DRN-4758500

The complaint

A limited company, which I'll call P, complains that HSBC UK Bank Plc is pursuing it unfairly and in error for repayment of a bounce back loan ("BBL"). That loan was applied for by a different limited company, which I will call M.

This complaint has been referred to us by P's director, who I'll call Ms R. Ms R is also the director of M.

What happened

Ms R has told us:

- She successfully applied for a BBL for P in June 2020. P continues to make repayments as they fall due.
- In September 2020, she applied for a BBL ("the second BBL") on behalf of another limited company, M. This application too was successful.
- M was dissolved in August 2022 as it ceased to be a viable business.
- HSBC had confused the two BBLs and was pursuing P for the loan granted to M.

HSBC said:

- Both loans were set up in P's name, because their system just used the account number on the application to provide the name on the agreement.
- Both agreements, signed by Ms R, were in P's name. So they considered that Ms R had knowingly applied for two loans in P's name.
- Ms R should have checked the second agreement and queried it at the time.
- M was not known to them and had never been a customer. The proceeds of each of the BBLS had been paid into different bank accounts, both in the name of P.
- There were two separate profiles for P on their system, each of which had a BBL.
- All subsequent correspondence had been to P, so Ms R should have queried this sooner.

I issued a first provisional decision on 1 February 2024, at which point my provisional view was that the bank didn't need to do anything except pay £250 for the inconvenience caused by its error in giving two BBLs to the same company.

P then supplied further evidence, which I considered showed that P hadn't benefited from the loan M applied for. This led me to change my opinion.

I issued a second provisional decision on 13 March 2024, in which I concluded that HSBC should write off the second loan and remove any credit records relating to it from P's file. In summary, I said:

- I hadn't changed any of my provisional conclusions about what I considered to be HSBC's error with the second application. I still thought HSBC should have noticed that they were issuing a second BBL agreement to the same company and queried this at the time of the application. I think had they done so, this would have resulted in the BBL either being put in the name of the correct company or not issued at all.

- I didn't think that Ms R's error in not noticing that the second agreement was in the name of P should cancel out the bank's prior mistakes.

- I thought that the bank account that serviced the second loan was being used by M, even though HSBC had shown that it was always in the name of P.

- I found Ms R's testimony that she had tried to alert the bank of the situation on multiple occasions persuasive. I am aware that it was difficult to contact banks at that time, albeit that this was for very understandable reasons. It was also often particularly difficult to get through to staff with specialist BBL knowledge. I was minded to think it's more likely than not that Ms R did try and contact the bank and therefore I didn't think HSBC's argument that she should have alerted them to the error earlier was fair.

- Ms R had provided new evidence and explanations regarding the way P and M operated. She pointed out that it is normal in P's industry to have a "main" company bearing all the overheads. This company then recharges the SPVs like M. She provided me with two invoices as evidence of this, from November 2021 and April 2022. I can see that these invoices match the transfers made from the account that Ms R was using for M to P's current account.

- It wasn't impossible that Ms R fabricated these copy invoices to match the bank transfers, but I didn't think that was likely. I said this because I could see that what she says about the way her industry operates is correct and is consistent with the way she used the company bank accounts. So I was minded to accept her evidence.

- For these reasons, I no longer consider that P had the benefit of both BBLs. I thought that M benefited from the BBL applied for in the name of M. It would therefore not be fair to hold P responsible for both BBLs, when it neither applied for nor benefitted from the second.

- I hadn't changed my previous conclusion that P had suffered inconvenience because of the bank's mistake. Its director had to take time away from running the business to try and get HSBC to rectify its error. I still thought £250 was fair to compensate for that inconvenience.

HSBC disagreed with my second provisional decision and asked me to take into consideration the following points:

- The bank account that Ms R claimed was used exclusively by M was opened six years before M was incorporated.

- The bank had searched again for phone call recordings and had found three from P, from October 2020, November 2020 and April 2021. Ms R didn't mention the error with the BBL name in any of those calls and they could find no others.

- M was dissolved in August 2022, yet the bank account Ms R said was M's received a credit for almost £16,000 later in August with the reference as P's name.

