

The complaint

A company, which I'll refer to as D, complains about HSBC UK Bank Plc blocking access to D's loan funds, and about it possibly disclosing D's confidential information to a third party.

Mr G, a director of D, brings the complaint on D's behalf.

What happened

D had agreed a large loan facility with HSBC for the development of commercial premises. In May 2019, on the day when D was due to pay its first invoice to its building contractor, HSBC placed an inhibit on D's loan account, blocking its access to these funds.

The directors of D also operated a franchise, which I shall call F, under an agreement with a franchisor, which I shall call W. In response to D's enquiries as to why the inhibit had been issued, HSBC told the directors of D to speak to W. The directors were alarmed that HSBC had been speaking to W about D's affairs.

The following day, D met with HSBC and the bank agreed to lift the block. This happened on the next day, and D paid its contractors. The planned development then continued.

D complained to HSBC, both about the inhibit being placed on its loan account, apparently influenced by W, and about the bank disclosing its confidential information to W. D said that HSBC's actions had caused the directors immense stress and D's reputation with its contractors had been damaged. D said that it avoided financial penalties from the contractors but believes it was treated less favourably due to the delayed first payment. Mr G also believes it has been treated less favourably by HSBC since the incident. Mr G said that, at the time, everything they owned was at risk if the build did not complete and they would have been left in significant debt if the inhibit had not been lifted.

HSBC reviewed what had happened. It said that, in the week prior to HSBC placing an inhibit on D's account, W had independently made the bank aware of significant changes to W's relationship with F. HSBC was then concerned that this could affect the viability of D's plans and took the decision to block D's access to the approved loan funds. HSBC apologised that, in hindsight, this was an over-reaction. It said that its process should have been to escalate matters to its Risk and Compliance Team before any action was taken. HSBC apologised to D for the inconvenience caused but noted that, as the inhibit was lifted within two days, D had suffered no financial harm. HSBC also confirmed that there was absolutely nothing to indicate that it had shared with W any confidential information relating to D. It said that W was clearly already aware of D's plans and had brought the information about W's relationship with F to HSBC. As far as HSBC was concerned, the timing of receiving the information from W and D's planned payment to its contractor was coincidental.

Not content with this response, Mr G brought D's complaint to our service.

Mr G provided further evidence of meetings between HSBC and W, which appeared to have been arranged to discuss F. One of these meetings occurred on the day after the inhibit was placed on D's account. Mr G also provided an email which appeared to indicate that W was

aware of the inhibit being placed on D's loan account. Mr G said that these documents suggested HSBC was inappropriately discussing D's business with W.

HSBC explained that the call with W on the day subsequent to the inhibit being placed on D's account was a matter between the bank and W, concerning W's relationship with F. It did not relate to D. HSBC confirmed that no information about D was shared with W. HSBC said there was a further meeting a couple of weeks later with W also about F but, again, this did not concern D. HSBC was unable to explain how W was aware of the inhibit on D's account.

Our Investigator considered D's complaint. She said that, in her view, although the inhibit was swiftly removed, HSBC's over-reaction to impose the inhibit had caused D some inconvenience. Mr G had needed to attend an urgent meeting with HSBC on the day after the inhibit had been put in place to try to resolve matters, and he'd needed to postpone payment to D's contractors. She also acknowledged that these circumstances would have been very stressful for Mr G, and that D's reputation with its building contractors would have been affected. However, she didn't find evidence of any financial loss to D. Therefore, she said that to compensate for the inconvenience, HSBC should pay D £150.

Mr G didn't agree. He said that he didn't understand how the chain of events could have unfolded without some disclosure of information from HSBC to W about D's business. He added that getting the inhibit removed wasn't straightforward. He believed HSBC's description of its mistake as an 'over-reaction' was incorrect as, in his view, it was completely wrong for the inhibit to be placed on the account consequent to information being shared with HSBC by an unrelated business.

As the matter was not resolved, it has been passed to me to decide.

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.

