

The complaint

A company, which I will refer to as N, complains that HSBC UK Bank Plc and its associates failed to issue a bank guarantee (also referred to as a performance bond) in a reasonable time.

What happened

HSBC told us:

- On 13 December 2021 N submitted an application for a bank guarantee. HSBC normally takes four working days to process such an application.
- N's application specified the name of the beneficiary (an organisation outside the UK). It asked for the guarantee to use the standard wording of a foreign bank, in the same country as the beneficiary. I will refer to that foreign bank as Bank C. N's application also requested that the guarantee be reissued by a third bank, which I will refer to as Bank S, in a third country.
- It correctly issued the guarantee documentation on 23 December 2021 (four days later than it should have done), and sent that documentation to Bank S.
- Bank C told Bank S that Bank C would not issue the guarantee locally because it required payment in advance. Bank S did not tell HSBC about that request until 21 January 2022, around three weeks after Bank S became aware of the issue.
- HSBC paid the relevant charges on 11 February 2022. HSBC accepts that it took too long to do so, but it says it could not have known the amount of the charges or where to pay them in advance.
- Bank S then issued the guarantee to Bank C with an incorrect beneficiary name. The guarantee was supposed to be picked up from Bank C's offices by the beneficiary, but was posted to a third party instead. HSBC accepts those errors caused difficulties for N, but it says they were the responsibility of Bank S and Bank C rather than HSBC.
- The guarantee required a further amendment, and HSBC processed that amendment without charging additional fees to N.
- The correct guarantee was eventually received by the intended beneficiary on 19 April 2022.
- It has contacted Bank S twice to ask what happened and to request that a complaint be raised on N's behalf, but it has not received a reply.
- Overall, HSBC took four days longer than it should have done to process the guarantee at the beginning, then caused a further delay when it received a request

for payment to be made to Bank C via Bank S. (Some of HSBC's paperwork says the further delay was two weeks, and some says three weeks.)

- It offered to pay N £2,000 in compensation. It considers that amount fairly reflects the impact to N of its own errors, but it is not prepared to pay compensation for the errors of the other banks involved.

N told us:

- It suffered losses of significantly more than £2,000 as a result of the problems with the bank guarantee. The delays meant that a contract was significantly delayed (and may even have been lost entirely) because its customer's forex allocation expired.
- HSBC took three weeks to pay Bank C's charges, not two as HSBC has suggested. A delay of even two weeks would have been a major failure given the urgency of the matter, and N had made the urgency clear to HSBC.
- If the guarantee had been issued by 11 March 2022, its customer's forex allocation would still have been available and it would have avoided the majority of the costs and losses that it suffered.
- HSBC did not even notice that Bank S had issued a guarantee in favour of the wrong beneficiary. N had to point that out.
- Bank S accepted instructions from HSBC, not from N. Bank S must therefore have a commercial relationship with HSBC. All the problems associated with this performance bond stem from HSBC and its chosen partners failing to issue instructions to Bank C in a reasonable time. HSBC has failed to properly monitor its subcontractor Bank S. HSBC's usual process of sending Swift chasers to foreign banks is ineffective.
- Bank S has not responded to N's query about the bank guarantee. It is not helpful to separate the mistakes of HSBC and the mistakes of Bank S. N's commercial relationship is with HSBC only; N does not have a commercial relationship with Bank S.

One of our investigators looked at this complaint, but she didn't uphold it. She didn't think HSBC was responsible for the actions of Bank S or Bank C, and she thought £2,000 HSBC had offered was fair compensation for HSBC's own errors.

HSBC accepted our investigator's conclusions, but N did not. The matter was therefore referred to me.

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, whilst I am sorry to further disappoint N's representatives I consider that the offer HSBC has made is fair. I will explain why.

Everyone agrees that it took far too long for the bank guarantee to be issued, and I think that is obvious. N submitted its application on 13 December 2021, yet it was another four months before the correct guarantee was received by the correct beneficiary. There were many

mistakes along the way, including at one point a guarantee being issued to the wrong beneficiary. N says that it has suffered losses as a result, and I accept that that is likely. But I don't think it would be fair for me to hold HSBC responsible for those losses.

