

The complaint

Mr O complains that HSBC UK Bank Plc erroneously set up a Bounce Back Loan in his own name, rather than that of his company – meaning he is personally liable for its repayment.

This issue has also left Mr O unable to obtain a term extension under the Loan Scheme's "Pay As You Grow" options.

What happened

Mr O is the owner and director of a limited company, which I'll refer to as "U".

Mr O holds a business account with HSBC, which he opened in 2008, but it is in his own name rather than U's.

In May 2020, Mr O applied to HSBC for a Bounce Back Loan of £50,000. He was attempting to apply for the loan on U's behalf, and provided the company's name and registration number in the online application form. But he also indicated that he was applying through an existing account with HSBC – which U didn't have, but he did – and the account details he provided were those of his own HSBC account. So HSBC processed the application on the basis that Mr O was the borrower.

HSBC accepted the application and issued a loan agreement to Mr O, in which it named him as the borrower. Mr O signed and returned the agreement to HSBC, and the loan funds were drawn down to his business account on 17 May 2020.

HSBC reviewed the application in December 2020 and identified the "entity mismatch" – noting that it had been made in U's name, but the agreement had then been set up in Mr O's name instead. It attempted to contact Mr O to novate the loan – i.e. to transfer it – to U. But the bank couldn't reach him, so the loan remained unchanged.

The bank's record of the entity mismatch meant that Mr O's access to the Loan Scheme's self-serve Pay As You Grow (PAYG) options was blocked. So he couldn't arrange a term extension when attempting to do so in May 2021. He contacted HSBC, and the bank arranged for its specialist team to contact Mr O to discuss a way forward – but it was unable to reach him.

With the matter unresolved, Mr O raised a complaint. HSBC said it had tried to call Mr O on 27 July, 30 July and 10 August without success, and so had emailed him asking that he make contact with the specialist team. So it didn't think it had done anything wrong, and again invited Mr O to contact the dedicated team to move matters forward.

Mr O raised a further complaint in January 2022. He said that HSBC had told him to visit a branch with information about U, and that having done so he was told that the necessary changes would be made. But no changes had been made – so he was still being held personally liable for the debt, which was affecting his credit file, and he couldn't arrange the term extension he wanted to reduce the monthly repayments.

HSBC reiterated that Mr O would need to call its specialist team, and said that he could refer his complaint to us if he remained unhappy – which he did. The complaint was reviewed by one of our investigators, but she didn't think HSBC had done anything wrong. As Mr O didn't accept our investigator's view, the complaint was passed to me to review.

My provisional findings

I have shared two provisional decisions with the parties setting out my thoughts on this complaint.

On the matter of the loan being held in Mr O's name, rather than U's, I said:

- The starting point is the loan agreement, which named Mr O – rather than U – as the borrower. Mr O signed that agreement, so there is a contract between him and HSBC under which he has committed to repaying the loan.
- That being said, there's no dispute that Mr O named U as the applicant in the application form. But because Mr O incorrectly provided the details of a bank account held in his own name – rather than U's – in that application, this request was overridden by HSBC and the application was treated as having been made in Mr O's name. While Mr O told us that he believed the account had been set up in U's name, that wasn't the case. And I thought it would've been obvious from the account statements and online banking that he was the accountholder.
- I didn't think Mr O would've known that the consequences of such an error (in using details of an account held in his own name rather than U's) would be so significant. And it was only because of the unique nature of the Loan Scheme – with largely automated online application processes in order to process applications, and provide lending, as quickly as possible – that such a discrepancy was left unchallenged. So I sympathised with the position Mr O found himself in, although noted that he could've queried things on receipt of the loan agreement – that named him rather than U as the borrower – if this wasn't in line with his expectations.
- Irrespective of where fault for the situation lay, it didn't seem right to me that Mr O was left with personal liability for a business loan used by his company – a loan that he wasn't eligible to receive, that HSBC ought not to have provided to him and that he didn't have the means to repay. So setting aside the issue of responsibility, I acknowledged that the ideal solution would be to move liability for the loan from Mr O to U.
- I could see that HSBC had made some attempts to initiate the process of transferring the loan from Mr O to U – recognising that things weren't right. Its internal records evidenced that it had made three attempts to call Mr O in December 2020 with a view to discussing this – but hadn't reached him. So HSBC had made *some* effort to sort things out, although noted it would've been helpful – particularly once it had been unable to reach Mr O by phone – if the bank had followed up in writing, especially as it hadn't noted leaving Mr O a voicemail either. It seemed Mr O had remained unaware of the issue, until finding he was unable to access the PAYG options in May 2021. There appeared to have been a breakdown in communication in trying to resolve the matter thereafter.
- Taking all these points into account, I initially said that I intended to require HSBC to novate the loan from Mr O to U – unless it wasn't permitted to do so under the rules

set by the British Business Bank (BBB), the government-owned bank that administers the Loan Scheme.

- In response to that proposal, HSBC sent further information that evidenced changes to the rules of the Loan Scheme, which said novating a loan between different legal entities (such as from an individual to a limited company, as would be required here) would only be possible in very limited circumstances. And such circumstances didn't apply here, so I accepted that the Loan Scheme rules prevented HSBC from novating the loan from Mr O to U.
- HSBC also explained that the loan had now been defaulted, with a final demand having been issued following the accrual of significant arrears. I thought this was relevant too, as I wouldn't generally expect a lender to agree to a change of borrower in such circumstances.
- Given that the loan couldn't be novated under the BBB rules, and in light of the significant arrears position and the fact that I didn't think it was wholly down to HSBC that the loan had been set up in Mr O's name in the first place, I didn't think I could fairly require HSBC to novate the loan.

