

The complaint

S, a limited company, complains about the way that C Hoare & Co ("Hoare & Co") handled its accounts.

The complaint has been brought on behalf of S by two of its directors, who I'll refer to as Miss R1 and Miss R2.

What happened

S's complaint falls into three areas, which I'll consider in turn, in the order in which they happened.

The suspension of S's current account in November 2021

S had an invoice financing arrangement with a finance company ("F"). In November 2021 Hoare & Co received a letter from F to say that it held a debenture over S's assets, which gave F a fixed charge over S's book debts. F said the debts owed to S by certain customers were legally assigned to F, and that Hoare & Co should hold any credits to S's account from those customers in trust for F, and forward the funds to F as soon as they cleared.

On a Friday two days after it received F's letter Hoare & Co and S had an online meeting. S confirmed that it had an invoice financing agreement with F, under which F owned some of S's debt, but S disagreed with F's interpretation of the agreement.

Later that day Hoare & Co emailed Miss R1 and Miss R2, saying that there appeared to be a dispute between S and F. It said it was now on notice that F believed, rightly or wrongly, that it held security under which it was entitled to payments received by S. It said it was taking legal advice on the situation as a matter of priority, but that this would take time. And it said it would contact Miss R1 and Miss R2 early the following week to explain what action it had taken and why. On the same day, it suspended payments from S's account.

On the following Monday Hoare & Co wrote to Miss R1 and Miss R2. It reiterated that it was aware that they disagreed with F's interpretation of the debenture. But it said it was now on notice of the debenture, which was registered at Companies House. And it said it was at risk of a claim by F. It said that following legal advice, it had decided that until 8am on the coming Friday, it wouldn't carry out payment orders on S's account. It referred to two provisions in the terms and conditions of the account:

Clause 11.7, which it said meant that following S's payment orders could be unlawful if it turned out to be contrary to the terms of the debenture, as F alleged.

Clause 15.5, under which it said it risked reputational damage if there was litigation about the dispute.

Hoare & Co said it was writing to F, asking it to reach an agreement with S or, failing that, to present Hoare & Co, by 8am that Friday, with a court order obliging Hoare & Co to block the account until the dispute was settled. Hoare & Co acknowledged that this would be inconvenient for S, but said it hoped it would allow S time to resolve the dispute with F.

On the same day Hoare & Co wrote to F. It said it had had no previous formal notice of the debenture. It said the dispute was a matter between S and F, and it wasn't in a position to forward any payments to F without S's instruction. It said F should seek to resolve the dispute directly with S. Meanwhile, it had suspended S's accounts until 8am that Friday, following which the suspension would be lifted unless it received a court order requiring it to block the account until the dispute was resolved.

During the suspension some payments were allowed out of the account. And Hoare & Co says S continued to have access to its business card during that time.

In its final response to S's complaint, Hoare & Co said that given that it had had no previous notice of the debenture, it had needed to act quickly and decisively. So it decided to suspend the account temporarily to make sure that it didn't contravene the terms of the debenture, and to allow S and F to resolve the dispute.

Miss R1 and Miss R2 say the suspension caused a great deal of stress and anxiety, as S couldn't pay wages or make payments to suppliers or creditors while the account was suspended. They say S's reputation was damaged, and that it lost suppliers and business, and its turnover and profit were reduced. They say Hoare & Co's communication was poor, and it didn't explain why it had suspended the account.

S would like Hoare & Co to apologise for freezing the account and compensate S for lost business and for the distress and inconvenience caused and damage to its reputation.

The payment of the card balance

In December 2021 Hoare & Co took a payment of nearly £20,000 from S's current account for the whole of the outstanding balance on S's business card account. The payment took the current account from a modest credit balance into unarranged overdraft. S says this was done without agreement and with no explanation. It says it asked Hoare & Co to set up a repayment plan for the balance on the card account, but it refused to do so, and has charged interest on the overdraft ever since.

S would like Hoare & Co to recredit its current account with the money that was used to repay the card debt, and set up a repayment plan.