- There were a number of other credits to that account with the beneficiary named as P, both before and after the BBL was taken out (details of each were supplied).

- The requirements of the Companies Act 2006 meant that it was essential for companies to have their own separate bank accounts.

Ms R was given the opportunity to respond to the bank's arguments and said:

- From 2018, the bank account was used exclusively by M.

- She had completed the bank's form to close M's bank account as soon as the company was dissolved and delivered it to her local branch. She could only assume it hadn't been processed until January 2023.

- The £16,000 credit received after M's dissolution was an error by the sender. It should have been sent to P's bank account, but the sender had M's bank details as well and sent it to the wrong one (evidence attached of award of funding to P and claim including P's bank details).

- Evidence was provided that other credits to the account were legitimate credits to M.

- The entire BBL was spent on people and resources that were required to bring a second series of M's programme to market.

- The calls the bank had found were calls she had made to HSBC's main helpline number. She had learnt that only the BBL helpline would discuss anything connected with the BBL. It was therefore futile mentioning the BBL in calls to the general helpline.

- She had, however, made a large number of calls to the dedicated BBL line about the BBL as she had previously advised. If HSBC were denying their existence, then they were falsifying the truth.

- HSBC had accepted they'd made an error so she didn't understand why she was being forensically examined about this matter.

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 haven't been persuaded to change the view expressed in my second provisional decision.

I still consider that HSBC should have noticed they were issuing a second BBL agreement to the same company and queried this at the time of the application. I think had they done so, this would have resulted in the BBL either being put in the name of the correct company or not issued at all.

Crucial to this decision is the question of which company was using the second bank account – and hence which company had the benefit of the BBL funds. HSBC has shown that the name on the account was always P's and that the account had been open for some time before M was incorporated.

Ms R does not dispute this, but has said that from 2018, the account was used exclusively by M. HSBC has tried to cast doubt on this by pointing to various payments into that account that were described as being for the benefit of P. Ms R has been able to explain all these payments, with supporting evidence, to my satisfaction. I have seen no evidence to indicate that the account was not being used by M during M's lifetime. I am satisfied, for example, that the large payment of around £16,000 paid into that account after M had ceased to exist was a payment to P, paid into that account by a sender that had also made payments to M and made an error. These funds were then disbursed to other bank accounts.

I accept that Ms R has made errors here – in particular by using a bank account for one of her companies that was not in the name of that company. But I don't think that should mean that P is held liable for a second BBL that it wasn't entitled to, didn't apply for and from which it didn't, in my view, benefit.

I also remain of the view that it's more likely than not that Ms R did attempt to raise and rectify the problem with the bank earlier on. I know that HSBC says that it can't find any record of these conversations. But I find Ms R's consistent testimony that she had tried to alert the bank to the situation on multiple occasions persuasive. I am also aware that it was difficult to contact banks during the pandemic, particularly specialist BBL helplines, and calls can often not be found. I don't think the fact that the bank has found three calls about other matters, in which the BBLs aren't mentioned, means that Ms R never attempted to raise it.

I am sorry to hear of the toll taken on Ms R's mental health by these events. I don't doubt that this has been an extremely stressful time. However, I'm not able to take this into account when awarding compensation, because the eligible complainant here is P not Ms R. P cannot be distressed, although it can be inconvenienced.

Putting things right

To put things right, my aim is to put things back in the position they'd be in if the bank had issued the loan agreement to the company named on the application form. I am therefore directing HSBC to remove the second BBL from P's name and not hold P responsible for it.

Any adverse credit records relating to this loan should also be removed from P's record.

I haven't changed my previous conclusion that P has suffered inconvenience because of the bank's mistake. Its director has had to take time away from running the business to try and get HSBC to rectify its error. I still think that £250 is fair to compensate for that inconvenience.

My final decision

I uphold this complaint and direct HSBC UK Bank Plc to remove the second BBL from P's name, cease to pursue P for repayments for that loan, remove any adverse markers relating to it from P's credit file and pay P £250 in compensation for the inconvenience caused by the bank's error.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 22 May 2024.

Louise Bardell
Ombudsman