

## **The complaint**

Mr S is a sole trader. He complains that HSBC UK Bank Plc unfairly terminated his Bounce Back Loan agreement and closed his bank account.

## **What happened**

Mr S opened a bank account with HSBC for his sole trader business in July 2020. He successfully applied to the bank for a Bounce Back Loan of £12,500 shortly afterward.

In January 2021, HSBC reviewed Mr S's loan application. To be eligible for a Bounce Back Loan, applicants needed to have been carrying on business on 1 March 2020. HSBC didn't think Mr S met this requirement, having noted that he told the bank his business had started on 3 March 2020 when applying for his bank account.

HSBC also considered that Mr S had inflated his annual turnover so as to qualify for a higher loan amount. He declared an estimated turnover of £50,000 in his loan application when the bank could only see around £20,000 flowing through his account.

These conclusions ultimately led HSBC to terminate the Bounce Back Loan agreement, albeit not until March 2022. It then applied the funds Mr S held in his bank account, of around £520, to reduce the amount owing before closing the account. The bank issued a formal demand for repayment of the remaining balance of just over £11,600. And, having deemed Mr S's loan application to have been fraudulent, it registered information about him with the fraud prevention agency Cifas.

HSBC also terminated all the facilities that Mr S held with the bank in his personal capacity, and those held by a separate limited company of which Mr S is a director. Those issues are the subject of separate complaints. This decision deals only with how HSBC handled Mr S's sole trader activity.

Mr S doesn't think HSBC treated him fairly. The bank didn't tell him why it was closing his account or recalling the loan, with both facilities having been withdrawn without notice or explanation. He says this had a severe impact on being able to run his business, in turn affecting his personal life and that of his family. Since learning that the primary reason for the bank's decision was its belief that he wasn't trading before 1 March 2020, he has told us that he was – and has provided documentation that he believes proves this.

HSBC has maintained its position throughout, in response both to Mr S's initial complaint to the bank and its subsequent referral to us. It says it closed Mr S's accounts in line with the applicable terms and conditions following a thorough review.

## **My provisional decision**

I issued a provisional decision last month, setting out why I intended to uphold Mr S's complaint in part and inviting both parties to let me have any further comments or information they wanted me to consider before making a final decision. I said:

To be eligible for a Bounce Back Loan, applicants needed to have been carrying on business on 1 March 2020. When applying for his loan, Mr S self-declared to HSBC that he met this requirement and the bank approved the application on this basis. In keeping with the rules of the Loan Scheme, HSBC was entitled to accept what Mr S said in this regard at face value.

When subsequently reviewing the loan application, HSBC had legitimate cause to question whether Mr S's declaration was accurate. The records of Mr S's bank account application show that he'd told HSBC that his business had commenced on 3 March 2020.

The bank's notes show that it called Mr S in January 2021 to discuss the apparent discrepancy. Regrettably, a recording of this conversation is not available. The brief note made by the bank's adviser at the time says:

*"It is my understanding that the business started trading in March 2020 but that it was not trading on the 1<sup>st</sup> of March. Language barrier."*

HSBC concluded that Mr S hadn't been carrying on business at the requisite point in time.

On the one hand, it is easy to see why HSBC reached that conclusion. Mr S had told the bank on his account application that he'd started trading on 3 March, and it seems that the conversation with the bank in January reaffirmed that position. HSBC deduced that Mr S may have altered the date in his loan application to obtain the loan, for which he would not otherwise have qualified.

On the other hand, Mr S tells us that his business was up and running before 1 March 2020. The discrepancy only amounts to a few days, and I think it is understandable that someone may not remember – or be able to evidence – the exact date that they began "carrying on business", particularly as the phrase itself is open to some interpretation. Mr S has shown us that he had a utility bill addressed to his sole trader business at the business premises for services being provided from 27 February 2020 – suggesting that he was, at least, *preparing* to trade.

