DRN-4863944

The complaint

Mrs G was a sole trader. She complains in that capacity that HSBC UK Bank Plc is unfairly holding her personally liable for a bounce back loan ("BBL") that she applied for on behalf of a limited company, of which she was the director.

What happened

Mrs G told us:

- She used to be a sole trader with a market stall. She had had a bank account with HSBC in that capacity since 2016.
- In 2018, she acquired business premises and set up a limited company, O, on the advice of her accountant.
- She tried to set up a business bank account for O with HSBC, but this didn't get sorted out before the pandemic, at which point it slipped her mind.
- In May 2020, O applied for a BBL for £25,000. She signed the documentation that HSBC provided and the £25,000 was paid into her sole trader account, which O used.
- In January 2021, HSBC explained that they'd made an error with the BBL and put it in her name not O's. They sent her an online novation agreement to correct this.
- She had electronically signed the novation agreement and had heard nothing more so thought the problem was sorted out.
- In early 2023, O's business failed and it went into liquidation.
- Later in 2023, HSBC chased her for BBL repayments and it was only then that she realised that the loan was still in her sole name.

HSBC said:

- They had never received a signed novation agreement from Mrs G, so the BBL had remained in her sole name.
- At the bottom of the email they'd sent about the novation, it said that all parties will receive a final PDF copy by email.
- Mrs G had no evidence that she'd received this PDF.
- Novation was no longer possible, so Mrs G remained liable.

I issued a provisional decision on 22 May 2024. I said, in summary:

Both parties had made errors. But in deciding upon a fair outcome, I'd considered where I thought the larger fault lies – and I'd provisionally concluded that this was with HSBC.

Mrs G had provided evidence of emails showing that she had informed the bank of her change of trading status and was in the process of opening an account for O in 2018 and 2019. She then became busy with her new business and appears not to have followed things up. This was an error on Mrs G's part, in my view, as the limited company should not have used a bank account in the wrong name for its trading. But I didn't think it played any parts in the events surrounding the loan agreement, because Mrs G correctly said the business account was in her personal name when she applied for the BBL.

There's no dispute that Mrs G applied for a BBL on behalf of O, giving its registered name in full. She then ticked a box that said "If you are applying for a Bounce Bank Loan from a lender with whom you have a business current account or charity bank account, please supply your account number and sort code". I thought this box was ambiguous in terms of whether "you" meant the entity applying - in this case, O, which didn't have a business account, or the individual representing the applicant - in this case, Mrs G, who did. Mrs G interpreted it as asking if she had a business current account. She did have one and she accurately filled in that the name on the account was her personal name, which was completely different from O's name.

I think it's therefore clear that the applicant was O and Mrs G did not hide the fact that O didn't have a current account at that time. I considered that HSBC should therefore have provided a loan agreement in the name of O – or else declined to do so, on the basis that O didn't have a bank account with HSBC, if that is what their policy on BBLs required.

Mrs G's second error was not noticing that, despite her giving O's details on the application, the bank had sent her back an agreement in her sole name. But Mrs G had applied for a BBL for O and was therefore reasonably expecting an agreement in O's name. In my view, Mrs G's mistake in not noticing the name on the loan agreement was only possible because of the bank's prior error in putting the agreement in a different name from that applied for. I didn't think it would be fair to hold her liable as a result of a failure to spot the bank's error.

I appreciated that the BBL scheme was designed for speed and that banks were therefore encouraged to process applications at speed and not conduct unnecessary checks. HSBC were not alone in using the account number given to drive the name in which the loan was granted. But I was also conscious that this shouldn't have – and didn't – prevent banks from doing additional checks where warranted.

HSBC in fact did do some additional checks later on, resulting in the bank contacting Mrs G in January 2021. Their letter made it clear that, at that point, they considered that they had made an error. It said:

> "Unfortunately, we didn't cross-check the details you provided in the BBL application against those existing records prior to issuing the Facility Offer Letter… Therefore, the Facility Offer Letter was populated with your existing account details, which reflect that previous trading status.
>
> We're sorry for this mistake and any inconvenience this may have caused".

