

## **The complaint**

A company which I'll refer to as "F" complains about HSBC UK Bank Plc's decision to terminate their business account and withhold the money held in it.

Mr Z, director of F, complains on its behalf.

## **What happened**

In July 2020, F applied for a loan under the Bounce Back Loan (BBL) Scheme. The loan was approved and a few days later, F received the loan funds into its account.

In January 2021, HSBC contacted Mr Z, on F's behalf, and asked for information about F. HSBC initially tried to contact Mr Z by telephone but wasn't successful. HSBC reverted to email contact. At the time, Mr Z was abroad and didn't respond to the email initially as he had concerns about the legitimacy of it. When he did reply – he didn't give in-depth detail but intended to investigate the email and its content when he returned to the UK. Mr Z didn't return home for a while due to him contracting the Covid-19 virus while abroad. In the meantime, and in July 2021, HSBC made the decision to immediately end the banking relationship with F. HSBC also recorded a fraud marker against Mr Z personally.

Mr Z says he was informed that HSBC would send a cheque with the remaining money which was left in F's account – but he didn't receive anything.

Our investigator who reviewed things upheld F's complaint overall. In summary, he thought HSBC were fair to close F's account – but didn't think it was fair they were holding on to F's funds. So, our investigator asked HSBC to return the balance of the account to F, add 8% simple interest to the amount and pay F £500 compensation for the distress caused. Our investigator explained to Mr Z that he couldn't comment on the fraud marker which had been applied because Mr F wasn't an eligible complainant because the marker had been applied due to Mr Z's link to F.

Mr Z, on behalf of F, didn't agree. In summary, he thought we could look at the merits of why the fraud marker had been applied as it was recorded against him individually and not F. And he didn't think £500 compensation was enough to reflect the reputational damage caused to F, the late payment fines it occurred and the declined application for a refinance on a commercial property. Mr Z said he would like at least £7,500 compensation.

HSBC responded to our investigator's view and said they were unable to return the full balance at this time due to the outstanding BBL loan.

As an agreement couldn't be reached, the complaint was passed to me to review.

Since our investigator's view, HSBC has provided an update to our service. They have explained that they used money from F's account to offset against the outstanding balance of the loan. This was communicated to F in February 2022.

In March 2022, I issued a provisional decision. In it, I said;

*I've noted that Mr Z, on behalf of F, has made a number of quite detailed submissions. Like the investigator, I've considered all of these, but I don't believe it's necessary to address each and every point that Mr Z has made in order to meet my statutory duty to determine his complaint. I'm required to do that with minimum formality, and so I'll address the issues that I consider to be the most important. I do stress however that I've considered everything that Mr Z and HSBC have said before reaching my decision.*

*I would add too that our rules allow us to receive evidence in confidence. We may treat evidence from banks as confidential for a number of reasons – for example, if it contains information about other customers, security information or commercially sensitive information. Some of the information HSBC has provided is information that we considered should be kept confidential.*

### *The fraud marker*

*Our service isn't able to consider every complaint referred to us. Sometimes a complaint may fall outside our jurisdiction, which means we don't have the legal power to consider it. Our jurisdiction is explained in the Dispute Resolution Rules (DISP). These form part of the regulator, the Financial Conduct Authority's (FCA's), handbook.*

*Although Mr Z is complaining on behalf of F, the negative marker Mr Z wishes to complain about isn't loaded against F. This means F isn't entitled to make a complaint about the marker.*

*I've moved on to consider whether Mr Z is an eligible complainant. There are a number of different rules which apply here, one of which is:*

*A consumer is defined as an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession.*

*I've considered whether Mr Z meets this criteria as a consumer, and I understand this will disappoint him however I'm afraid he doesn't. The negative marker loaded against Mr Z was applied because of activity which took place on F's business account – this means that Mr Z isn't acting outside of his business when complaining about the marker.*

*Mr Z's complaint must also arise from one or more of the relationships with HSBC set out in DISP 2.7.6. Most of the time this will be a direct relationship between the person bringing the complaint and the financial business. And most complaints about banks are brought by their customers as a result of something the bank did or didn't do to them as customers. However, Mr Z's complaint doesn't arise from a direct relationship between him and HSBC; he wasn't the bank's customer; his company F was.*

*In summary, I've concluded that Mr Z's complaint doesn't arise from one of the necessary relationships between him and HSBC set out in our rules. It follows that he isn't an eligible complainant.*

*I'd like to make it clear to Mr Z that I haven't considered whether or not HSBC are justified in loading the marker against Mr Z's name. And I'm afraid I won't be commenting on this. For the reasons I've explained above I don't have the power to consider the fairness of HSBC's actions relating to the application of the fraud marker against Mr Z.*

### *Account block and closure*

*HSBC are strictly regulated and must take certain actions in order to meet their legal and regulatory obligations. Based on what I've seen, I'm satisfied HSBC were acting in line with these obligations when reviewing, blocking and subsequently closing F's account.*

*Banks sometimes choose to end their relationship with customers. This can be due to a number of reasons and a bank isn't obliged to give a reason to the customer. Just the same as if Mr Z, on behalf of F, decided to end the agreement with HSBC and use another bank – he wouldn't have to explain why.*