As no recording of the conversation between Mr S and HSBC in January 2021 is available, I don't know exactly what he told the bank – or, importantly, how the bank phrased its question to him. The significance of getting the date *exactly* right is unlikely to have been made clear to Mr S. Had it been made clear, Mr S may have taken the time to check his records and/or look for supporting evidence. I'm also conscious that English is not Mr S's first language, and that the adviser who spoke with him in January 2021 seems to have noted some difficulty in discussing the matter with him (having referred to a "language barrier", and the somewhat caveated note that it was their "*understanding*" that he wasn't trading on 1 March).

There is no suggestion that Mr S isn't running a genuine business. The question is whether he was carrying on that business before 1 March 2020. Given the significance to Mr S of HSBC's subsequent actions, and given the discrepancy related to only a few days in early March 2020, I think HSBC should have investigated the position more thoroughly before reaching its conclusion.

However, even if HSBC had investigated matters further, I think it would still have arrived at the same decision. We've given Mr S the opportunity to evidence that he was trading before 1 March 2020, and the only documentary evidence to this effect is

the utility bill in late February. I think HSBC would still have considered this insufficient to show that Mr S met the Loan Scheme eligibility requirements, so it would still have reached the same conclusion. And I think that conclusion would have been reasonable on the basis of all the evidence available. It is not for me to form a view on whether Mr S was or wasn't trading on 1 March 2020 but, on the basis of the total evidence available, I think HSBC's conclusion that he probably wasn't would have been reasonable.

Carrying on business before 1 March 2020 was a key eligibility requirement for a Bounce Back Loan. Therefore, this conclusion entitled HSBC to terminate the loan agreement. The terms and conditions of the agreement allowed the bank to take this action where any representations made by Mr S were or became materially misleading or incorrect.

Given all of this, I don't think HSBC did anything wrong in terminating the loan and demanding its immediate repayment. The bank also had the "right of set off", meaning it was entitled to use the money held in Mr S's bank account to reduce the amount he owed on the Bounce Back Loan, as it did.

However, I have set out above the finely balanced nature of the issue regarding Mr S's trading status because I'm not persuaded that some of the other actions HSBC took were fair and reasonable in the circumstances. While I can see that there were legitimate grounds for HSBC to take the view that Mr S didn't meet the eligibility requirements for the loan, I don't think this means that Mr S's application was fraudulent – as HSBC deemed it to be.

I note that HSBC's view was informed, in part, by its conclusion that Mr S had also inflated his turnover figure. Again, I don't think it reviewed this point thoroughly enough. Mr S declared an annual turnover of £50,000 – but, as Mr S's business had started after 1 January 2019, this was an *estimated* turnover, as required in the application. I would not expect the figure to be precisely accurate. HSBC noted that Mr S received a substantially lower amount through his account (seeing credits totalling £20,000). However, not all of Mr S's turnover will necessarily have flowed through his account, with at least some of his income being received in cash. Therefore, it appears to me that the estimated figure he used doesn't seem beyond the bounds of reasonableness, with such a prediction for a new business operating in the volatile circumstances of the pandemic being particularly difficult. I don't believe that it adds any evidence to suggest Mr S's loan application was fraudulent.

For these reasons, I don't think HSBC acted fairly or reasonably in deciding that Mr S's loan application was fraudulent. In my view, had the bank looked into things more thoroughly, I don't think it would have reached that conclusion.

HSBC's decision that Mr S's loan application was fraudulent then prompted its other actions, i.e. closing his bank account immediately and reporting information to Cifas, and taking action related to his personal banking and other business.

I can see why HSBC's reasonable concerns as to Mr S's eligibility for the loan would have led it to close his bank account alongside calling in the loan, and it was entitled to take such action. But I think it would have been reasonable to give Mr S two months' notice of the account closure, such that he had time to make alternative banking arrangements – reducing the disruption caused to the day-to-day running of his business.

More significantly, I don't think it was fair for HSBC to record information with Cifas. Given the severity of the consequences of such a marker – which will have significantly restricted Mr S's access to financial products and services – there is a burden of proof to be met beyond suspicion. Given all I've said above, I don't think HSBC had reasonable grounds to believe that Mr S was acting fraudulently or that it obtained clear and rigorous evidence to show that he was, as is required by the principles that govern the Cifas database.