While I have read carefully the full correspondence between D and HSBC and considered all the evidence submitted, I have focussed my decision on the matters which I consider central to this complaint. There are two key issues:

- Did HSBC breach its duty of confidentiality to D? In particular, did HSBC share with W information which was confidential to D; or did HSBC simply receive information from W, which W proffered to HSBC?
- Did HSBC act appropriately towards D with the information it gained from W about W's relationship with F?

I consider each in turn.

Breach of confidentiality

It is clear that, prior to the inhibit being placed on D's account, representatives of HSBC's franchise team met with W. I have checked the purpose of this meeting and at whose request the meeting was set up and there is no suggestion that it had anything to do with D.

At this meeting, W shared information with HSBC about its relationship with F. W also demonstrated that it was aware of D's development plans. However, there is no evidence to indicate that HSBC shared any information about D with W.

HSBC has also confirmed that at no point did HSBC's relationship manager who considered D's loan application contact W. Therefore, it is unclear how W knew of D's development plans, but there is nothing to suggest that this information came from HSBC.

Given that the arrangements for the meeting between W and HSBC in mid-May 2019 had nothing to do with D, I am convinced that it was entirely coincidental that HSBC placed the inhibit on D's account on the same day that D's first payment to its contractors became due.

A meeting also occurred between W and HSBC on the day after the inhibit was placed on D's account. This meeting was to discuss W's relationship with F. Given the information which W had previously shared about its relationship with F, I do not find it surprising that a further meeting was scheduled. Another meeting happened a few weeks later as a further update. Having looked at the purpose of these meetings, it appears to me that they were intended for HSBC to understand what was happening between W and F. There is no suggestion that D was discussed, and no evidence to indicate that at these meetings HSBC conveyed any confidential information about D to W.

Although it appears that W might have been aware of HSBC's actions in placing the inhibit on D's account, I have seen no evidence to indicate that it had this awareness as a result of information provided by HSBC.

On the basis of this evidence, it appears to me that HSBC's engagement with W was about W's relationship with F, and not about D. It appears that W had an understanding about D's plans, and possibly about HSBC's actions towards D, but there is nothing to suggest this information came from HSBC. Having looked carefully through the evidence available, I have seen nothing to suggest that D's financing arrangements or commercial plans were shared at any point by HSBC with W.

Therefore, I do not believe HSBC breached its duty of confidentiality to D.

Use of the information received by HSBC

HSBC has acknowledged that, having received information from W about W's relationship with F, which it believed could affect D's business, it should first have consulted its Risk and Compliance Team before putting in place the inhibit on D's account. It has apologised for this.

I have considered the effects on D of this mistake.

The immediate consequence was that D was two days late in paying its contractors. Mr G has said that this damaged D's relationship with its contractors. He has also said that HSBC has treated D less favourably since this incident. However, I have not seen any evidence to demonstrate that D suffered any financial loss as a result of HSBC's mistake through either of these relationships. Therefore, I do not believe I can reasonably require HSBC to compensate D for this.

Mr G has also said that HSBC's actions put at risk his personal assets and D's business proposition. However, although this was a real risk, it didn't materialise. So, again, there was no actual financial loss.

I do acknowledge that HSBC's mistake caused D some inconvenience, both at the time of having to resolve matters with HSBC to get the inhibit lifted, and subsequently in its relationship with its contractors given the late first payment. Our investigator has proposed that HSBC should pay D £150 to compensate for this inconvenience, and I believe this amount is fair in the circumstances.

It is also clear that the events caused the directors of D some considerable stress. However, the complainant in this case is D, which is a company, and a company is unable to feel distress. Therefore, I cannot award anything to D for this; and I am unable to require HSBC to compensate the directors for any distress they suffered.

I am aware that this will not be the answer Mr G was hoping for. I acknowledge that he feels it is most likely HSBC breached D's confidentiality but, on the basis of the evidence I have seen, I do not believe that is the case. While HSBC inappropriately blocked D's account, it has apologised for this and there was no financial harm. Therefore, I believe the fair outcome of this dispute is for HSBC to compensate D for the inconvenience it caused.

My final decision

I uphold this complaint in part and require HSBC UK Bank Plc to pay D £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 2 March 2023.

Andy Wright
Ombudsman