On the unavailability of the PAYG options, I said:

- The entity mismatch issue that HSBC identified led it to block Mr O's access to the PAYG options, including term extensions and payment holidays that reduce the borrower's monthly payments. But if it wasn't able or willing to novate the loan to address the mismatch – instead requiring that the loan remain in Mr O's name – then I could see no valid reason for declining to offer Mr O the same level of support that was available to other borrowers under the Loan Scheme.
- The block was a consequence of the bank's identification in December 2020 that the loan was intended for U rather than Mr O. I thought HSBC could've done more at that time to resolve the issue, or at least make Mr O aware of it, such that the block need not have been necessary. For example, it could've written to him asking him to get in touch – and making him aware of the possible consequences of not doing so.
- Even if the loan needed to be transferred to U, I didn't think it was fair to deprive Mr O of access to the PAYG support while that was outstanding. There was no suggestion of Mr O having attempted to defraud the bank, and the position had left him personally in a far worse position than would otherwise have been the case. And by the time HSBC was telling Mr O to call in to resolve the issue, the BBB guidance that HSBC was now relying upon would've been in force – so it wouldn't have been able to novate the loan anyway.
- While access to the PAYG options may have helped Mr O at the time, matters had evidently moved on while the complaint had been with us, such that the level of difficulty Mr O was experiencing had left him unable to afford the loan repayments altogether. I didn't think Mr O's inability to access the PAYG options had a bearing on this, given the level of the arrears. In other words, I thought he would always have ended up in a position of arrears and default even if HSBC hadn't unfairly blocked his access to the PAYG options.
- The PAYG options aren't available once a loan is defaulted, so I couldn't require HSBC to offer these in light of Mr O defaulting on his loan. And while I noted Mr O's

request for payments to be deferred, this wasn't something I could instruct the bank to do either – and instead he'd need to liaise with the bank as to his options.

- Even though Mr O may not have been left *financially* worse off than he would otherwise have been, I thought that HSBC's unreasonable denial of his access to the PAYG options had caused him some avoidable distress and inconvenience – in exacerbating the stress caused by loan repayments that were higher than they ought to have been at the time, and in him having to pursue the matter by way of complaint to access the support that should've been available to him previously. So I thought HSBC should pay him compensation of £250 for this.

HSBC agreed to pay Mr O the £250 compensation as I provisionally instructed. But Mr O hasn't accepted this, and reiterated his request that the loan be transferred to U.

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 reached the same overall conclusion as that of my second provisional decision – in that I don't think I can fairly require HSBC to novate the loan to U, and that £250 compensation represents a fair way to resolve this complaint. I'll explain why Mr O's further points haven't changed my mind – albeit I will focus on the points that I consider most relevant to how I've reached my decision, rather than addressing everything he's said.

Firstly, Mr O remains adamant that the account details he provided when applying for the loan were for a business account held by his company. But that is not the case. He says I've made an error by referring to the account as a personal account, but that is not what I've said. The account was (and is) a *business* account – but it is a business account held in Mr O's name, not U's.

Mr O argues that if the account was indeed set up in his own name, then this too was an error on HSBC's part. He asks that I investigate the account-opening to establish this. I don't consider that necessary. Even if I accept that the account should always have been in U's name, I think it's reasonable to suggest that Mr O ought to have spotted the error and queried this with the bank at some point prior to the loan application – given the account statements and all other documentation, online facilities and the like would've referred to him as the accountholder. So I don't think it would be fair to attribute the problems he's since had with the loan to such an error, with the account having operated for some 12 years without query.

Mr O has also reiterated that he named U as the intended borrower when asking for the loan, which I agree with. As I've said, it is unfortunate that this mismatch wasn't picked up before the loan was processed. But I don't think that this oversight on HSBC's part is the sole cause of the situation that has arisen.

Mr O also disputes that HSBC made attempts to contact him about the possible novation of the loan in December 2020, but the bank's internal records show that they did and I've no reason to doubt their authenticity. As noted previously, it's regrettable that HSBC didn't follow up in writing.

As I've said throughout, I do have some considerable sympathy for the position Mr O finds himself in. HSBC holds some responsibility for the loan being in his name rather than U's, and the situation has doubtless had – and may continue to have – a significant impact on him. Mr O understandably queries why HSBC get "the benefit of the doubt" in processing the

loan application in the manner it did due to the circumstances of the time, but he's not given the same for signing an agreement in his own name in the belief that it was for his company. But I have recognised that Mr O isn't wholly responsible for this situation. The issue is about how to put that right. Ultimately, if the rules allowed HSBC to novate the loan from Mr O to U then that's something I'd likely be instructing. But they do not. The bank has evidenced that the rules of the Scheme do not permit such a change.

Given this, and the broader circumstances including the level of arrears that have since accrued, I don't think this is something I can fairly require of HSBC. I note Mr O's unhappiness at the arrears being a factor in my view on this, given he sees this as a result of HSBC's blocking his access to PAYG options. But the level of arrears is such that the PAYG options wouldn't, in my view, have enabled Mr O to maintain the repayments anyway.

So while I'm sorry to disappoint Mr O as I appreciate his understandable strength of feeling over this issue, I'm not instructing HSBC to take any further action in response to this complaint beyond paying him £250 compensation should he wish to accept it.

My final decision

For the reasons I've explained, I uphold this complaint and require HSBC UK Bank Plc to pay Mr O compensation of £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 26 November 2023.

Ben Jennings
Ombudsman