

complaint

Mr and Mrs G, and their representative, are unhappy about the interest rate applied by Habibsons Bank Limited on the outstanding debt they owe under personal guarantees and complain they have been treated unfairly when discussing repayment.

background

Mr and Mrs G provided personal guarantees to support credit given by Habibsons Bank Limited to a company of which they were directors. The company was dissolved and the bank has sought to enforce their personal guarantees to recover money it was owed by the company. Mr and Mrs G dispute the levels of interest the bank has applied to the outstanding debt and say the bank has not treated them fairly when discussing repayment of the outstanding money.

Our adjudicator did not recommend that the complaint should be upheld. In summary he considered that the bank had calculated interest on the debt by charging 6% interest on the amount owing up to the company's old overdraft limit and 18% for the excess amount. He concluded that was in line with the agreement with the bank when the personal guarantees were provided and he could not say the bank had acted incorrectly.

He also considered that the bank was entitled to seek to recover the debt and noted it had been in discussion with Mr and Mrs G's representative and it had taken account of Mr G's health problems. He did not consider it appeared that the bank had acted unreasonably.

Mr and Mrs G and their representative do not agree with the adjudicator's conclusions. They say, in summary, that nothing in the contractual documentation gives the bank the right to charge contractual interest and that the guarantees only apply to continuing banking facilities not the overdraft and loan. They do not consider that the personal guarantees determine the appropriate rate of interest or that interest should be compounded.

Habibsons Bank says in summary that the rates of interest it is applying are set out in the company's original facility letter and that it is in fact entitled to apply the 18% interest rate on all the outstanding debt – as when the company was dissolved the entire debt became unauthorised - but has chosen not to do so. It has applied the lower interest rate to the money that falls within the company's old overdraft facility and only charged the higher rate on the excess amount.

my findings

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

Having done so, I agree with the conclusions reached by our adjudicator for broadly the reasons given.

The personal guarantees signed by Mr and Mrs G in 1997 and 2000 clearly say that in doing so they are guaranteeing "*all monies and liabilities*" of the debtor company "*which are now or shall at anytime hereafter be due owing or incurred to the Bank ... including lawful charges and expenses computed and compounded from time to time in accordance with the terms agreed between the Debtor and the Bank and in the absence of any such agreed terms ...according to the then current practice of the Bank...*"

The terms agreed between the bank and the company, which was the debtor, include those contained in the facility letter of 2009. This letter specified that the applicable interest rate for the company's borrowings was 3% over a leading bank's base rate with a minimum rate of 6% and if the company exceeded its agreed limits the rate would be the unauthorised overdraft rate which was then 18%.

As such I am not persuaded that the bank has done anything wrong in applying these interest rates to the monies owed by the company and in turn to the debt owing by Mr and Mrs G pursuant to their personal guarantees. I am also not persuaded that the bank has miscalculated or wrongly compounded interest as is suggested by Mr and Mrs G's representative. I am also not persuaded that the bank has treated them unfairly.

Consequently, I see no compelling reason to change the proposed outcome in this case.

My role as an ombudsman is to consider the individual complaint and decide whether something has gone wrong. But a court may take a different view of the situation. Should Mr and Mrs G not accept my final decision then any rights they may have to take action in the courts against Habibsons Bank are unaffected and they will be free to pursue their, and their representatives', arguments in any court action that may arise, if they so wish.

my final decision

My final decision is that I do not uphold this complaint.

Stephen Cooper
ombudsman