

The complaint

Mr and Mrs L, who were partners in a business partnership, are unhappy that HSBC UK Bank Plc didn't make it clear when they applied for a Bounce Back Loan (BBL) that they would remain personally liable for the loan amount if their business ceased trading.

What happened

Mr and Mrs L successfully applied to HSBC for a BBL for their business, which they ran together as a business partnership. Mr and Mrs L's business subsequently ceased trading. And when Mr and Mrs L told HSBC about this, they were dismayed to discover that HSBC still considered them personally liable for the outstanding BBL. Mr and Mrs L weren't happy about this and felt that their personal liability for the loan hadn't been adequately explained to them when they applied for it. So, they raised a complaint.

HSBC responded to Mr and Mrs L but felt that the terms of the BBL were clear – including that partners in a partnership remain personally liable for a BBL. Mr L and Mrs L weren't satisfied with HSBC's response, so they referred their complaint to this service.

One of our investigators looked at this complaint. They didn't feel HSBC had acted unfairly in how they'd managed the situation and so didn't uphold the complaint. Mr and Mrs L remained dissatisfied, so the matter was escalated to an ombudsman for a final decision.

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'd like to begin by confirming that this service isn't a regulatory body or a Court of Law and doesn't operate as such. Instead, this service is an informal, impartial dispute resolution service. And while we do take relevant law and regulation into account when arriving at our decisions, our remit is focussed on determining whether we feel a fair or unfair outcome has occurred – from an impartial perspective, after taking all the factors and circumstances of a complaint into consideration.

I also note that Mr and Mrs L have provided several detailed submissions to this service regarding their complaint. I'd like to thank Mr and Mrs L for these submissions, and I hope they doesn't consider it a discourtesy that I won't be responding in similar detail here. Instead, I've focussed on what I consider to be the key aspects of this complaint, in line with this service's role as an informal dispute resolution service.

This means that if Mr and Mrs L note I haven't addressed a specific point they've raised, it shouldn't be taken from this that I haven't considered that point – I can confirm that I've read and considered all the submissions provided by both Mr and Mrs L and HSBC. Rather, it should be taken that I have considered that point but that I don't feel it necessary to address it directly in this letter to arrive at what I consider to be a fair resolution to this complaint.

Mr and Mrs L feel that the terms of the BBL surrounding the personal liability of members of

a business partnership were unclear. But I don't agree. Instead, I feel that the personal liability of members of a business partnership was clearly explained in both the BBL application and BBL agreement – both of which were signed by Mrs L on behalf of the partnership, and both of which it was Mr and Mrs L's responsibility to have reviewed and understood before a member of the partnership signed them.

Specifically, the BBL application states:

"I/we understand that the 100% guarantee that is provided by the government under this scheme is to cover any losses made by the lender, and does not cover losses that I/we might suffer if I am/we are unable to meet my payment obligations **for which I/we remain fully liable**".

And:

"I/We understand that...if I am/we are a sole trader or partnership my/our personal assets may be at risk, should I/we fail to complete loan repayments as per the loan agreement with the lender."

While the BBL agreement states as follows:

"YOU ARE RESPONSIBLE FOR REPAYING THE WHOLE OF THIS LOAN AT ALL TIMES. WE WILL ALWAYS TRY TO RECOVER THE FULL AMOUNT OF THE LOAN FROM YOU."

Also, the fact that partners in a business partnership remain personally liable for debts incurred by the business partnership after the business ceases trading isn't a liability feature limited to BBLs. Rather, it's a fundamental feature of business partnerships that partners remain personally liable for the business's debts if that business ceases trading, including but not limited to in regard to, loans, overdrafts, and credit cards.

Additionally, because of the unprecedented social and economic circumstances that surrounded the emergence of Covid-19, and which prompted the creation of the BBL scheme, lenders such as HSBC were expected by the UK Government to process BBL applications and transfer loan funds to successful applicants quickly. And lenders weren't expected to undertake the same level of checks on applications as they would at other times for other loan products. Instead, the onus was on the BBL applicant to ensure that they fully understood the terms of the loan before they applied for or later accepted it.

All of which means that I won't be upholding this complaint as Mr and Mrs L would like. This is because I feel that, as partners in a business partnership, Mr and Mrs L should reasonably have been aware that they would remain personally liable for the BBL even if their business ceased trading – in the same way that they would remain personally liable for any other credit facility they took as a business partnership if their business ceased trading.

Additionally, I feel that the wording of both the BBL application and BBL agreement, which it was Mr and Mrs L's responsibility to have reviewed and understood before signing, clearly explained that they would always remain personally liable for the BBL balance. And I feel that it was for Mr and Mrs L to have clarified this matter at the point of application with HSBC if they felt the need to do so.

Mr and Mrs L have explained that they didn't feel the need to clarify the terms of the BBL when they applied for it because they believed that they correctly understood that their personal liability would only exist so long as their business traded and wouldn't continue if their business ceased to exist. But I don't feel that the wording of the BBL application or BBL

agreement suggests this is any way.

Also, as explained, Mr and Mrs L's misunderstanding of this point isn't limited to the BBL but is a more general misunderstanding of the personal liability of partners in a partnership regarding all business debts. And this means that, ultimately, Mr and Mrs L were always going to be considered personally liable for the BBL after their business ceased trading, because that's a fundamental feature of how partnerships work.

Mr and Mrs L are also unhappy that HSBC won't allow them to restructure the BBL and make smaller payments over a longer term. But the BBL agreement sets the terms for the loan, and I don't feel that HSBC should fairly be expected to restructure those terms unless they make the commercial decision to do so. And, if Mr and Mrs L can't meet their contractual payment obligations as per the BBL agreement, then I feel it's fair that HSBC should be able to consider the BBL agreement to be in default and to act as permitted by the BBL agreement in such circumstances.

All of which isn't to say that I don't sympathise with the difficult personal position that Mr and Mrs L presently find themselves in. But, in my professional capacity as an ombudsman, I don't feel that HSBC have done anything wrong or acted unfairly here. And I don't feel that it's HSBC's fault that Mr and Mrs L didn't correctly understand the terms of the loan they applied for and received. And I also don't feel that it's unfair for HSBC to now seek to act in accordance with those terms – which Mr and Mrs L accepted and agreed to.

I realise this won't be the outcome Mr and Mrs L were wanting. But I hope that they'll understand, given what I've explained, why I've made the final decision that I have.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 15 March 2024.

Paul Cooper
Ombudsman