

## The complaint

Mr O complains HSBC UK Bank Plc (HSBC) restricted, and then closed his business accounts without explanation and withheld his funds. Mr O also complains that HSBC used the funds in his accounts to set-off against his Bounce Back Loan (BBL).

Mr O says HSBC's actions have cost him loss of business, financial difficulty, inconvenience and distress.

## What happened

Following an internal review, HSBC restricted Mr O's accounts in June 2022. On 12 July 2022, HSBC told Mr O it was closing his business accounts and would do so in two months' time. Mr O was not given access to his accounts during this time.

Unhappy with HSBC's actions, Mr O complained. HSBC didn't uphold the complaint. In summary it said Mr O will be unable to make any transactions whilst the account remains under review, and it's complying with UK statutory obligations.

Mr O referred his complaint to this service.

In October 2022, HSBC sent Mr O a letter in which it explained that after a review it was cancelling his Business BBL scheme which was taken out in May 2020. HSBC said that it was relying on clause 12 of the agreement in doing so. HSBC used Mr O's withheld business account funds amounting to around £12,000 to set-off against the BBL.

One of our Investigator's then looked into Mr O's complaint. They recommended the complaint isn't upheld. In summary, they made the following findings:

- HSBC blocked, reviewed, and withheld Mr O's funds in line with its legal and regulatory obligations. And HSBC isn't obliged to give a reason for its actions
- HSBC were allowed to set-off Mr O's funds against the BBL he owed it. This is in accordance with section 6 of its business account terms and conditions
- HSBC should have done more in the way of informing Mr O that it was exercising its right of set-off in this way, and with at least 14 days' notice. But this lack of action didn't significantly impact Mr O, so HSBC doesn't need to pay any compensation

Mr O didn't agree with what our Investigator said. He then appointed professional representatives, but to keep things simple I'll mainly refer to Mr O in the rest of my decision. Mr O has made several points in response. Some of the key ones are:

- Mr O is a sole trader and HSBC's actions have crippled his business as he wasn't able to make regular payments leading to him losing his commercial vehicle through repossession. This meant he couldn't carry on with his normal business, and he's lost significant business income
- This has caused loss of reputation and mistrust with his customers. And he has fallen

behind with his rent

- Mr O has lost over five months of income at £5,000 a month. Given the distress he's also suffered, HSBC should altogether pay him £54,000 compensation

In response, our Investigator said HSBC's actions of blocking Mr O's account, holding his funds, and setting-off his funds from his business account to pay off his bounce back loan, were all taken fairly. So because of this they can't consider any impact HSBC's actions had on Mr O.

As Mr O didn't agree, his complaint was passed to me to decide. I then sent both parties my provisional decision and set a deadline for them to send me further comments and evidence. For ease of reference, here is what I said I was planning on deciding:

#### Provisional decision

*"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'm planning on deciding to not uphold Mr O's complaint. I'll explain why.*

#### *Account restrictions and closure*

*Banks in the UK, like HSBC, are strictly regulated and must take certain actions in order to meet their legal and regulatory obligations. They are also required to carry out ongoing monitoring of an existing business relationship. That sometimes means banks need to restrict, or in some cases go as far as closing, customers' accounts.*

*HSBC have provided me with an explanation, and evidence, of why it reviewed and restricted Mr O's business accounts. Having carefully reviewed this, I'm satisfied it acted in line with the legal and regulatory obligations it must follow.*

*I can understand why Mr O would like an explanation. But I'm not aware of any obligation under which HSBC must do so. I'd also add that our rules allow us to receive evidence in confidence. We may treat evidence from banks as confidential for a number of reasons – for example, if it contains security information, or commercially sensitive information. Some of the information HSBC has provided is information we consider should be kept confidential.*

*HSBC is entitled to close an account just as a customer may close an account with it. But before HSBC closes an account, it must do so in a way, which complies with the terms and conditions of the account.*

*The terms and conditions of the business accounts, which HSBC and Mr O had to comply with, say that it could close the account by giving him at least two months' notice. And in certain circumstances it can close an account immediately or with less notice.*

*HSBC gave Mr O two months' notice of its decision to close his business accounts. Broadly speaking, when a bank does this, its customer is given access to the account until the account is closed. But Mr O's account remained restricted until they were closed. Because of this I'm satisfied I must treat HSBC's closure of the accounts as immediate.*

*I note Mr O says he's mainly complaining about the blocks, his funds being withheld, and later HSBC setting-off his funds against his BBL. But given how intrinsically the closure is linked to the other events, I'm persuaded I need to make a finding on whether HSBC acted fairly here, and in line with its terms of account.*

*Having carefully reviewed HSBC's reasons and the evidence it's given me, and the concerns it had, I'm persuaded on balance, that it had reason and evidence enough to close Mr O's accounts in the way it did. Though I won't be explaining why in detail here - for the reasons I've already given above – I do think this was a very finely balanced point when taken in isolation.*

#### *Right of set-off and BBL*

*HSBC informed Mr O his account would close in September 2022. But his funds weren't used for the right of set-off until October 2022. It's possible HSBC could've acted quicker and may therefore have caused undue delay. But for me to look into this more closely, I'd need to determine whether HSBC have acted fairly and in line with its terms of account when exercising the right of set-off.*

