

The complaint

A limited company, which I'll refer to as P, complains that HSBC UK Bank Plc incorrectly required loan repayments on the wrong dates. P says this resulted in the bank putting its Bounce Back Loan ("BBL") into default and registering Cifas and late payment markers against it.

P is represented by one of its directors, who I'll call Mr A.

What happened

HSBC said:

- P took out a £50,000 BBL. The proceeds were paid into its HSBC business current account in early June 2020. The loan agreement said that no repayments were due for the first 12 months after the loan was drawn down.
- On 2 June 2020, they placed a restriction on P's current account as they were carrying out an internal review. The restriction meant that P couldn't access the BBL funds. It remained in place until November 2020.
- On 9 November, P transferred the BBL funds to an account with another bank.
- In April and May 2021, HSBC wrote to P to say that the first repayment on the loan would be due on 2 July 2021, 13 months after the funds were placed in P's current account.
- On 27 May 2021, P successfully applied for a six-month capital repayment holiday.
- On 2 December 2021, they informed P that the repayment holiday was coming to an end, and the first BBL repayment would be due on 2 January 2022.
- On 11 January 2022, they wrote to P to point out that the January repayment had been missed.
- On 15 January 2022, they issued a notice of default, because they became aware of a petition for P's dissolution. They gave P until 4 February 2022 to sort out the issue.
- On 11 February 2022, they issued a final demand, because P hadn't had the Notice of Intended Dissolution withdrawn.
- In May 2022, they transferred the BBL to their Recoveries function.
- In August 2022, they put a Cifas marker on the national fraud database against Mr A's name for "evasion of payment".

Mr A told us:

- He hadn't had access to the BBL proceeds until 9 November 2020, so he considered this to be the drawdown date.
- The first repayment should therefore have been in November 2021, but he applied for a six month repayment holiday, making the first repayment due May 2021.
- He had written to the bank on at least six occasions and also had numerous telephone calls with them and raised complaints between December 2020 and February 2022 to try and resolve what he considered to be HSBC's error with the repayment dates.
- HSBC's Collections team had made calls to him, but couldn't arrange a direct debit for him to repay.
- In August 2022, the bank had told him they wouldn't accept any payments into any of P's accounts, as they no longer wanted his banking.
- He had never tried to evade payment and remained willing to repay, although P was in trading difficulties.
- The problem at Companies House had been resolved and P was still trading.

One of our investigators looked into what had happened. She didn't think that the bank acted fairly as she considered that Mr A had made attempts to pay. She recommended that HSBC remove the Cifas marker, reconstruct the loan and pay £200 for the inconvenience caused to P.

HSBC accepted the first part of our investigator's recommendation and removed the Cifas marker. The remainder of the complaint was passed to me.

I issued a provisional decision on 28 November 2023. I upheld one part of the complaint and provisionally concluded that the bank should remove any default markers on P's credit record relating to missed repayments on the BBL before June 2022. I said, in summary:

- In the particular circumstances that arose here, I didn't see how it could be fair to say P drew down the loan in June 2020 when P had no access to the money until November 2020.
- In my view, the drawdown date should be the date P had access to the funds and the repayment date should therefore be calculated as 13 months after that date.
- Both sides agreed that P had successfully applied for a Pay As You Grow six month repayment holiday. I therefore thought that repayments on P's BBL should only have fallen due starting from May 2022.
- It followed that I thought the letters regarding arrears in early 2022 were incorrect. And if the bank has put late payment markers on P's record relating to payment arrears before June 2022, I thought those would also be incorrect.
- If the default notice and final demand issued in February 2022 had been issued due to the loan arrears, then I would be minded to ask the bank to reinstate the loan and withdraw the default. But there was a separate event of default.
- The default notice HSBC sent to P on 15 January 2022 didn't mention loan arrears.

Instead it said “we understand there’s a pending application to dissolve the company...”. I’ve examined the Companies House record to check that this application existed. The record shows that a notice for compulsory strike off of P was made on 5 October 2021. There had also been an earlier application in January 2020.

- The BBL agreement gave a list of events of default, which included “an act, whether by you or another person, which either amounts to, or could directly result in, a formal step being taken for the receivership, administration, bankruptcy, liquidation, dissolution or analogous proceedings of, or in respect of, you or, if you are part of a wider group, any member of your group.”
- I thought the bank acted reasonably, and in accordance with the agreement, when they issued a notice of an event of default. This was independent of the issue of the repayment dates and the blocked account and I saw no reason to consider this action unfair.
- The bank then followed the terms of the BBL agreement when they wrote giving P until 4 February 2022 to rectify the strike-off notice. Because it hadn’t been rectified by 4 February 2022, my thinking was that it was reasonable for HSBC then to proceed with a formal demand.
- My provisional conclusion was therefore that the bank did not make an error when it put the loan into default and transferred it to their Recoveries function.
- The record shows that the notice of intended dissolution was formally discontinued on 18 February 2022 so I agreed with Mr A that it was resolved in the end. But this didn’t take away the bank’s rights to treat it as an event of default.
- Mr A had provided extensive evidence of emails he sent to the bank seeking repeatedly to clarify the repayment dates over a prolonged period. He has also provided recordings of some calls with the bank, which show him being passed between departments, with no-one able either to give him an answer to the repayment issue or to take any payment for the loans. On at least one occasion, in January 2022, he was told that the bank couldn’t take any payments from him while there was a complaint outstanding.
- All this amounted in my view to very poor service on the part of the bank. On the one hand, they were demanding immediate repayment and on the other hand, making no attempt to facilitate this happening – and in fact, actively obstructing it.
- I didn’t doubt that Mr A has been through a very distressing and exasperating time, which had been exacerbated by the bank’s poor service. But limited companies cannot be distressed and I have no power to make an award for distress suffered by directors.
- I was able to make awards for inconvenience suffered by limited companies, as suggested by our investigator. However, in this case, I wasn’t persuaded that P was actively trading during this period.
- If P wasn’t actually doing anything, then I didn’t think it could have been inconvenienced. My current intention was therefore not to make an inconvenience award. But I explained I was happy to reconsider this if any evidence of inconvenience to P was provided.

HSBC responded to say they agreed with my decision. Mr A didn't respond, except to confirm his understanding of the meaning of a provisional decision.

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 in the absence of any new evidence or arguments from either party, I haven't changed my provisional view.

In my provisional decision, I invited Mr A to provide evidence of any inconvenience experienced by P as a result of the bank's poor service and error regarding the repayment dates. No evidence has been provided, so I still don't intend to make any award for inconvenience, as I'm not persuaded there was any.

HSBC have accepted my conclusions in this case, which remain that the bank made an error regarding the drawdown date and therefore regarding the date repayments should begin. HSBC's service was also poor, when Mr A contacted them to sort things out. However, I consider they were entitled to declare an event of default due to the notice of P's intended dissolution. And they were then entitled to issue a formal demand and take recovery action when P failed to rectify this notice.

Putting things right

I understand that the bank has already removed the Cifas marker. HSBC should also remove any default markers on P's credit record relating to missed repayments before June 2022.

My final decision

I uphold this complaint in part and direct HSBC UK Bank Plc to remove any default markers from P's credit file that relate to the period before June 2022.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 11 January 2024.

Louise Bardell
Ombudsman