £135,000 loan and did not comply with a subject access request.
- In 2008 HSBC issued a formal demand on Mr B's personal guarantee. In 2009 HSBC issued a formal demand on the charge over Mr and Mrs B's house for nearly £200,000. In 2010 HSBC appointed solicitors to recover the debt. Despite knowing he cannot afford to pay the debt, it threatened to repossess his home. HSBC later agreed not to pursue him for D's debts.
- Mr and Mrs B's mortgage loans became due in 2013. They cannot re-mortgage due to the second charge relating to D's debts. HSBC has added legal fees to one of the mortgage accounts, which Mr B disputes.

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

- He could not look into the relationship between HSBC and D, which no longer exists. HSBC had dropped its claim against Mr and Mrs B for D's debts.
- HSBC said it would not ask Mr B to pay its legal fees and related interest incurred in taking steps to enforce its security for D's debts.
- There was no reason to think HSBC would not be able to enforce the personal guarantee and security. These pre-dated the £135,000 loan that Mr B had raised concerns about. D already owed nearly £200,000 to HSBC. It seemed likely D would have gone into administration owing money to HSBC regardless of taking out the £135,000 loan.
- As HSBC had said it would not pursue Mr and Mrs B for D's debts, it was not appropriate to ask it also to pay compensation or pay their legal fees.

- Due to the time passed since the £30,000 mortgage was taken out in 2005, information was limited. The adjudicator said the nature of the agreement was clear, it was signed by Mr and Mrs B, they made repayments and statements were sent to them. They did not dispute it at the time or question where the loan amount had been paid. The adjudicator said on balance it was likely Mr and Mrs B agreed to the loan, were aware the funds were paid to D and so were liable to repay it.

Mr and Mrs B did not agree. Mr B said:

- HSBC had not investigated the circumstances around the £135,000 loan or provided documents he requested. He could not make a decision whether to accept HSBC's offer to write off D's debts without this information. He wants his concerns about the sale of the loan to be investigated. He does not consider HSBC has a valid claim to write off.
- HSBC treated him unfairly in demanding repayment of his mortgage loans when he had not missed payments. He cannot remortgage as he is retired and the £30,000 loan is secured on the house.
- HSBC should not have tried to enforce its security for D's debts as there is not enough equity in the house to pay the amount owed. He says HSBC should release him from the personal guarantee and the security for D's debts.
- He has been disputing the £30,000 loan since 2008 – before the end of the six years limit for HSBC to retain documents. He says HSBC did not follow the lending code when it made the loan. If there were documents showing he authorised the loan and payment to D HSBC would have provided them. He says it is not relevant that he knew the loan money was paid to D's account after it happened. D was not able to pay the money back and they could not raise a complaint with HSBC as it had control over their home.
- HSBC did not lend responsibly when it offered the £30,000 mortgage or a £85,000 mortgage the following year. Mr B says the mortgage loans were not affordable and exceeded the value of his property.
- He says without the support of professional advisers he would have been homeless. He says HSBC should pay their advisers' fees.

## **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, 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.

### Complaint about HSBC's dealings with D

Mr B feels strongly that HSBC did not treat D fairly. He says HSBC was acting in its own interests when it offered the £135,000 loan to D. I have considered carefully whether Mr B's concerns about the sale of the loan to D is a matter we can consider.

The Financial Ombudsman Service operates under a set of rules – laid down by Parliament under the Financial Services and Markets Act 2000, published by the Financial Conduct

Authority and known as the DISP rules. These rules set out the scope of our powers. A copy of the rules can be found through a link on our website.

In particular, the rules say we can only consider a complaint if it is brought by an eligible complainant. We have no jurisdiction to consider a complaint by someone who is not eligible to bring it to us.

The issues that Mr and Mrs B complain about relate to HSBC's treatment of D. As a separate legal entity, only D was able to complain about such issues. As D has been dissolved, it no longer exists and has no legal capacity to complain to us. Nor do Mr and Mrs B have the capacity to complain about the effect of HSBC's actions on D.

To the extent it affects Mr and Mrs B – for instance by increasing their liability under the guarantee and security – I can reasonably consider HSBC's dealings with D.