*I'm aware Mr Z believes HSBC took the action they did because of an email which was interpreted incorrectly. When HSBC asked for further information relating to F, and Mr Z responded, he referred to the date F was formed, and HSBC referred to the date F started trading. I'm aware of how strongly Mr Z feels about this, and he has made it very clear that the words 'trading' and 'formed' have two different meanings. I can appreciate why Mr Z feels this way, and I can understand his frustrations and concern around this potential misunderstanding. However, having considered the full circumstances of this complaint, I can't fairly agree that HSBC have acted unfairly when closing F's account. I understand HSBC hasn't shared the full reasons for their decision to close the account with F. And I'm sorry I can't share more specific details, but I've reviewed HSBC's reasons and I'd like to reassure Mr Z that I've seen nothing to suggest HSBC have acted unreasonably. It therefore follows that I won't be asking them to do anything differently in relation to the account closure.*

*Withholding the funds and offsetting the debt*

*I can appreciate why it would have been inconvenient for Mr Z not to have access to F's money for a prolonged period of time. And I recognise this would have put F in a financially challenging position because it didn't have access to its funds – which in turn would have likely made it difficult to continue trading. But a bank can't always guarantee that funds in an account will be readily available as they have broader regulatory obligations which they have to comply.*

*Having said that, I do think HSBC could have dealt with things more efficiently – and I've seen nothing to satisfy me that F being without its funds for the amount of time it was, is reasonable. Again, HSBC has shared information with our service which I'm unable to share with F. However, despite this evidence, I do consider HSBC caused unnecessary delays – I think the action they took could have been pursued sooner, and no later than August 2021. It therefore follows that I think HSBC should pay 8% simple interest on the funds they withheld and the funds which rightfully belonged to F only.*

*This brings me on to the developments of the complaint since our investigator issued his opinion. I'm aware HSBC has used money from F's account to repay the BBL loan. I'm aware Mr Z has already explained to our service that F utilised all of the loan funds shortly after they were paid into its account and he continued to make the repayments towards the loan to avoid defaulting. Therefore, I've gone on to consider whether I think HSBC were entitled to use money from F's account, which likely didn't form part of the original loan funds, to repay the loan.*

*I've reviewed the loan terms. Clause 12 states;*

*12. Set-off*

*If you have money in one of your accounts (except for trust, client or joint accounts), we may set it off against any amount you owe us which is due for payment on other accounts (including money you owe on a joint account) so it reduces or repays the amount you owe us. We'll only do this with accounts in your name and after we have checked that you have enough left in your accounts to cover essential living costs.*

*I'm satisfied, based on these terms, that HSBC didn't do anything wrong in using the funds F held in its current account to settle the debt owed on its BBL account.*

*Therefore, the amount I think F was entitled to receive back from HSBC, was the total amount left in their account (£150,092.59), less the amount owed to the BBL (£46,173.99). I haven't seen any evidence to show why F isn't entitled to the remaining £103,918.60 and therefore am likely to ask HSBC to return this amount to F and include 8% simple interest on it from 5 August 2021 (when they could have likely released the money), up to the date they do return it.*

### **Compensation**

*I appreciate Mr Z, on F's behalf, would like at least £7,500 compensation to recognise the distress, reputational damage and loss of funds to F. I've carefully considered the full circumstances of this complaint, and I agree with our investigator £500 compensation is fair. I say that because, Mr Z has commented that the declined application of the re-mortgage and the higher monthly repayments, were a result of the fraud marker being registered. I've explained above why I can't consider whether the fraud marker was recorded fairly or not – and therefore it wouldn't be reasonable for me to make a finding on whether compensation should be paid because of the result of it.*

*I find the 8% simple interest added to the funds which should be returned to F covers the loss of use of the money, and the £500 fairly reflects the inconvenience this overall situation has caused F.*

HSBC responded to my provisional decision and confirmed they issued a cheque with the remaining balance to F in February 2022. HSBC didn't add any further comments to the provisional decision.

Mr Z, on behalf of F, responded to confirm he did receive the outstanding balance. Mr F also explained that he wasn't happy HSBC took the remaining balance outstanding from the original BBL loan as he says F was legally entitled to the BBL.

### **What I've decided – and why**

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

Having done so, as neither party has presented new arguments or evidence, I see no reason to depart from my original findings which are explained above.

I recognise Mr Z, on behalf of F, remains unhappy that HSBC used the balance to repay the loan, but I can't fairly uphold the complaint on this point. I'm satisfied, based on the terms of the loan agreement, HSBC were entitled to do what they did. I appreciate this may have put F in a difficult position – as it hasn't got access to the loan funds like it would have had this situation not occurred. But that doesn't mean HSBC have acted unfairly – and based on the evidence I've received; I'm satisfied HSBC's actions were reasonable in the circumstances. So, I won't be asking them to do anything differently.

### **Putting things right**

I'm pleased to hear Mr Z, on behalf of F, has received the money which is owed to it. However, I still consider HSBC should pay 8% simple interest on the amount withheld from Z from 5 August 2021, up to the date they did refund it – 21 February 2022.

And I consider HSBC should pay £500 to recognise the inconvenience caused.

### **My final decision**

My final decision is that I uphold this complaint. To put things right, HSBC should:

- Pay 8% simple interest on the £103,918.60 withheld from F from 5 August 2021 to 21 February 2022.
- Pay £500 compensation for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 27 May 2022.

Hayley West  
**Ombudsman**