

## **The complaint**

O – a limited company – complains about the way that HSBC UK Bank Plc handled an application for a commercial mortgage.

## **What happened**

O applied for a commercial mortgage with HSBC. O complains about how HSBC handled that application:

- There were many issues with the documents sent by HSBC, including documents:
  - Sent in error
  - Sent multiple times.
  - That contained factually incorrect information.
  - Had technical issues.
- Failed to drawdown the loans on the date requested. As a result they incurred additional costs.
- As a result of the way HSBC handled this matter the solicitor's costs were higher than anticipated.
- HSBC made a "threatening" phone call in regard to the legal fees.
- HSBC forced an account to be opened for the loan to be drawn down. They were not told about it and encountered technical difficulties in setting it up.
- HSBC has not shown any "meaningful remorse" for what happened. It offered £250 compensation, but later charged them a £50 for "charge security" and £180 for a "charge debenture", without explaining what those charges are for.

I issued a provisional decision explaining why I considered HSBC had made a fair offer to settle this complaint. My provisional findings, which form part of this decision, were:

*The Financial Conduct Authority's handbook includes the rules that I must follow when deciding this complaint. Under those rules, the limited company O is the eligible complainant. I only have the power to award compensation to eligible complainants. So I can only consider the impact of this matter on O.*

*That is not to dispute or downplay the impact on this matter on O's directors. But I can't award them any compensation personally. After looking at everything, I consider the amount awarded by HSBC is fair and reasonable.*

## **Documents**

*O said there were multiple problems with the facility letter and the debenture. HSBC said that the facility letter needed to be re-signed because the facility letter was only valid for 90 days and by the time O wanted to complete more than 90 days had passed. HSBC said that there were “technical issues” with the debenture which meant it could not be accepted electronically. So there was a lot of back and forth and O’s directors had to go to a branch to sign it.*

*HSBC has not produced a copy of the original facility letter. So I can’t verify if it was originally signed more than 90 days before completion. But that does not seem unlikely bearing in mind the timescales involved in this application. The facility letter sets out that funds can only be drawn down up to 90 days from the date the facility letter was accepted. So if O had signed the facility letter more than 90 days before draw down it was reasonable for HSBC to require a new facility letter to be signed. I can’t say that was a result of any error by HSBC.*

*HSBC has accepted that there were technical issues with the debenture that meant it was sent to O several times but they were unable to complete it and eventually O’s directors had to go to a branch and sign the debenture. I accept that O has been caused some inconvenience by that. I will consider what is fair compensation below.*

*I haven’t seen any evidence that the debenture contained any incorrect information.*

#### *Drawdown*

*Both sides have accepted that on 20 October 2023, O requested that the funds were drawn down on 27 October 2023. They were not actually drawn down until 7 November 2023.*

*I can’t see there were any delays up to the point that O requested the draw down on 20 October 2023. I would add that a week in my experience would be a tight deadline to achieve – and I can’t see that HSBC ever promised O that it would meet such a deadline. So I don’t consider it was entirely HSBC’s fault that the loan could not be drawn down on 27 October 2023.*

*In saying that, it is clear that the issue with the debenture delayed things. And HSBC did not start the process of opening the bank account that was required until after the draw down had been requested. There are also some periods of time that HSBC has not properly account for to show what action it had taken. So HSBC has caused some delay – probably around a week. I will consider the impact of the delay on O below.*

*Throughout this complaint O has referred to a “bridging loan”. I have sought clarification about what they meant by that. It is still not entirely clear. There is no evidence from either HSBC or O that shows there was ever any formal bridging arrangement in place. I can see that HSBC agreed to release the funds without the debenture being registered with Companies House. I wonder if that is what O is referring to? Nevertheless, I have not been given any evidence that O suffered any financial loss as a result of the “bridging loan”.*

#### *Threatening phone call*

*HSBC called O when it had not paid HSBC’s solicitors costs as agreed. While HSBC was entitled to chase O for payment of that amount, it does seem that it could have been handled more sensitively bearing in mind O’s concerns.*

*The difficulty I have is that while O’s directors might have been upset and threatened by the tone of that phone call, I can’t award them compensation to them. And I can’t see any impact on O as a limited company of this point.*

### Bank account

*O said that HSBC did not tell them about the need to open a bank account. HSBC said its business manager told O during a phone call on 18 July 2023. HSBC has not provided any evidence to support what the adviser said. And I would question whether it was sufficient for a customer to only be told about this requirement in a phone call. I would add that HSBC said that because the bank account has free banking for a number of months, it usually delays starting the process until it knows the mortgage is ready to complete, so the customer does not lose out on free banking. I would have thought in those circumstances there is more reason to make sure that customers know what is expected.*

*I don't consider it was unreasonable for HSBC to require O to have a bank account with it. But HSBC has not shown that it did enough to tell O about that. HSBC has acknowledged that there was not much time to open the account; But it said that reflected the short completion time it was give. I think that was avoidable if HSBC had set out the timescales involved to O at an earlier point.*

### Fees

*HSBC charged O £245 for a debenture charge, a security registration charge and a companies registration fees. It was entitled to apply those charges under the agreement O had entered into. I do not consider that nay of these issues or complaints would prevent HSBC looking for those amounts to be paid as agreed.*

