

DRN-4899709



The complaint

Mr L complains that HSBC UK Bank Plc unfairly put his bounce back loan (“BBL”) into default.

What happened

Mr L took out a £50,000 BBL in May 2020.

Payments were missed on the BBL in late 2021 and in 2022.

HSBC closed Mr L’s client accounts in June 2022. They said this was because he hadn’t provided confirmation that the accounts were set up and run in accordance with the relevant regulations.

Mr L complained about the closure, later referring the case to the Financial Ombudsman. I issued a jurisdiction decision, in which I found that the complaint had not been made in time under the Financial Conduct Authority’s time bar rules.

In November 2022, HSBC agreed to reopen Mr L’s client account. They said this was a goodwill gesture, after he provided the information they required.

On 1 June 2023, the bank issued a default notice for the BBL, requiring repayment of the total arrears of £1816 within 21 days. Mr L did not make this payment. HSBC then issued a formal demand requiring repayment of the full balance of the loan. The BBL was then transferred to HSBC’s recoveries department.

Mr L made a second complaint regarding the default of his BBL. He said this was caused by the client account closure, which left him legally unable to trade.

HSBC didn’t uphold this complaint, as they said they had followed the correct procedures for loans in arrears.

One of our investigators looked into what had happened, but didn’t recommend upholding the complaint. He said HSBC had complied with the terms and conditions of the BBL, so they hadn’t done anything wrong.

Mr L asked for an ombudsman’s decision. He enclosed a letter HSBC had sent in February 2024 reminding him that they had the right to use the balance on his business account towards the BBL as evidence of what he said was their negligent and unlawful behaviour. He also said that the bank had acted unfairly by not allowing him to use all his Pay As You Grow (“PAYG”) repayment holiday options before calling in the debt.

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.

Mr L's client accounts were closed by HSBC on 27 June 2022 and reopened by them on 22 November 2022. As Mr L is aware from my previous jurisdiction decision, I will not be looking at the circumstances of the closure in this decision, as that is outside my jurisdiction. But I have looked at whether I think HSBC acted fairly in relation to the BBL, given that the client accounts were closed for that five month period.

Before his first repayment fell due in June 2021, Mr L took out one of the available Pay As You Grow ("PAYG") options to extend the term of his BBL to ten years. He then failed to provide enough money to cover the first repayment on the loan, although he corrected this shortly afterwards.

By March 2022, I've seen evidence that HSBC had written to Mr L to inform him he was two payments in arrears, some £1,035. He then also missed April 2022's and May 2022's payments, although both were made up shortly afterwards. I think it's fair to say that all this indicates that Mr L's cashflow was under pressure and he was struggling to meet loan repayments for some months before HSBC closed the client accounts.

Whilst I appreciate that the closure of Mr L's client account would have exacerbated these problems, I don't think it's fair to say that the arrears were caused by the client account closure, since he was in arrears before the client accounts were closed.

I can see that Mr L was emailing the bank regularly after the closure and explaining that he was unable to trade and therefore would struggle to make his BBL repayments. So I've looked to see if HSBC exercised any forbearance in the way they handled his BBL, bearing in mind that they were aware of this situation.

HSBC gave Mr L a "breathing space" in October 2022 and a two month payment break in February 2023, as well as allowing him to use several of his PAYG options, despite the presence of arrears. So I think HSBC did show Mr L some forbearance by giving him some time in which to bring the loan back up to date.

By the time HSBC sent their default notice, it was over six months after the client accounts were reopened. So I think HSBC had given Mr L a reasonable period in which to make up his arrears – or at least to contact them to make a proposal about how he would make them up.

In April 2023, HSBC sent Mr L a letter informing him that the payment break would end soon. This letter said that "if there's still an overdue amount on your account, and you don't contact us, we may send you a Default Notice relating to your loan account". I've not seen any evidence that Mr L responded to that letter and the bank then sent a default notice on 1 June 2023 and a formal demand on the 23 June 2023.

I'm aware that Mr L has said he didn't receive any of these letters and only discovered in a phone call to the bank that his loan had been put into default and transferred to a debt collection agency. I can see that the address on the letters is different from the address he gave us, which may explain this. However, it is his responsibility to keep the bank informed of his address. And in any case, I know that he did receive the bank's later letter regarding their right of set-off, sent in February 2024, because he forwarded it to us. My conclusion from this is that I don't think the bank made any error in their communications with Mr L.

I appreciate that Mr L had taken out another PAYG capital repayment holiday at the time of the default. But I don't think this made it unfair for the bank to declare an event of default. I say this because the arrears had persisted for some time, without Mr L making any payments towards them or getting in touch with the bank to discuss them. I can see from the bank's records that he did speak to them in January and February 2023, but I can't see that he tried to contact them after this date, until after the formal demand.

Mr L has also suggested that the bank should not have put the loan into default whilst he still had some PAYG options left. I'm afraid I disagree, because his loan was in arrears. PAYG options are not a substitute for keeping loan repayments up-to-date and there is nothing in the terms and conditions of the BBL that said it couldn't be put into default while PAYG options remained. PAYG options are designed to provide some cashflow relief for a business for a period. This is entirely separate from repaying arrears, albeit that a PAYG holiday might offer a breathing space in which to make up arrears. However, at the time Mr L's loan was declared to be in default, he hadn't made a full monthly repayment since October 2022 and there was no sign of him making up any of the arrears.

As I mentioned earlier, Mr L has provided me with a copy of HSBC's February 2024 letter reminding him of their right to use any credit balance on his business current account to offset the loan. Mr L feels that this proves that the bank is acting negligently and unlawfully. But I don't see anything wrong with this letter. The terms of Mr L's BBL permitted the bank to take this action. This is a normal term in banking agreements and I see nothing unfair in its inclusion or application in the circumstances here. The letter sent specifies that client accounts are excluded from this right of set-off, which is what I would expect to see.

My final decision

For the reasons explained above, I do not uphold this complaint.

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

Louise Bardell
Ombudsman