The offsetting of money credited to the account

In June 2022 S received a substantial payment into its euro account. At the end of that month, S tried to make an online payment out of the account for almost the full amount of the payment it had received. Hoare & Co withheld the payment.

A few weeks later Hoare & Co wrote to S, saying that the payment wouldn't be processed, because of the unauthorised overdraft on S's sterling current account. Hoare & Co pointed out that it had demanded repayment of the overdraft in February 2022, but the demand hadn't been met. It said S owed it more than £22,000, and that it had a right, under the terms and conditions, to use any credit funds it held to reduce S's debt to it. It said it was giving S 14 days' notice of its intention to use the credit balance on S's euro account to reduce the overdraft on its current account. And it asked S to respond if it thought Hoare & Co shouldn't do this.

In early August 2022 Hoare & Co wrote to S to say that it had exercised its right of set-off and had applied the substantial payment S had received to reduce the amount it owed to the bank on its sterling current account.

S says Hoare & Co prevented it from withdrawing the money without any warning or justification. It says the account was only overdrawn because Hoare & Co unfairly transferred money out of the account to pay off S's business card. S would like Hoare & Co to recredit its account with the euro payment and allow it to withdraw the money.

Our investigator's view

One of our investigators considered the complaint, but didn't think it should be upheld. In summary, he thought Hoare & Co had been right to suspend S's account in November 2021, as it hadn't wanted to contravene the terms of the debenture. He said that S's bank card was a deferred debit card, not a credit card, so S was required to clear the balance every month. As it hadn't done so, Hoare & Co was entitled to transfer money from S's account to clear the balance on the card account. And he said Hoare & Co had acted fairly by offering to help S if it was in financial difficulty. Finally, he said Hoare & Co had sent S a formal demand for repayment of its overdraft, and Hoare & Co was entitled to use funds received into S's account to reduce the overdraft. So taking everything into account, he didn't think Hoare & Co had done anything substantially wrong, and it didn't need to take any further action.

S didn't agree with the investigator's view, so the complaint was passed to me.

After considering all the evidence, I issued a provisional decision on this complaint to S and to Hoare & Co on 10 January 2024. I said:

"S's complaint falls into three separate areas, which I'll consider in turn.

The suspension of S's account

S has commented that Hoare & Co would only have been entitled to freeze its accounts if it suspected illegal activity. It says that even if F had had a legitimate claim (which it doesn't accept), it should have sought a court order. It says that Hoare & Co shouldn't have frozen its accounts on the basis of an unsubstantiated letter from a third party.

Hoare & Co has referred to the provisions referred to above from the terms and conditions of S's account. I acknowledge that it's possible that F might have decided to take action against Hoare & Co for making payments from S's account after being notified of the invoice financing agreement. But it seems to me that any resulting reputational risk for Hoare & Co would only have arisen if it was established that Hoare & Co had acted unlawfully by making payments from the account after it became aware of the dispute between S and F.

I acknowledge that Hoare & Co says that it would have risked acting unlawfully by making payments contrary to the terms of the debenture held by F. But Hoare & Co wasn't a party to the debenture. The disagreement about the interpretation of the invoice financing agreement was a matter, as Hoare & Co quickly – and in my view correctly – concluded, for S and the debenture holder to resolve between them.

I can see that if Hoare & Co had made payments from the account contrary to a court order, it would have risked reputational damage. But in the absence of a court order, I'm not convinced that there was a real risk that S's use of the account could reasonably be expected to give rise to a reputational risk for Hoare & Co. And Hoare & Co itself appears to have taken the view at the time that in the absence of a court order it would be reasonable to lift the suspension and allow payments from the account in the usual way.

So taking everything into account, I'm not satisfied that it was reasonable of Hoare & Co to suspend S's account. But I don't have the power to fine or punish a financial business. I can only require Hoare & Co to pay compensation to S if I'm satisfied that S lost out as a result of the suspension of the account.

Within a day of being told Hoare & Co had suspended S's account, Miss R1 and Miss R2 made several transfers into the account to cover a substantial payment to F, which was subsequently made. That left a credit balance of less than £170 in the account. S has referred to the suspension having lasted for several weeks, but I'm satisfied that it was lifted early on Friday 19 November, having been in place for one week.