HSBC spoke to Mrs G on the phone at that time and sent her an online novation agreement to sign. Novation agreements are legal documents that are required to transfer an obligation from the original signee to another party. In this case, the agreement would have transferred the loan from Mrs G's sole name to O's.

Mrs G says she signed this document online and saw a message confirming that she had done so. She also points out that if you now click on the electronic link, it says that the document has already been signed. HSBC, on the other hand, says that no pdf version of the document was generated, therefore the agreement was not signed and so Mrs G remains personally liable.

In instances such as this, where there is limited evidence, I am required to reach my conclusions on the basis of the balance of probabilities, that is, what I think it more likely than not to have happened. In this case, HSBC had told Mrs G that, contrary to her application, she had a £25,000 loan in her personal name – and that this could be removed by signing a document. I think it's more likely than not that she would have at least attempted to sign such a document in those circumstances.

Electronic documentation systems are not, in my opinion, foolproof. Things go wrong and it is sometimes unclear to the signatories whether they have completed the process successfully or not. This may be what happened here, through no fault of either party.

HSBC suggested that because Mrs G had been told that a pdf would be generated, but cannot provide evidence of such a document, that she didn't sign. But I considered that HSBC should have checked for the receipt of the agreement. They had sent Mrs G an important legal document to correct an error they accepted they'd made. I thought the onus was on them to follow it up and I had seen no evidence that they did so.

Mrs G accepted that she can't provide evidence that she received a pdf version of the agreement. But she also says she didn't receive a copy of the original facility agreement either. I can see that on the original application form, she gave O's email address, not her personal address. She no longer has access to this address (it no longer exists) but it seemed to me possible that the pdf was sent to this address on each occasion.

I had also seen that the relevant link now says "this document has already been signed". HSBC were unable to explain this but suggested it might be because the novation agreement had expired or been removed. I didn't find this very persuasive, as I thought it would be more likely to say it was no longer available, or words to that effect, in that scenario.

For all the reasons above, my provisional finding was that it was more likely than not that Mrs G signed the novation agreement, or at least reasonably believed that she had completed the online process. I therefore thought she did whatever she could to mitigate the error with the original documentation.

Further evidence to support this was, in my view, provided by the fact that the BBL appears in O's balance sheet, thus indicating that Mrs G thought it was in the company's name and so did her accountant.

The bank had provided evidence showing that it was only possible to novate BBLs in very limited circumstances under the BBB's rules and these did not apply. The bank therefore argued that the novation agreement was itself a further error on their part. I accept this may well be correct. The rules on novation are not straightforward and have been subject to further guidance from the BBB on several occasions. But I didn't think it followed that Mrs G should remain liable for a loan that should never have been in her name to begin with.

In summary, I was satisfied that Mrs G applied for a BBL on behalf of O. HSBC, however, set it up in her sole name in error. They then offered to correct this error, but failed to check this process had been completed. I therefore intended to uphold this complaint and put Mrs G back in as near as I could to the position she would have been in but for the bank's error.

My provisional intention was therefore to direct the bank not to pursue Mrs G for the BBL. I also intended to direct HSBC to remove any entries made relating to the BBL from Mrs G's personal credit record, since I didn't think the loan should ever have been in her name.

I was satisfied that Mrs G has found the discovery that the bank were pursuing her personally to repay the BBL distressing. Having been through the distressing process of a business failure, she then discovered that the bank were pursuing her for a personal debt. She has told us that it has affected her mental health. I was minded to direct the bank to pay compensation of £300 in recognition of this distress.

Mrs G responded to say that she agreed with what I'd said, but the bank had now transferred the administration of the loan to an external debt collection agency.

HSBC disagreed with my provisional decision and made the following points:

- A number of payments had been made from Mrs G's sole trader account to a company with a similar name. They said this was the trading name of O and showed that it had had a current account with another bank.

- They questioned whether a BBL had been taken out at this second bank in the name of the company with a similar name.

