

The complaint

A limited company, which I'll refer to as E, complains that HSBC UK Bank Plc has failed to provide support or forbearance when fraud left E in financial difficulties.

E is represented by its sole director in bringing this complaint.

What happened

In 2020, E took out a bounce back loan ("BBL") from HSBC. In July 2021, E took out a three year Recovery Loan ("RL") for £55,000.

In early 2023, E's trading suffered as a result of the postal strikes and it had to draw on its reserves to survive. In July 2023, E became a victim of fraud from its eBay trading account, causing it severe financial loss.

As a result of the fraud, E could not maintain all its loan repayments. In September 2023, E contacted HSBC seeking some support. A term extension and capital and interest repayment holiday was quickly put in place for the BBL. Nothing was agreed for the RLS and E's director complained.

HSBC responded in early October 2023 and paid E £100 for delays and extended waiting times.

E's relationship manager ("RM") wrote to E to say that the bank required a repayment plan regarding the loan arrears and would need two years' accounts and a cashflow forecast before it could consider any support for the RL, which would require credit approval.

E's director complained again and in November 2023, the bank paid E a further £500 for poor customer service. The bank said it would find E a new relationship manager.

On 5 December 2023, HSBC issued a default notice for the RL.

E's director emailed the bank requesting urgent contact from the new relationship manager, who responded, explaining that she had been intending to wait until January, as the bank had a moratorium in December. She informed E that the bank still needed the cashflow forecasts and accounts before any credit application for support could be considered.

E's director remained dissatisfied with HSBC's support, so he referred E's complaint to the Financial Ombudsman. He said that instead of making any effort to contact him, HSBC had issued a default notice. He wanted the bank to agree a repayment break and an extension of the RL term.

On 21 December 2023, E emailed HSBC a copy of Elko's accounts and cashflow projections. E proposed paying £150 a month towards the RL until it saw substantial improvement in trading.

One of our investigators looked into what had happened and wrote to E with her findings. She didn't recommend upholding the complaint, as she didn't think HSBC had acted unfairly

or made errors, it had simply followed its process.

E disagreed and asked for an ombudsman to look at the matter again. E's director made the following points, in summary:

- He had made every effort to get help from HSBC. But the bank had been obstructive, unhelpful and unprofessional. The bank's latest letter re Standards of Lending Practice was hypocritical since they'd provided him with no help at all since September 2023.
- HSBC had recognised that their service level was unacceptable, but then failed to provide a new contact as promised. The person who took over was a friend of the original unhelpful person.
- Our investigator had said that she couldn't award compensation for stress to E, but E was a single director company that wouldn't exist without him.
- The Government's RL scheme said that loans were available for up to six years, with a term extension to ten available in certain situations. But HSBC had only agreed E a three year RL, despite his request.
- The RL agreement said that borrowers could request to defer some of the capital repayments.
- In May 2024, HSBC was fined by the Financial Conduct Authority ("FCA") for failing to treat its customers fairly in relation to forbearance.
- The bank should have treated him as vulnerable in accordance with the Lending Standards Board's section on "Customers in vulnerable circumstances", which included the directors of limited companies. HSBC was aware that due to the damage the hacking (crime) inflicted on the company, he was in a vulnerable position, with exacerbated health conditions and a risk of bankruptcy.

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've reached the same conclusion as our investigator, for essentially the same reasons. I realise this will be a disappointment for E's director, especially when his business has been through such a difficult time, so I'll explain why below.

E said on our complaint form that he first made contact with the bank in September 2023, at which point E's BBL was around one payment in arrears and the RL around two or three payments in arrears. I can see that on 6 September, the bank sent E an agreement to extend the term of the BBL and put in place a six month capital and interest repayment holiday. On 9 September, HSBC wrote to say it had put in place a 60 day breathing space on the RL. These actions are in line with banks' usual best practice where they are advised of financial difficulties, in my view.

Some delays followed, during which E made its first complaint and on 3 October, was awarded £100 compensation. The bank's response to the complaint mentioned that E's relationship manager had already been in touch and I can see that was the case and an email exchange followed. On 5 October, E's RM asked what I consider to be some reasonable questions and set out the next steps:

"to provide support, we would require a repayment proposal plan for the RL and BBL loan arrears. Please provide the last 2 years financial statements from your accountant and a projected cash flow statement so that I can review them and based on what the credit team comes back to me, I would be able to discuss further"

I think this explains the bank's position clearly and I don't think the requirement for accounts and a cashflow projection are unreasonable, given E's position that trading had been catastrophically damaged but would recover in time. I appreciate that accounts are publicly available on Companies House, but these would have only been up to June 2022, before any of the problems, and also comprised a highly abbreviated balance sheet only.