On the final day of the suspension a significant loan was credited to the account, with a further loan being credited on the day the suspension ended. Most of that money was withdrawn straight away by Miss R1 and Miss R2. But a credit balance of more than £2,000 was left in the account, and over the following 18 days, credits and debits appear to have been processed as usual until the automatic payment of the card bill which took the account significantly into unarranged overdraft on 8 December. That payment to the card account forms a separate part of this complaint, which I've considered below. Following the payment of the card bill, Miss R1 and Miss R2 asked Hoare & Co for a temporary overdraft facility for a few weeks, pending receipt of payments they were expecting into the account.

It appears that S was having some challenges with its cashflow in the last weeks of 2021. But there's no mention in the emails from S to Hoare & Co during the weeks following the suspension of the account of S having lost business as a result of the suspension. And based on the evidence provided, I'm not satisfied that Hoare & Co's suspension of S's account resulted in S losing business. I do, however, accept that not being able to make payments from the account may have meant that S had to make other arrangements to make payments that it was due to make, and that having to do so would have caused S some inconvenience. And I consider that it would be fair to require Hoare & Co to pay S £300 to reflect that inconvenience.

The debiting of the card balance

I acknowledge that on occasion Hoare & Co referred to S's payment card as a credit card. But I'm satisfied from the records that Hoare & Co has provided that the card was, in fact, a deferred debit card. The terms and conditions for the card provided that Hoare & Co would issue a monthly statement, showing all transactions on the card, and would take a payment for the full amount shown from S's nominated account.

I'm satisfied that Hoare & Co acted in line with the terms and conditions when it took payment for the full balance from S's nominated current account in the usual way in December 2021.

Hoare & Co emailed Miss R1 and Miss R2 on the day the payment was taken, pointing out that it had resulted in a significant overdraft on the current account, and asking them to confirm that they would transfer funds later that day to rectify the position. In response, Miss R1 said S was waiting for payments into the account, and asked for an overdraft for three weeks, until the payments were received. I've seen nothing to satisfy me that S had asked Hoare & Co to set up a repayment plan before the payment was taken, or that S told Hoare & Co that it was experiencing financial difficulties.

Hoare & Co asked S to provide details of its expected income and outgoings over the following weeks, with supporting invoices. S responded that it was due to receive more than £150,000 before the end of the month, and said it would appreciate it if Hoare & Co could help until then. Following a review by its credit risk team, Hoare & Co decided not to agree to S's overdraft request, and it wrote to S to say that it would be closing S's accounts in two months' time.

Hoare & Co was entitled to make a commercial decision as to whether or not to provide the agreed overdraft facility that S requested. I can't interfere with that decision, or with its decision to close S's accounts, and I'm satisfied that it gave the required notice.

Hoare & Co has said it is open to considering any proposals S wishes to make for repayment. I can't fairly ask it to do more.

The withholding of the payment into the euro account

Hoare & Co had a legal right to transfer money from an account in credit to repay or reduce a debt on another account held by the same customer – what's commonly referred to as "set-off". That legal right was referred to in the terms and conditions of S's accounts.

I acknowledge that S was unable to withdraw the money when it tried to do so in June 2022, and that it wasn't warned about that. But the account terms and conditions provided that Hoare & Co would give 14 days' notice of its intention to exercise its right of set-off "unless we reasonably believe that you may try to prevent us from obtaining the repayment".

The credit was received into S's euro account nearly six months after Hoare & Co had given S two months' notice that it would be closing S's accounts. It had demanded repayment of the overdraft, but the demand hadn't been met. And S had tried to withdraw the money. I'm satisfied, in the circumstances, that it was reasonable of Hoare & Co to conclude that S might try to prevent it from obtaining repayment of the money. And I'm satisfied that it was entitled to retain the money and use it to reduce the overdraft balance on S's current account."