Therefore, to put things right, I'm intending to require HSBC to arrange for the removal of the marker from the Cifas database. Moreover, the situation as a whole has evidently caused Mr S some distress and disrupted his business. Some of that is an unfortunate consequence of the bank's withdrawal of the Bounce Back Loan, which I've found to be reasonable and so isn't something for which I think HSBC needs to pay him any compensation. But Mr S has also been caused avoidable upset and stress by the immediate withdrawal of his bank account and the registration of information about him with Cifas, which contributed to his feeling that he was being treated like a criminal. And while he's only spoken in quite general terms about the impact to his sole trader business, I can appreciate that having to arrange alternative banking facilities immediately would have been disruptive – and all the more challenging given the Cifas marker against him. Taking all of this into account, I'm also intending to require HSBC to pay Mr S compensation of £500.

In his response, Mr S wished to highlight that the situation had significantly impacted him and his business. While his business had survived, he described a large toll having been taken both on his own life and mental health as well as that of his family. He also suggested that HSBC attempt him to contact him in other ways – such as email or letter – in the event that a problem can't be resolved over the phone, in view of English being his second language. And he asked that HSBC remove any other adverse records it may have filed against his name, in addition to the Cifas database.

HSBC responded to reassert that it had correctly deemed Mr S's application to have been fraudulent, with the actions it took consequently being justified in light of that conclusion.

### **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, I've not seen cause to depart from my provisional decision. I'll explain why the further comments made by Mr S and HSBC haven't led me to a different view.

Underpinning my provisional decision was my view that HSBC didn't act fairly or reasonably in deciding that Mr S's loan application was fraudulent. I didn't think it had investigated the position thoroughly enough to reach that conclusion. And, if it had looked into things more thoroughly, I didn't think it wouldn't have grounds to reach that conclusion. I've considered the bank's further comments in this respect but it has largely restated the information that it had provided previously, which I had reviewed prior to reaching my provisional decision. So I've not seen anything new that leads me to think any differently on this point.

HSBC maintains that Mr S declared an incorrect business start date within his loan application. That may be the case. But that doesn't necessarily amount to fraud. I highlighted in my provisional decision that there may have been other causes as to why this discrepancy may have arisen, and other mitigating circumstances as to why it was difficult for Mr S to confirm and/or evidence the correct position. So while HSBC firmly maintains that Mr S's conduct amounts to fraud, I don't consider this position to be fair or reasonable.

I also note that HSBC has referred to the incorporation date of Mr S's limited company (September 2020) as further evidence that he wasn't trading at the requisite time. But prior to the incorporation of his limited company, Mr S was operating as a sole trader (of which there is plentiful evidence. This irrelevant detail hasn't, therefore, led me to a different conclusion either.

Turning to Mr S's additional comments, I should say that I am unaware of any other agencies – other than Cifas – to whom HSBC has referred any adverse information about him. The termination of the loan may have resulted in a default being recorded with credit reference agencies. But as I found that the bank had grounds to terminate the loan, there's no basis on which I could reasonably require this record to be removed.

I note Mr S's point that HSBC ought reasonably to attempt other means of contact if phone conversations don't yield the desired outcome. I would agree with that, while pointing out that he can also update his communication preferences with HSBC if he feels that other methods may be more appropriate or helpful for him.

Lastly, I appreciate that this matter has taken a significant toll on Mr S. As noted in my provisional decision, much of the impact will have been caused by HSBC's withdrawal of the loan and account – which I think were legitimate actions, and therefore not matters for which I can award compensation. It is only the impact of the *immediate* withdrawal of the bank account and the registration of information about him with Cifas that I am requiring HSBC to compensate him for. And in that regard, I still think that £500 is fair compensation for the distress and inconvenience he was caused.

### **My final decision**

I uphold this complaint in part and require HSBC UK Bank Plc to:

- Arrange for the removal of the fraud marker it registered against Mr S with Cifas, and
- Pay Mr S compensation of £500

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 July 2023.

Ben Jennings  
**Ombudsman**