- On the subject of the novation agreement, they said this was an automated system and if the agreement had been signed, the system would have automatically populated and moved the account to the next stage of the process.

- They had no record of the system moving to the next stage and no record of a receipt.

- A number of further letters (copies supplied) had been sent to Mrs G after this date showing that the loan was still in her sole name. They thought this should have alerted her to the fact that the novation had not taken place.

- Mrs G did not alert them to the mismatch until November 2023.

- There was an inconsistency in Mrs G's version of events regarding the pdf of the loan agreement. She told us she hadn't received it, but she had received the agreement to sign at the email address given on the application form and returned it the next day.

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, and having considered the bank's new evidence and arguments carefully, I haven't been persuaded to change my provisional view. I'll explain why below.

First, the bank has pointed out that a number of payments were made in round amounts from the sole trader account to an account in a similar name with a different bank in the same city as Mrs G, shortly after the BBL proceeds were received.

I note that the recipient of these payments does not have an identical name to O, so I don't see any reason to believe it's the same company although it does include a similar part. I have looked at this company's records on Companies House and I can see no evidence that it is connected to Mrs G or Mrs G's company. So I don't think these payments prove that O had an account elsewhere or was acting in bad faith in relation to the BBL application. After all, it's not unusual for businesses to trade with other businesses with similar names.

I realise that the novation agreement was an automated one and the bank has no record of it being completed, but as I said before, I do not consider such systems to be foolproof. I don't have an explanation as to why Mrs G says she signed it but the bank has no record of this. But neither does the bank have an explanation of why the document says it has already been signed if you go into it online. And Mrs G no longer has access to the mailbox to which the completed pdf would have been sent.

Mrs G applied for a loan on behalf of O and it was O that wanted the BBL. She was sent an online link to transfer a £25,000 liability out of her personal name and into O's. I don't think it's likely that she would have ignored it. I think it is more likely than not that she attempted to follow the instructions and sign the novation agreement.

I also still consider, that the bank should reasonably have taken steps to follow up the completion of the novation agreement, which after all was intended to rectify the serious error they admitted they'd made.

The bank has pointed out that a number of letters were sent to Mrs G about the BBL after January 2021, which they say showed that the debt was still in her name. I accept that these letters were addressed to Mrs G, not to O and did not mention O. But I don't think they made it particularly clear that the loan remained in her name. In any case, since HSBC subsequently concluded they weren't able to novate loans after all, I'm not sure what difference it would have made if Mrs G had noticed and pointed it out to them. I think it's likely that they would have said there was nothing they could do to correct their error. And I don't think that would make it any fairer to hold Mrs G personally liable for the BBL.

Finally, the bank says there is an inconsistency in Mrs G's account of events relating to the receipt of the loan agreement. Since Mrs G no longer has access to the email account to which it would have been sent, she has no way of double-checking this, but in any case, even if she was wrong about not receiving the original pdf, it wouldn't change my view about the fairness of pursuing her personally for this debt.

In summary, HSBC acknowledged they had made an error in not checking O's BBL application. As a result, they offered to novate the loan, but then did not follow up to check if Mrs G had completed this process. My conclusion remains that, in these specific circumstances, it would not be fair for HSBC to continue to hold Mrs G liable for this debt.

Putting things right

My aim is to try and put Mrs G into the position she would have been in were it not for HSBC's error. In order to do this, I consider the bank should retrieve Mrs G's loan from the external debt collection agency and cease to pursue Mrs G for the BBL. They should also remove any adverse entries made relating to the BBL from Mrs G's personal credit record.

Mrs G has told us that being pursued personally to repay the BBL has caused her significant stress and anxiety. I am awarding compensation of £300 in recognition of this.

My final decision

I uphold this complaint and direct HSBC UK Bank Plc to cease to hold Mrs G personally liable for the BBL, remove any adverse credit information relating to the BBL from Mrs G's record and pay her £300 compensation for the distress caused.

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

Louise Bardell
Ombudsman