

The complaint

B is a company and is represented in bringing this complaint by its director, whom I'll refer to as "Ms S". She complains about the way HSBC UK Bank Plc handled B's accounts when there was a dispute among directors.

What happened

Ms S and her business partner were directors of B. She has explained that they fell into dispute about the running of the company, and in particular about the wages which each of them was entitled to. Each accused the other of taking money to which they weren't entitled. And each had given a personal guarantee in respect of B's liabilities, which included a flexible business loan and liabilities under the Recovery Loan Scheme.

On 22 August 2022 Ms S's business partner and co-director called an emergency board meeting with B's third director. Ms S was not given notice of that meeting. The meeting resolved to suspend Ms S as a director, pending a further meeting to which she would be invited.

On 25 August 2022 HSBC inhibited B's account, restricting payments that could be made from it. Ms S's co-director removed her access to it – so she was unable to see transactions that were made on it. She complained to the bank about what had happened and shared her concerns about the actions of her co-director.

HSBC acknowledged that it should not have inhibited the account. Rather, it said it should have revoked the existing mandate on the account, which allowed either Ms S or her business partner to operate it. The bank apologised and credited the account with £100. The inhibition on the account was removed on 31 August – five working days after it had been applied.

In the meantime, Ms S began court proceedings against her co-director and B. On 2 November 2022 the Court issued a Tomlin Order – an order staying proceedings, save for the purposes of putting into effect a settlement agreement reached by the parties. The main points of the settlement agreement in this case were, in summary:

- Ms S would buy her co-director's shares in B and would make a contribution towards their costs.
- She would use her best endeavours to ensure that B paid her co-director money owed by the company.
- She would use her best endeavours to secure the release of her co-director from their personal guarantee.

The overall intention of the settlement was that Ms S would, in return for a payment, take sole control of B. The court order and settlement were put into effect, and a new account mandate was set up in December 2022.

Ms S – having taken control of and now representing B – complained about the way HSBC had handled matters. She said specifically:

- She had not been kept informed about the operation of B’s account when HSBC had placed the inhibition placed on it.
- Because of the bank’s actions, payments had been missed. Those showed on B’s credit files and made it more difficult to obtain credit.
- B had paid fees to gain access to credit reference agency information; that would not have been necessary if HSBC had handled things correctly.

HSBC had already accepted that it should not have inhibited the account, but it did not accept B’s other claims. Ms S referred the matter to this service, where one of our investigators considered what had happened. She recommended that HSBC:

- arrange for the removal of references by the credit reference agency to missed payments arising from the inhibition of B’s account;
- refund the fees which B had paid to the credit reference agency – totalling £89.97; and
- pay B a further £150 in recognition of the inconvenience to which it had been put.

HSBC accepted the investigator’s recommendations but Ms S, on behalf of B, did not. She asked that an ombudsman review the matter.

I did that and issued a provisional decision in which I said:

As is apparent from the background which I have set out above, this complaint arises primarily from a dispute between B’s directors. It is not for me to comment on the merits of that dispute, of course; my role is to seek to resolve B’s dispute with HSBC. But I think it is important too to say that it was not the role of the bank to take sides in that dispute either. To the extent it was being told different things by each director (and, no doubt, receiving differing instructions), it had to protect the interests of B.

Where a bank becomes aware of a dispute on an account, I would generally expect it to take steps to preserve the position, as far as possible. Where the dispute is between joint account holders (for example, partners in a business set up as a partnership, or between spouses with a joint personal account), that might mean acting only when instructions are received from both account holders. The effect may be very similar to freezing the account.

In the case of a company account, however, there is only one account holder – the company itself. Here, two directors could operate the account; it had been set up under an “either to sign” mandate. HSBC acknowledges that, rather than inhibit the account, it should have changed the mandate, so that both signatories needed to approve any payments. I note that the bank made the necessary changes within five working days.

I note that some suppliers were not paid promptly. However, B was able to pay them once the inhibition had been lifted and matters resolved between the directors, and I understand that no late payment fees or other penalties were levied.

I am satisfied too that credits to the account were applied correctly. I acknowledge Ms S’s concern at the time that they might not have been, but those concerns appear to have been unfounded. I have seen no evidence that credit went missing.

B’s credit records did however show three late payments which appear to be the result of the dispute on the account – in the sense that they arose at around the same time. I note that the bank has agreed to take steps to remove them, and may have done so already. But I

have considered too whether those entries have had any further detrimental effects on B. I am not persuaded they have. Whilst there is some evidence that B has had difficulty in securing borrowing, there are many other possible reasons for that – not least its overall liabilities and the internal dispute. I do not believe I can safely conclude that the late payment notices have had any meaningful impact on B's ability to secure credit.

The investigator noted that B had paid a monthly fee to monitor the late payment references and recommended that HSBC cover these. The bank agreed to do so.

Ms S says too that her co-director was able to withdraw £2,000 on 31 August 2022. If so, that withdrawal was made either when the account was inhibited (albeit incorrectly) or when the mandate should have been changed to prevent either signatory from acting alone. Either way, it's strongly arguable that the bank should not have allowed that withdrawal from B's account. I note however that the settlement agreement included a payment from B of money owed to the director. The amount owed must have taken into account that withdrawal, and so there is no loss to B as a result.

I turn finally to Ms S's complaint that she was not kept fully informed about what was happening on the account. As I have explained, however, on the face of it she had been suspended as a director on 22 August 2022. Any duty HSBC had was to provide information to the company, not to Ms S individually. I do not believe I can safely conclude that the bank was in breach of any duty it owed to the company as a result of what it did or did not provide to her. I reiterate that this is a complaint brought by B, not Ms S. And, for the avoidance of any doubt, I make no comment on the validity of Ms S's suspension by her fellow directors, or on the reasons for it.

As I have noted, the investigator recommended that HSBC pay B a further £150, refund payments made to the credit reference agency and arrange for the removal of late payment markers in respect of late loan payments. HSBC accepted that recommendation, but I will, if necessary, make a formal award in those terms, so that B can enforce it if necessary.

Neither the bank nor B has provided any additional evidence or arguments.

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.

As neither the bank nor B has sent me any additional information to consider, I do not believe there is any reason for me to reach a different conclusion from that set out in my provisional decision. In saying that, I stress that I have considered all the evidence and arguments afresh, before reaching this final decision.

My final decision

For these reasons, my provisional decision is that, to resolve B's complaint in full and to the extent it has not already done so, HSBC UK Bank Plc should:

- arrange for the removal of late payment markers attributable to events in August to October 2022;
- pay B £89.97 in respect of fees paid to the credit reference agency; and
- pay B a further £150 in recognition of the inconvenience to which it has been put.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 2 April 2024.

Mike Ingram
Ombudsman