

The complaint

A sole trader, Miss M, complains that HSBC UK Bank Plc is wrongly holding her personally liable for a bounce back loan ("BBL") that should have been in the name of a limited company.

What happened

Miss M opened a sole trader business account with HSBC in 2018.

In May 2020, Miss M successfully applied for a £50,000 BBL in her sole trader name.

Later in 2020, Miss M and another individual set up a limited company, which I'll refer to as B. Miss M owned 50% of B. From this point on, Miss M says that the trading business was B and she wasn't trading in her own name. The BBL was recorded in B's financial statements as a liability.

Miss M attempted to apply for a current account in the name of B. HSBC say they tried to contact her about this application, but received no response, so it didn't go ahead.

In 2022, the BBL went into arrears and HSBC sent Miss M a number of letters before ultimately making formal demand for repayment.

In early 2023, B went into a creditors' voluntary liquidation. The liquidators wrote to the bank, as a creditor of B. HSBC said they were not creditors as the loan wasn't in B's name.

In 2023, Miss M wrote to the bank asking them to reconsider their position. The bank treated this as a complaint, which they did not uphold. They said that the BBL was in the correct name and that B would never have been eligible for a BBL as it wasn't incorporated in time.

B was dissolved in 2024.

Miss M asked the Financial Ombudsman to look into her complaint. She said that she had made a number of attempts to get in touch with HSBC to get the loan and current account in the correct name over a six month period.

One of our investigators looked into what had happened and concluded that the bank hadn't acted unfairly. She said that the BBL had clearly been applied for by Miss M personally and that B had not been incorporated at the time.

Miss M asked for an ombudsman's decision.

I wrote to the bank to ask why it hadn't been possible to transfer Miss M's BBL to the limited company under a legal process known as novation. HSBC responded to say that their policy was not to allow loan novations from sole traders to limited companies in any circumstances.

I wrote to Miss M to explain that I had reached the same conclusion as our investigator, but that my reasoning was different. In summary, I said:

- The British Business Bank (“BBB”)’s guidance on novations says that novations are only possible where, at incorporation, the original borrower becomes the only shareholder of the limited company.
- In the case of B, Miss M was not the sole shareholder. So Miss M’s BBL would never have met the definition set out by the BBB.
- The BBB also left it up to banks to decide whether they should novate even where the borrower becomes the sole owner.
- Taking the BBB’s guidance into account, and bearing in mind that lending to a limited company is generally regarded as a higher risk than lending to an individual, I didn’t think HSBC’s stance was unfair.
- I thought the bank could have communicated better in this case. But I didn’t think that changed the fact that Miss M took out the loan in her sole name and remained solely liable for it. I therefore didn’t think I could reasonably require the bank to do anything differently.

Miss M acknowledged my letter.

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.

I am setting out my findings to formalise my answer to this complaint, of which both parties are already aware.

I would like to start by saying that I don’t doubt that Miss M has acted in good faith throughout these events. Her good faith is shown by the recording of the BBL in B’s balance sheet and by the efforts of the liquidators to contact the bank. Unfortunately, Miss M made an error in not realising that if she took out the BBL in her sole name, it might not be possible to transfer the liability afterwards.

For the reasons set out when I wrote to Miss M, I do not consider that the bank made an error in continuing to treat the BBL as a personal liability. B would never have been eligible to apply for a BBL in its own name, as applicants were required to have been trading as at March 2020. Neither did it meet the BBB’s guidance to be a suitable case for novation. In short, HSBC had no obligation to transfer the liability to B and I don’t think it was unfair of them not to do so.

I acknowledge that Miss M has said she spent six months trying to change the status of her accounts in 2020. The bank accept they got an application for a new current account in the name of B, but say this did not proceed, because they tried to contact Miss M by phone to discuss it without success. It seems likely to me that the bank could have communicated better during this period. But my conclusion is that this ultimately made no difference, as the bank would never have novated the loan. Better communication would just have left Miss M aware of the bank’s position earlier.

I am aware that Miss M is currently battling a very serious health condition, for which she has my greatest sympathy. I would hope and expect that the bank will take her health into consideration in their handling of Miss M's outstanding debts.

My final decision

For the reasons set out above, I do not require HSBC UK Bank Plc to take any action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 3 December 2024.

Louise Bardell
Ombudsman