Firstly, I do not criticise HSBC for the way in which it communicated with Bank S. I know N considers that HSBC should not have relied on "routine Swift chasers", but the use of Swift messaging services is a common banking practice and I think it was reasonable for HSBC to contact Bank S in that way.

I understand why N's representatives say that it isn't helpful to N for HSBC's mistakes to be separated from the mistakes made by foreign banks. They appear to accept that some of the delays were not caused by HSBC, but they consider that HSBC should nevertheless be responsible for the whole of the delays. They have suggested that HSBC should compensate N for any errors made by Bank S or Bank C. But I do not agree.

I acknowledge that, in the circumstances in which N found itself, it would not have been possible for N to have caused a bank guarantee in favour of the non-UK beneficiary to be issued without the involvement of a non-UK bank. But that does not automatically mean that HSBC UK Bank Plc is responsible for the actions of anyone other than itself. Even if Bank S or Bank C were members of the HSBC group (which they are not), that would still not automatically mean that HSBC UK Bank Plc was responsible for the actions of another legal entity.

Here, I have seen nothing to suggest that HSBC UK Bank Plc is responsible for the actions of Bank S or Bank C. That means I cannot order HSBC to pay compensation for the consequences of the errors of Bank S or Bank C.

I note in passing that even if HSBC had been responsible for the actions of Bank S and Bank C, I would still be unable to consider the actions of those banks. The compulsory jurisdiction of the Financial Ombudsman Service only covers complaints about banking services which are "carried on from an establishment in the United Kingdom" (or, in some circumstances, "carried on from an establishment in an EEA state" – that is, from Norway, Iceland, Lichtenstein, or from a current member of the European Union). Bank S and Bank C both carry on their activities from establishments outside of Europe, and those activities therefore fall outside of the territorial scope of my jurisdiction.

It is unfortunate that Bank S has not responded to correspondence from HSBC or from N. But it is not appropriate for me to speculate about whether any particular error is the responsibility of Bank S, Bank C, or anyone at all other than HSBC UK Bank Plc. I only have the legal power to consider the actions of HSBC UK Bank Plc. Looking solely at the errors made by HSBC, I think it was right to identify those errors as an initial four day delay, followed by a further delay of around three weeks in paying Bank C's charges.

I acknowledge that there has been some confusion about whether HSBC delayed paying Bank C's charges for two weeks or for three weeks, but I don't think the exact length of that delay makes a material difference. The evidence I have seen suggests that HSBC became aware of Bank C's request for an upfront payment of charges on 21 January 2022, but did not make payment until 11 February 2022. Those two dates are exactly three weeks apart, but I would not expect HSBC to have made payment immediately in any event. The delay in respect of HSBC's payment to Bank C was therefore just under three weeks. In total, including the four day delay at the beginning of the process, I therefore consider that HSBC was responsible for just over three weeks of the delay N experienced. It is therefore fair that HSBC should pay some compensation to N.

Putting things right

For the reasons I've given above, I consider that HSBC was responsible for just over three weeks of the delays N experienced. That is not trivial, but it is nevertheless a relatively small proportion of the overall delay.

I am also satisfied that HSBC made no errors after 11 February 2022 (the date that it paid Bank C's charges). If no errors had been made by anyone else after that date, I think it is likely that the guarantee would have been correctly issued by 11 March 2022. N's representatives have said that if that had been the case, the majority (although not all) of N's losses would have been avoided. In the circumstances, I am not satisfied that HSBC's errors caused N to suffer a financial loss. I consider that any financial losses suffered by N were caused by other parties for whom HSBC was not responsible.

However, HSBC's errors did cause N to suffer inconvenience. We publish information on our approach to awards for inconvenience on our website at <https://www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience> . Our website explains that an award of between £100 and £300 might be fair in cases where there were repeated small errors, or a larger single mistake, which took a reasonable effort to sort out. I think that is a fair description of the errors made by HSBC (although it would not be at all fair to describe all the errors made by all parties involved in that way).

HSBC has offered to pay £2,000 for the inconvenience that it caused, and I see no basis on which I could fairly order it to pay more.

My final decision

My final decision is that I order HSBC UK Bank Plc to pay N £2,000.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 6 November 2024.

Laura Colman
Ombudsman