### Putting things right

*I've found that HSBC has not treated O fairly and reasonably. It did not give O clear, fair and not misleading information about the process so that they could time their request for a draw down in enough time. And it contributed to the time taken to draw down the funds. But I do not think it was unreasonable that it could not meet the 27 October 2023 deadline.*

*O has not provided evidence of any financial losses it has suffered as a result of this matter – apart from solicitors' costs. O says that they have incurred an additional £388 plus VAT in solicitors' costs. I accept that may have been due to the delays in processing the draw down. But I do not think it would be fair for me to say that HSBC should pay those fees. I will explain why.*

*When O complained, HSBC agreed to cover the costs of its own solicitors – over £1,900. I know O considers that was because of issues with the paperwork. But I don't see how those issues alone would have prevented HSBC looking for O to pay its solicitors fees. The offer to waive the fees was made in response to this complaint and I consider it was intended as redress for all of the things that O has complained about. In view of that, I don't consider it would fair for me to say that HSBC should make a contribution to O's own legal costs. Its offer to waive its own legal costs is more than I would have required it to do.*

*That leaves a payment for inconvenience caused to O. O would always have been required to open a bank account and re-sign the facility letter. So I can't say that HSBC should compensate O for the time spent on that or indeed on any of the things that would usually be required when funds were being drawn down. While O would always have had to sign the debenture, there has been avoidable inconvenience because of the technical issues caused by that. I can also see that O might have been better equipped to navigate this process if HSBC had explained what its process was at an earlier stage.*

*There was some avoidable inconvenience over a period of around three weeks. Looking at how we award compensation, I consider the amount HSBC has already paid of £250 is fair*

*in all the circumstances. Therefore, I consider the steps taken by HSBC to settle this complaint were fair. I don't consider it needs to do anything else.*

HSBC said it had nothing further to add. O did not accept my provisional conclusions. One of its directors responded to make a number of points, including:

- HSBC had sufficient notice of the drawdown. The delays were exacerbated by its failure to tell O about the need for a bank account and the technical issues with the debenture. O had given evidence that the missed drawdown jeopardised the transaction and forced them to secure emergency funding, causing stress and increases solicitors' fees. Even if HSBC did not commit to meeting a deadline does not absolve it to act with due diligence once a timeline was established.
- While the emergency funding may not have been labelled as such, it had to be secured due to the delays. O has given evidence that there was such funding in place. The solicitors' fees of £388 plus VAT are directly attributable to that.
- I had acknowledged the threatening nature of HSBC's call. It directly related to O's financial obligations, was made in the interest of company matters and was addressed to a representative of the company. Therefore it warrants compensation. It was an inappropriate and aggressive tactic that warrants compensation.
- The £250 offered does not reflect the inconvenience, stress and financial harm caused. The waiver of legal fees was not a gesture of goodwill it as a necessary correction for HSBC's procedural errors. O had not received a goodwill offer in respect of HSBC's failings. The delays, misleading information and technical issues resulted in at least three weeks of disruption. That was more than minor inconvenience.
- We should order HSBC to refund £388 plus VAT of solicitors' costs and increase the compensation to reflect the financial and emotional impact of this matter.

### **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.

#### Drawdown

In my experience a week is a short timescale to complete a drawdown of this nature. But I accept there were some avoidable delays caused by the way HSBC handled this matter.

I have asked a number on a number of occasions for evidence of the "bridging loan". While it is alluded to in some of the evidence, it is far from clear. And ultimately O has not shown that it suffered any financial loss because of what it refers to as the emergency funding. So there is no basis for me to make any award for that. I will deal with its claim for the solicitors' costs' below.

#### Threatening phone call

I can't see that the phone call had any real impact on O, the limited company. There was no financial loss caused by it. While it might have upset the directors of the company, as I have explained, I do not have the power to make any compensation award for that.

#### Putting things right

We have guidelines that set out the type of compensation awards we make for both distress and inconvenience. They say we may make an award of up to £300 where there have been repeated errors or a larger single mistake requiring a reasonable effort to sort out. The business's actions could have resulted in some acute stress lasting hours or had a milder impact over weeks.

That is the category closest to what O has described. But the above also includes an element of distress. O is the eligible complainant in this case. It can't suffer distress or have emotions. It follows, that any award would be lower than recommended in the guidelines as it does not include an element of compensation for distress. But even if I was able to consider the impact on the directors (and for the avoidance of any doubt I am not) our award would not likely be significantly more than HSBC has already awarded bearing in mind how we make awards of that type.

In any event, I am satisfied that the £250 already paid is a fair amount to reflect the inconvenience caused to O by avoidable issues.

I am not persuaded that HSBC was not entitled to require O to pay its legal fees. That work had been carried out for O's benefit and I don't think a technicality would have prevented HSBC requiring O to pay for that work. Instead it waived the fees in response to the complaint – and the final response references O's claim for its own solicitors' costs when it made that offer. I think that is a fair way to settle the complaint, bearing in mind the level of those fees was significantly more than O is claiming.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask O to accept or reject my decision before 10 January 2025.

Ken Rose  
**Ombudsman**