

## The complaint

Mr C complains that HSBC is unfairly holding him personally liable for a bounce back loan (“BBL”) he applied for in the name of a limited company, of which he was a director.

## What happened

Mr C opened a business current account with HSBC in December 2018, as a sole trader.

Mr C says he stopped trading as a sole trader in April 2019. Instead, in June 2019, Mr C set up a limited company, which I’ll call L. Its name was the same as the trading name on Mr C’s sole trader business account, but with “limited” at the end.

In May 2020, Mr C completed a BBL application in the name of L for £10,000. The application asked for an account number and he gave the details of the sole trader account.

HSBC produced a BBL agreement in the name of Mr C, which he signed. The BBL was then opened in his sole name and the proceeds paid into the sole trader account.

In March 2021, Mr C opened a new current account in the name of L.

Mr C said that external changes then meant L’s business model ceased to be viable. L was compulsorily struck off the register of companies in August 2022.

Not all the proceeds of the BBL were spent, which meant that there was enough money in the sole trader account to meet the BBL repayments until January 2023.

The BBL went into arrears in February 2023 and in March 2023, Mr C complained. He said the BBL should be written off as it should have been in the name of L, which no longer existed.

HSBC didn’t uphold Mr C’s complaint and said there was no bank error.

In June 2023, HSBC issued a formal demand for repayment in full. In July 2023, the BBL was transferred to external debt collectors.

Mr C referred his complaint to our service. I issued a provisional decision on 20 February 2024, in which I said, in summary:

- I considered all this made it very clear that that the application was from L. I didn’t think there were any ambiguities or errors on the part of Mr C in completing the form. And I thought that if the bank was going to include tick boxes in an application, they then needed to take account of which box was selected.
- My view was that the application ought reasonably to have drawn the bank’s attention to the fact that there was a mismatch between their business customer and the applicant. This ought then to have led the bank to get in touch with Mr C to discuss L becoming a business customer, as the section from the application quoted above suggested they would do.

- If HSBC had got in touch with Mr C following receipt of the application, I thought it more likely than not, that they would then have opened a current account in the name of L. I thought Mr C would then reapply for the BBL using the new account number for L. So I thought that, if everything had gone to plan, HSBC would have produced an agreement in the name of L.
- Mr C had said that he tried to convert his sole trader account into an account for L but was unable to get any help from the bank. But if the bank had contacted him following the application, he would then have been speaking to the right part of the bank to help him and explain that he needed to open a new business account.
- Instead of identifying the mismatch, HSBC sent back an agreement in the name of Mr C. I understand this was because the bank used the current account details given to generate automatically the name on the agreement. I'm aware HSBC were not alone in adopting this process.
- I appreciated that the pandemic was not a normal time and the BBL scheme was designed for speed, so that banks were encouraged to process applications at pace and not conduct unnecessary checks. But I was also conscious that this shouldn't have – and didn't – prevent banks from doing additional checks where warranted.
- Mr C then also made an error by not noticing the agreement was in his sole name and signing it. I thought HSBC had made this harder to spot by quoting the limited company's name in full as the recipient of the drawn down proceeds. This was a further error by the bank, since the current account number quoted clearly wasn't in L's name.
- My provisional conclusion was that Mr C's mistake in not noticing the name on the loan agreement only occurred because of the bank's prior errors in putting the agreement in the wrong name. I didn't think it would be fair to hold him responsible for a failure to spot a mistake the bank should not have made.
- I could also see from HSBC's own internal notes that in December 2020, they identified what they called the "entity mismatch" and may actually have phoned Mr C regarding it. Following this, the bank got as far as instigating a request to novate the loan (that is, move it from Mr C's name to L's name) before concluding that they were no longer permitted to novate in this way under the BBL rules. The net result of this conclusion was that they did nothing at all.
- Mr C has also said that he made at least three requests to HSBC by phone to change the sole trader account to a limited company account, but the bank were unhelpful and promised to phone him back then didn't. The bank hadn't been able to find any record of these calls. I understood that Mr C wouldn't have been able to switch the account to a limited company one, but would have needed to open a new account. And I can see that in March 2021, Mr C did open a current account in the name of L. He said he did this in March 2021, because it was only then that he was able to go into a branch to do it, because of the pandemic. I found this explanation plausible.

- Mr C made a further error by failing to transfer the remaining balance of the BBL into the account in L's name once he had managed to obtain it. But he had provided evidence that it was the limited company that was trading from June 2019 and that Mr C as sole trader had ceased to trade. This evidence includes accounts and an invoice issued by L in late 2019. I can also see that the BBL was included in L's balance sheet, showing that both Mr C and his accountant believed it was in the name of L.
- I'd also looked at how the proceeds were used in the sole trader account. Over £3,500 of the £10,000 remained in the current account and was used to meet the monthly BBL instalments for some twenty months. The only other sizeable item was £2,500 to repay a credit card facility from a lender which, as far as I understood, lends only to limited companies and was thus clearly an expense of L's. My current thinking was that the account in sole trader name was being used entirely by L.
- In summary, I was satisfied that Mr C applied for a BBL on behalf of his limited company and believed that is what HSBC had provided. The limited company then used the money, albeit using an account in the wrong name for its trading. The bank, however, set the BBL up in Mr C's sole name in error. I therefore intended to uphold this complaint and direct the bank to write off the BBL in Mr C's name (retrieving it from the debt collection agency first if necessary). I also intended to direct HSBC to remove any entries made relating to the BBL on Mr C's personal credit record.
- Mr C had told us that being pursued personally to repay the BBL had caused him a great deal of stress and anxiety. There was no scientific way to put a figure on this distress, but I was minded to direct the bank to pay compensation of £300 in recognition of it.