*If it did, then any delay hasn't caused Mr O any detriment given the funds wouldn't have been released to him. So he wouldn't have been deprived of them.*

*The terms and conditions of Mr O's business accounts say:*

*"If you have money in one of your accounts, we may use it to reduce or repay amounts owed to us which are due for payment on other accounts. This is our right of set-off. Amounts owed to us include amounts due under a loan, a credit or charge card, a mortgage or an overdraft"*

*The BBL agreement, which Mr O signed, also says the following:*

*"If you have money in one of your accounts (except for trust, client or joint accounts), we may set it off against any amount you owe us which is due for payment on other accounts (including money you owe on a joint account) so it reduces or repays the amount you owe us. We'll only do this with accounts in your name and after we have checked that you have enough left in your accounts to cover essential living costs"*

*Section 14, titled 'Sharing Information' of that agreement says:*

*"If we make a reasonable request for information, you must give it to us as soon as possible. If you don't, or we suspect fraudulent or criminal activity of any kind:*

- (a) we might try to obtain it from another source; and/or*
- (b) we can terminate the Facility, demand repayment of the Loan, and/or suspend access to services"*

*I need to consider if HSBC applied its terms fairly - which I've referenced above – before exercising the right of set-off.*

*The BBL application form Mr O completed shows it was applied for in a dissolved limited businesses' name which I note is similar to Mr O's sole trading name. That company was dissolved some time before the application, and Mr O wasn't listed as a director on the Companies House website. But it's possible this was an error as the agreement that followed this, which Mr O signed, was in his personal name.*

*The application form says:*

*"You can apply for a loan which is up to 25% of your turnover in calendar year 2019, from a minimum of £2,000, up to a maximum of £50,000. If your business was established after*

*1 January 2019, you should apply the 25% limit to your estimated annual turnover from the date you started your business”*

*Mr O said his turnover was £120,000 and he wanted to borrow £25,000. Mr O signed the declaration on 13 May 2020, which amongst other things said he confirmed the information he had provided in the application is complete and accurate.*

*HSBC have also provided me with a copy of Mr O’s BBL agreement, which he signed on 15 May 2020. In section 4, titled ‘Your confirmations to us, it says:*

*“You make the following representations and warranties to us on: (i) the date that you accept this Agreement; (ii) the date on which you make a drawdown; and (iii) each date you make a payment of capital and/or interest to us:*

*...(d) all declarations made by you in your application form for this Loan are true, complete and accurate and have not become misleading or incorrect”*

*Section 6, titled ‘Events of default’ set-out the following:*

- (a) cancel all or part of the Facility and we will have no further obligations to you;*
- (b) demand immediate repayment of all amounts due to us under the Facility; and/or*
- (c) declare that all or any part of the Loan is repayable on demand.....*

*An Event of Default will occur if.....(b) any of the representations and warranties you make to us under this Agreement is or becomes materially misleading or incorrect”*

*Mr O has provided his HMRC tax submissions from April 2019 until April 2020. He has also given me the tax returns made to the HMRC for the next two accounting periods. For the 2019 to 2020 returns his turnover for his business is just slightly less than £29,000.*

*This is significantly adrift of the £120,000 that was stated in his BBL application form. So, given what I’ve seen I’m persuaded this representation is most likely misleading and/or incorrect. Mr O’s turnover for the next two accounting period from 2020 to 2021, and 2021 to 2022, is also no more than £29,000.*

*Mr O has said he had been trading for quite some time – HSBC say his business was incorporated in 2015. So I don’t think the turnover he stated in the application is or could be an estimate.*

*This amounts to an ‘Event of Default’ under the declarations Mr O signed. And in that event HSBC are permitted to demand immediate repayment of the BBL loan.*

*So, in conclusion and after weighing everything up, I’m satisfied HSBC did nothing wrong when it terminated Mr O’s BBL and used the funds in his business account to set-off against what he owed. That means any delay HSBC may have caused in making those funds available for potential release to Mr O would not have caused Mr O detriment for me to then consider any compensation.*

### *Compensation*

*Mr O says HSBC’s actions have led to him suffering significant loss of business and reputation. He also says the matter has caused him substantive distress and inconvenience. Mr O’s representative says to put things right, HSBC should pay him around £54,000.*

*I'd like to assure Mr O that I don't underestimate HSBC's actions would've caused him significant difficulty in the way he describes. But having looked at what's happened in this particular case, I can see no basis on which I might make an award against HSBC given that I don't think it's done anything wrong here by restricting, closing and using funds in his accounts to set-off against his BBL.*

*So I'm not going to ask HSBC to compensate Mr O for any loss of income, reputation, inconvenience and distress its actions may have caused"*

Neither HSBC or Mr O and his representative have responded to my provisional decision – and the deadline for doing so has now passed. So it follows that I must now decide this complaint.

### **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 for the reasons in my provisional decision – as above – I have decided to not uphold this complaint.

In short, I'm satisfied HSBC hasn't done anything wrong in restricting, closing and using funds in Mr O's business accounts to set-off against his BBL. And, because of this I find no basis to award any compensation.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 17 January 2024.

Ketan Nagla  
**Ombudsman**