

complaint

S, a limited company, complains about the way HSBC Bank Plc calculated the interest rate on its commercial mortgage. It asks for compensation.

background

S took out a commercial mortgage in April 2007. The terms of the loan say the interest rate will be renegotiated on the fifth anniversary of the first drawdown in April 2012. The terms require HSBC to give notice of the renegotiation no later than one month before this. The new terms were agreed in June 2012.

S says HSBC had no contractual right to renegotiate the terms of the loan in June 2012. The new terms it imposed are void and HSBC should refund the additional interest that S has paid.

The adjudicator did not recommend that the complaint should be upheld. He said HSBC was not late giving notice of the renegotiation. While the new terms were not agreed in time, we look for a fair outcome. S took part in the renegotiation and agreed the new rate. It did not complain at the time. If there hadn't been a delay in agreeing the interest rate, it would have been applied sooner. So S benefitted from the lower rate during the delay. The alternative would have been for HSBC to terminate the agreement and the loan would have been immediately repayable. The adjudicator said it would not be reasonable to unwind the agreement now based on a technicality.

S did not agree. A representative on its behalf said HSBC imposed onerous new terms after the date it had the right to renegotiate the terms. This was a material breach, not a technicality. S had no say in the new terms and only agreed because HSBC threatened to terminate the loan. Few banks were lending at that time, so S had no option but to agree. S had complained at the time but could not find copies of the letters. Later letters showed it was unhappy with the rate.

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 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.

The terms of the loan say HSBC can request a renegotiation of its terms (including the interest rate) to take effect on the fifth anniversary of the first drawdown. I am satisfied the first drawdown was on 30 April 2007, so the fifth anniversary was 30 April 2012.

To start the renegotiation, notice must be given not more than three months and not less than one month before the anniversary. While I have not seen the notice, an email on behalf of S refers to a letter dated 30 March 2012 concerning the revised terms. So I think it likely HSBC gave notice of the renegotiation to S in accordance with the loan terms. There are email exchanges in mid April 2012 in which HSBC told S the new interest rate it proposed.

Agreement was not reached by 30 April. This was a termination event under the terms of the agreement and HSBC could have required immediate repayment of the loan. Instead, it agreed new terms with S to take effect in mid June. S signed to accept the new terms.

S says it looked for loans from other providers. From what it has said, it had limited options due to the lending market at the time, its properties and its location. I appreciate it may have felt obliged to accept the new terms offered by HSBC. But I don't think HSBC acted unfairly. It gave notice of the renegotiation and the new interest rate. It applied the new (higher) interest rate from mid June 2012, so S benefitted from the delay. In the circumstances, I don't find it fair and reasonable to require HSBC to refund any part of the interest paid by S since June 2012.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 9 November 2015.

Ruth Stevenson
ombudsman