And I said that my provisional decision was that I upheld the complaint in part, and intended to require Hoare & Co to pay S £300. But I didn't intend to require it to take any further action.

Further submissions

Both S and Hoare & Co made lengthy comments on my provisional decision. It's clear that Miss R1 and Miss R2 feel very strongly about what's happened. I have read and considered all the comments that both parties have made, and have taken them all into account in reaching my final decision. But I've focussed on what I consider to be the key points, in line with our role as an informal dispute resolution service.

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 don't consider that there's any good reason to depart from the findings in my provisional decision. As in my provisional decision, I'll consider the three areas of the complaint in turn.

The suspension of S's account

S has reiterated many of the points it made before I issued my provisional decision, and has commented at length on what it views as the unreasonableness of Hoare & Co's suspension of S's account, and the way it went about it.

But I explained in my provisional decision that I didn't think Hoare & Co should have suspend S's account as it did. And I also explained that having reached that view, I could only require Hoare & Co to pay S compensation if I was satisfied that S had lost out as a result of the account being suspended. So if, having considered the further points that both parties have made, my view remains that Hoare & Co shouldn't have suspended S's account, the only question to be decided is how much, if any, compensation it's fair to require Hoare & Co to pay. I'll return to that after considering what Hoare & Co has said in response to my provisional decision.

Hoare & Co doesn't accept that it was unreasonable of it to suspend S's account. It says, in summary, that that fact that S hadn't told it about F's debenture, or told it how it wished Hoare & Co to manage the account subject to the debenture, meant that Hoare & Co was in a difficult position when it received F's letter. It has pointed out that the debenture was registered, as a matter of public record, at Companies House. So it doesn't accept S's assertion that it was an "unsubstantiated letter from a third party". It's reiterated that it took legal advice on reputational issues and litigation risks, and says this is evidence of its intention to resolve the issue as fairly and promptly as possible. And it says it acted in good faith.

I wish to be clear that I don't doubt that Hoare & Co acted in good faith in suspending the account, and I can understand why it felt that it was in a difficult position, having had no previous notice of the debenture. I recognise that Hoare & Co discussed the situation with S to get its side of the story and it made its position clear to F once it had taken advice.

However, I explained in my provisional decision that I wasn't satisfied that the account terms and conditions that Hoare & Co has referred to allowed it to suspend S's account in the specific situation that arose here. And what Hoare & Co has said in response to my provisional decision doesn't change my view that the question of whether F was entitled to money received into S's account was a matter between S and F.

In the absence of a court order, I don't consider that there would have been any significant reputational risk to Hoare & Co in continuing to operate S's account as normal after receiving the letter from F. Hoare & Co effectively took the matter into its own hands by suspending S's account. I recognise that it did this because it wanted to seek legal advice. But that was a matter for Hoare & Co, and my view remains that it's fair to require Hoare & Co to compensate S for the consequences of the suspension.

S has repeated its assertion that it lost staff and lost business as a result of the suspension of the account. It's commented that Hoare & Co only told it on 15 November 2021 (a Monday) that the suspension would be lifted on the coming Friday. Until then, it didn't know if it would ever be lifted, and it says it was in turmoil as a result. S has referred to three specific substantial payments which it says were due to be made during the suspension. And it says that it wasn't able to open an account elsewhere as Hoare & Co had suspended its account due to suspected unlawful activity. What's more, Miss R1 and Miss R2 were having to shield as a result of the covid pandemic.

I acknowledge that Miss R1 and Miss R2 say they told their relationship manager numerous times over the phone that the suspension had caused significant repercussions. But as I said in my provisional decision, S was in email contact with Hoare & Co during the weeks following the suspension of the account. And none of those emails mention lost business as a result of the suspension.

I can fully understand that the suspension of the account would inevitably have been inconvenient for S, and I accept that not knowing initially how long the suspension was going to last would have added to the uncertainty. But I'm satisfied from Hoare & Co's internal records that the suspension was put in place on a Friday. The following Monday Hoare & Co told S that it would be lifted at 8am that Friday unless F got a court order. Having thought carefully about everything that's been said, my view remains that if S had lost staff and business as a result of the suspension of its account, I'd have expected to see at least some mention of this in the emails S sent Hoare & Co over the following weeks. And I'm not persuaded, based on the evidence provided, that S lost the suspension resulted in loss of business to S.