HSBC wrote off about £200,000 of D's debts. It says it will not pursue Mr and Mrs B for payment of D's debts or the legal fees it incurred in taking steps to enforce the guarantee and security. So I am not persuaded the £135,000 loan increased Mr and Mrs B's liability.

HSBC had taken steps previously to enforce the personal guarantee and security, which I do not doubt caused distress to Mr and Mrs B. As D owed other debts to HSBC which were also secured by the personal guarantee and security, I find it likely HSBC would have taken steps to enforce the guarantee and security even if D had not taken out the £135,000 loan.

I am not persuaded Mr and Mrs B are eligible to bring a complaint about the sale of the £135,000 loan to D as their liability to HSBC is not increased by it. It seems likely HSBC would have called on the personal guarantee and security to recover other amounts owed to it. So, while I know Mr and Mrs B will be disappointed, I find this aspect of his complaint must be dismissed as Mr and Mrs B are not eligible to bring the complaint.

#### HSBC's enforcement of the personal guarantee and the security for D's debts

While Mr B has not disputed providing the personal guarantee and the security for D's debts, he says HSBC was wrong to try to enforce its security. He disputes the amount claimed by HSBC and that it was appropriate to claim this amount as there was insufficient equity in the house to cover the claim.

I consider HSBC was entitled to take steps to recover the debt owed to it – including enforcing the security and personal guarantee. I am not persuaded it was prevented from enforcing its security on the basis it might not be sufficient to repay the debt in full. HSBC says it will not pursue Mr and Mrs B further for payment of D's debts or the legal fees it incurred in taking steps to enforce the guarantee and security. I find this fair and reasonable.

I can understand why Mr and Mrs B would like the personal guarantee and second charge removed. I also appreciate that while Mr B disputes the £30,000 mortgage and says it is D's liability, HSBC may want to retain the personal guarantee and second charge. I consider HSBC has acted reasonably in saying it will not pursue Mr and Mrs B for D's debts and I am not persuaded I can reasonably require it to do more.

I do not uphold this aspect of Mr and Mrs B's complaint.

### Liability for the £30,000 loan

I am satisfied that Mr and Mrs B received a mortgage offer for the £30,000 loan – which they both signed and returned to HSBC. During 2006 and 2007 some repayments were made by D and others were made from Mr and Mrs B's joint account.

I find it likely Mr and Mrs B were aware the loan money was paid into D's account. There is no evidence they asked at the time where the money had gone. Had they not authorised the payment to D's account, I find it reasonable to expect them to raise this at the time or to request that D transfer the money to themselves. I also find it unlikely they would have made loan repayments. On balance, I find it more likely than not Mr and Mrs B agreed the £30,000 loan and authorised the payment of the loan money to D.

I do not uphold this aspect of Mr and Mrs B's complaint.

### Compensation for advisers' fees

Mr B says HSBC should compensate him for his advisers' costs. We are an informal service and customers do not need to appoint an adviser to bring a complaint to us. I would not usually award compensation for legal fees and I am not persuaded it would be fair and reasonable to do so here. I do not uphold this aspect of Mr and Mrs B's complaint.

### Provision of information

HSBC has responded to Mr B's requests for information and documents. HSBC says it is unable to find some of the information Mr B requests and will send copies if/when it locates them. While I understand Mr B's frustration, I cannot reasonably require HSBC to provide copies of documents it cannot locate.

### Unaffordable lending to Mr and Mrs B.

In his response to the adjudicator's view, Mr B says HSBC did not lend responsibly when making the £30,000 mortgage loan or the £85,000 mortgage loan the following year. As this was not raised when Mr and Mrs B brought the complaint to this service, I cannot make a decision about it here. To do so, would not give Mr and Mrs B or HSBC an opportunity to provide evidence or comment on the adjudicator's findings before a final decision is made.

**my final decision**

My decision is that:

- Mr and Mrs B's complaint about the sale of the £135,000 loan to D should be dismissed as neither Mr B nor Mrs B is an eligible complainant.
- I do not uphold Mr and Mrs B's other complaints.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs B to accept or reject my decision before 5 June 2015.

Ruth Stevenson  
**ombudsman**