On 12 October 2023, after a chasing email from the bank, E replied, saying, amongst other things:

"The BBL loan is now not due to restart until March 2024 I believe. It would be helpful if similar could be done to the RLS loan. There will be no option for us to catch up with RLS missed payments in the near future therefore the term of the loan will have to be extended".

As our investigator explained, the BBL scheme had some substantive forbearance options known as Pay As You Grow built into the scheme, which are automatically available to borrowers. The RL scheme was a very different scheme, under which the bank takes on some of the risk and is expected to make decisions subject to its own credit and forbearance policies. So whilst I appreciate E's director would have liked a repayment holiday on the RL too, the bank would need to be satisfied that any repayment plan was viable and affordable, in order to meet its obligations to lend responsibly. It would therefore be usual banking practice to put such a request through its credit approval process, as HSBC said it would need to do here.

E's director has pointed out that the RL agreement included a clause saying that borrowers could request to defer some capital repayments. But this clause goes on to say "provided that (a) no event of default has occurred and is continuing". E's RL was over £10,000 in arrears by October 2023 and the agreement includes in its list of events of default "you or any obligor does not pay any amount due to us under the documents when due". I think it's therefore clear that an event of default had occurred. And in any case, this clause only said that borrowers could request a deferral (which E did), not that it would necessarily be approved or that it wouldn't require additional information.

E's director has also mentioned that RLs were available for up to six years and there was potential to extend this to ten years, but HSBC had only agreed E's loan for a three year term despite his request. I think this is a separate complaint point, which he would need to take up with the bank first, but I will say that the duration was at the discretion of the lender and that E chose to accept the terms offered.

HSBC accepted that its RM hadn't provided the standards of service it aimed for and paid E a further £500 compensation. It also agreed a change of RM. This took place, but E's director remained dissatisfied, as he felt the new RM was a friend of the first.

I can see that the new RM mentioned the old one in her correspondence, but this seems to me reasonable in explaining why she still needed the information the first RM had requested. I haven't seen any evidence of obstructive behaviour and I think the tone of all the emails I've seen is clear and courteous. I appreciate E's director would have liked the new RM to adopt a different and more accommodating position, but I have already explained why I think HSBC's questions and information requests were reasonable. And since it was following its usual policies, I would not expect a change of RM to result in a radically different approach.

I do agree, however, that sending a default notice in December, whilst maintaining a moratorium on other contact, is not a helpful position to maintain. But as the RM did get in touch when requested, I don't think any compensation is warranted.

On 21 December, E sent its RM a further email, to which it said its accounts and cashflow forecast were attached. E also said that it could only pay £150 a month towards the RL "until we see substantial improvement" and that there was no option for clearing the arrears.

In January 2024, the RM emailed again having reviewed the last couple of months of activity through the bank account. She noted that trading seemed to have improved and E had been able to make its recent RL repayments, but asked again for a proposal for clearing the arrears. She didn't comment on the cashflow forecast (which I would have expected) and later correspondence from the bank to us suggests that this may not have been received.

Since this point, as far as I am aware, the bank has put matters on hold regarding the arrears pending the resolution of this complaint. I have only seen one letter since then, which referred to the Standards of Lending Practice and informed E that the bank was concerned about it.

E's director has argued that the bank should have identified him as a vulnerable person under the Standards of Lending Practice. I am not persuaded that the bank had any information that should reasonably have led it to make this assessment. But if E's director considers himself vulnerable now, I would strongly recommend that he talks to the bank about this and discloses any medical conditions that might mean that the bank should adapt its approach. However, I would not expect an assessment of vulnerability to change the bank's requirement for a plan to clear E's arrears over a reasonable timeframe.

I am aware that HSBC has been fined by the FCA for forbearance failings. These were for a specific period, between June 2017 and October 2018, which is not the relevant period for E's complaint. In any case, my role is to look at each case on its individual merits, so it would not be fair to take any past failings with other customers into account.

I do sympathise with E's director's comments about E being a one person undertaking and therefore the amount of stress he has been under. I do not doubt that he has been going through a very difficult time, having taken on a large amount of debt (I can see there is at least one debt outside of HSBC too) and then become a victim of fraud.

Nonetheless, our investigator was correct that our rules prevent us from awarding compensation for distress experienced by company directors, regardless of business size. This is because the complainant that is eligible to use our service is E not E's director and companies cannot be distressed. Companies can be inconvenienced, but I consider the £600 of compensation already paid to be sufficient to cover HSBC's customer service shortfalls.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 24 September 2024.

Louise Bardell
Ombudsman