Following my provisional decision, S mentioned that due to Hoare & Co's actions, it took legal advice, which cost it more than £6,000. But I don't consider that I can fairly require Hoare & Co to compensate S for this. I've accepted that Hoare & Co acted unreasonably in suspending the account, and that this caused some inconvenience to S for a limited time. But S knew the next working day after the account was suspended that the suspension was temporary and would be lifted within a few days unless F obtained a court order. I've explained that I'm not satisfied that the suspension caused financial loss to S. And I don't consider that I can fairly require Hoare & Co to cover the cost of any legal advice that S chose to take.

Taking everything into account, my view remains that £300 is a fair level of compensation to reflect the inconvenience that S experienced as a result of the suspension of its account.

The debiting of the card balance

In response to my provisional decision, S has pointed out correctly that the business card account had a credit limit. S says that rather than paying off the full amount each month, they paid amounts off to reduce the balance and enable the card to be used.

But the fact that S was able to make ad hoc payments to the business card account to provide some headroom doesn't change my view that the terms and conditions of the card account clearly provided that Hoare & Co would take payment for the full amount shown on each monthly statement. This is what happened in December 2021, and I can see that the same thing had happened the previous month too.

As I said in my provisional decision, Hoare & Co was entitled to make a decision that it wasn't willing to offer S the overdraft that it requested. And it was also entitled to make a decision to close S's account. For the avoidance of doubt, I don't consider (as S has suggested) that the Hoare & Co decided to close the account *because* S asked for an overdraft. Rather, having reviewed S's financial position, it made a commercial decision to close S's account, as it was entitled to do. And I'm satisfied that it provided the required notice in line with the terms and conditions of the account.

S has challenged my assertion that Hoare & Co has said that it's open to considering any proposals that S wishes to make for repayment. But I'm satisfied that Hoare & Co has told S that it should get in touch if it wishes to discuss repayment proposals for S's liabilities to the bank. And it has told this service that it remains open to considering any proposals S wishes to make regarding repayment.

The withholding of the payment into the euro account

It appears that S believes that I said in my provisional decision that Hoare & Co gave it 14 days' notice of its intention to set off the payment that S received into its euro account. But I pointed out that the terms and conditions gave Hoare & Co the right *not* to give such notice if it reasonably believed that the accountholder might try to prevent it from obtaining repayment of the money. And I concluded that it had been reasonable of Hoare & Co in this case to conclude that S might try to prevent it obtaining repayment of the money, for the reasons I set out. So I was, and remain, satisfied that Hoare & Co was entitled to exercise its right of set-off without giving the usual 14 days' notice.

S has also commented that Hoare & Co used an unfavourable exchange rate when it set off the payment from S's euro account. But this is a different point, and wasn't included in S's complaint. If S believes that the exchange rate used for the set-off wasn't in accordance with the terms and conditions of the accounts, it will need to raise this with Hoare & Co.

Having considered the further comments and evidence provided by both parties my view remains that it's fair and reasonable to require Hoare & Co to pay S £300 for the reasons I've set out.

In response to my provisional decision Hoare & Co said that if I require it to pay compensation, it intends to set the compensation off against the outstanding sums on S's account. While that might, in some circumstances, be reasonable, the compensation in this case is for inconvenience which I've found that S experienced as a result of Hoare & Co's actions. Given this, I don't consider that it would be fair for Hoare & Co to set the amount off, and so if S chooses to accept this decision, I require Hoare & Co to *pay* the £300 to S, either by cheque or by transfer to an account specified by S.

Putting things right

To put things right, Hoare & Co should pay S £300 to reflect the inconvenience that it experienced when its account was suspended in November 2021.

My final decision

My final decision is that I uphold this complaint in part. I require C Hoare & Co to put things right by doing as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 18 April 2024.

Juliet Collins
Ombudsman