Mr C accepted my provisional decision. HSBC did not agree and asked me to consider the following points:

- The application form was not part of the contract. The facility letter was the contractual offer and this was clear, including Mr C's personal name in red.
- The most important safeguard was the preface to the offer letter, which said "This is an important legal document that you should read in its entirety using a device with a large screen, such as a laptop, tablet or similar device. We recommend that you obtain independent legal advice and make sure you understand this document before you enter into it". They relied on customers to flag to them when details were incorrect.
- Mr C had signed the contractual offer letter as an individual. He legally owed the debt.
- The BBL process was designed for speed. It was common for application details not always to match customer details. Customer inconsistency about how they are contracting also occurs.
- I had said that banks were not precluded from doing additional checks. This was correct, but those checks needed to be triggered by something. There was nothing that warranted further checks in this case.
- Mr C applied for the BBL using his sole trader business account and Mr C as sole trader benefitted from those funds.

## 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.

First, I am not disputing that the BBL agreement (or "facility letter" as the bank calls it) is the contract here and the application form is not. But my role is to decide what's fair and reasonable. The bank's arguments have not persuaded me that it would be fair and reasonable for the bank to rely on the contract in the particular circumstances of this case.

HSBC's argument is essentially that, because the BBL scheme was designed for speed, it was reasonable for them to ignore much of the information on the application form, send out a facility letter based on the account number quoted and rely on the customer to spot any errors.

I think it's fair to say that HSBC chose to participate in the BBL scheme and chose to put the process in question in place. In doing this, I consider that the bank would have evaluated and accepted the risks inherent in that process, including that the use of automation might sometimes deliver a contract in the name of the wrong applicant.

For the same reason that the bank's system was designed for speed – because the money was desperately needed in the pandemic – it was foreseeable that the customer was likely to be signing in haste too. Because of this, I don't think it is fair for the bank to put all the responsibility for spotting errors onto Mr C, notwithstanding the warning in bold at the top of the agreement.

Put simply, Mr C knew what he had put on the application form and I think it was reasonable for him to expect the facility letter to be in the name of the company that had applied.

I also think that the fact that the facility letter actually included the name of L, in red capital letters in a spacious box on page one, made the error in this case particularly hard to spot.

I am also mindful that this was not a case where there were inconsistencies on the application. I accept that the bank is right that business people are not always clear about the trading entity and inconsistencies can occur. But Mr C's application was in my view consistent – the applicant was L, all the details given were for L and a box was ticked to say L did not have a bank account, which was correct.

The bank's automated system took this information and somehow generated a facility letter in the name of Mr C, but with L showing as a the account holder of the account to which the proceeds would be credited (actually the sole trader account). HSBC have said that there was nothing to prompt further enquiries in the application. But I think that the applicant details not matching the account holder should have alerted them, particularly given the bank's knowledge of how their system worked and the fact that Mr C had correctly ticked this box:

"If you are applying for a Bounce Bank Loan from a lender with whom you have a personal current account and your business was established between 6 April 2019 and 1 March 2020, you will need to discuss becoming verified as a business customer with your lender in order to qualify for a Bounce Back Loan"

My view is that ticking that box would leave you reasonably expecting that the bank would contact you, whereas it seems to me that what actually happened was that HSBC's system ignored which box you ticked entirely. As I said in my provisional decision, I think that if you incorporate tick boxes in your application process, you ought reasonably to take into account what box is ticked.

I think it is also relevant that, although HSBC have now said that Mr C applied as a sole trader and that there was nothing in the application to trigger further enquiries, their own internal records show that they spotted the mismatch in December 2020. Something clearly triggered them to identify it at that stage and they then chose to do nothing about it. So I think it is disingenuous of them to say there was nothing that should have led them to identify it at the time.

I accept that Mr C applied for the BBL proceeds to be paid into his sole trader account, which wasn't correct. But I remain satisfied that, although the name on the account was wrong, it was in fact L that was using that account and hence had the benefit of the BBL proceeds. I say this because I've seen evidence that L was trading at this time and Mr C had ceased to trade as a sole trader. The BBL was included in L's accounts. And the largest single item for which the BBL proceeds in the account were used was to repay another lender who lends only to limited companies, so must therefore have been L's debt.

In summary, for the reasons set out above, I don't think it is fair to say that Mr C applied for the BBL as a sole trader. I think HSBC made an error in the way they handled L's application and I don't think it would be fair, in these particular circumstances, for the bank to pursue Mr C personally for this debt.

### **Putting things right**

My aim is to try and put Mr C into the position he would have been in were it not for HSBC's error. In order to do this, I consider the bank should write off the BBL in Mr C's name and remove any adverse entries made relating to the BBL on Mr C's personal credit record.

Mr C had told us that being pursued personally to repay the BBL has caused him significant stress and anxiety. I am awarding compensation of £300 in recognition of this.

### **My final decision**

I uphold this complaint and direct HSBC UK Bank Plc to write off the BBL in Mr C's name, remove any adverse credit information from Mr C's record and pay him £300 in compensation for the distress caused.

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

Louise Bardell  
**Ombudsman**