DRN-4124712

## The complaint

A limited company, which I'll refer to as 'B', is unhappy that Lloyds Bank PLC didn't send correspondence about its Bounce Back Loan ("BBL") to the correct address, which meant B wasn't notified that its BBL was in arrears before it was defaulted.

B's complaint is brought to this service by its director, whom I'll refer to as 'Mr P'.

## What happened

In May 2020, B successfully applied to Lloyds for a £16,000 BBL. B received the BBL funds that same month, and its obligation to begin making monthly payments towards the BBL began in June 2021.

But while B did make the first payment required of it in June 2021, the next payment – in July 2021 – was returned unpaid. Lloyds sent letters to B about the missed payment. But B didn't take any action to clear the missed payment arears, and further payments weren't made by B in both November and December 2021.

In January 2022, with the arrears on B's BBL still unpaid, Lloyds sent a formal demand notice to B which confirmed that the BBL agreement had been broken because of non-payment and that B was now required to repay the full outstanding BBL balance within 14 days. Mr P wasn't happy about this, especially as he hadn't received any prior letters from Lloyds about the BBL arrears, and so he raised a complaint on B's behalf.

Lloyds responded to B's complaint. They acknowledged that, while the formal demand notice had been sent to an address where it had been received by Mr P, they had incorrectly updated the address they held for B and had sent the arrears notification letters to that incorrect address. Lloyds apologised for this, and they made a payment of £30 to B as compensation for any inconvenience it may have incurred as a result.

However, Lloyds didn't feel they'd acted unfairly by terminating B's BBL agreement for non-payment as they had, and so they didn't uphold that aspect of B's complaint. Mr P wasn't satisfied with Lloyds' response, so he referred B's complaint to this service.

One of our investigators looked at this complaint. They felt that B would most likely have cleared the arrears on the BBL had it received notice of those arrears from Lloyds and so recommended that this complaint be upheld in B's favour and that Lloyds should remove the default from B's credit file and reinstate the BBL. Lloyds accepted our investigator's recommendation – on the provision that B cleared the arrears that had accrued on the account and made a payment to Lloyds equal to the payments it should have paid on the BBL up to this time. Our investigator felt this was a fair way to resolve this matter.

Mr P wasn't happy with the payment arrears requirements and felt that Lloyds should be instructed to reinstate the BBL with the balance outstanding as it was, including the arrears, and that an interest only payment option should be applied to the BBL moving forwards. So, the matter was escalated to an ombudsman for a final 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.

I issued a provisional decision on this complaint on 17 April 2023 as follows:

> *While I can appreciate how Mr P would be unhappy that B didn't receive the arrears notification letters from Lloyds, I don't feel that this absolves B of its responsibility to have managed and monitored its BBL account and to have made the payments to the BBL that were required of it. And so, I do feel that B bears some responsibility for what's happened here.*
>
> *However, while I do feel that B had breached its obligations in regard to the BBL by not making the payments that were required of it, I also feel that Lloyds have breached their obligations in regard to the BBL by failing to provide notice to B both that it had missed payments and also the potential consequences of missing these payments. And I feel Lloyds' obligations to provide such notices to B are covered in the BBL Facility Letter, and specifically the following section:*
>
> > *"3. Obligations on your lender*
> >
> > *Your lender has agreed in connection with the BBLS to certain obligations in respect of their relationship with you, including making certain information available to you in relation to your loan."*
>
> *This requirement to provide arrears information is also backed up by good industry practice, including the LSB Standards of Lending Practice for Business Customers.*
>
> *Additionally, under the terms of the BBL agreement, where B has breached the agreement – as it has by not making the required payments – Lloyds are obliged to give B "reasonable notice and an opportunity to remedy any breach within a reasonable period of time" before exercising any of its recovery rights arising from that breach. And, in this instance, Lloyds haven't done this.*
>
> *So, I do feel that Lloyds have made an error here which has resulted in an unfair outcome for B for which corrective action should be instructed – in line with the remit of this service to return a complainant to the position they should reasonably be in, had the error never occurred.*
>
> *In their discussions with our investigator, Lloyds suggested reinstating the BBL on the condition that B makes a lump sum payment covering all payments that should have been made on the BBL by B up to this time.*
>
> *However, matters are complicated here by Mr P's confirmation that B hasn't recovered financially to a position where it's able to make such a large one-off payment, as well as a further claim made by Mr P that B was unfairly denied access to the Pay As You Grow ("PAYG") payment deferment options on the BBL because of Lloyds' unfair defaulting of it - which Mr P states would have been utilised by B so that the total amount B would have been required to repay up to this point would have been significantly reduced.*
>
> *But it must be noted that while B were benefiting from a PAYG arrangement for the time that the payments were missed and while the account was in arrears, that*

*PAYG arrangement ended before Lloyds terminated B's BBL for non-payment. This means that B's BBL payments had reverted to the full contractual amount before the loan agreement was terminated, and it was B's responsibility to have applied for a further PAYG arrangement to be put in place, when the old one ended – which B appears not to have done.*

*In short, things here are very messy, with fault for the present situation lying with both sides. And, while I endorse Lloyds' attempts to find a reasonable way forwards, I feel that a more balanced approach would be fairer here.*

*Accordingly, my provisional decision is that Lloyds should reinstate B's BBL on a tailored basis with a monthly repayment amount calculated as the sum of two parts – with the present BBL arrears being kept separate from the remaining amount due on the BBL. This would take the following structure:*

> *1. Lloyds should reinstate B's BBL and calculate the first part of the repayment structure on the basis of total that B has left to pay, not including any accrued arrears. B should then be allowed to avail of any PAYG options that should reasonably remain of it. And Lloyds should instruct the removal of any record of the default that it registered with the credit reference agencies.*
>
> *2. The total amount of the accrued arrears to date – as they presently stand, and not in amendment of any potentially missed PAYG options – should then be spread equally over the remaining term of the BBL, with interest calculated on the arrears amount at the same rate as the BBL.*

*Assuming that a PAYG deferment option is put in place immediately upon the reinstatement of the BBL, this would result in B having to make monthly payments of the interest payments as per the PAYG option as well as a further amount relating to the arrears repayment – although, if possible, Lloyds's should calculate this so that B only makes one repayment.*

*My intention here is to make it more feasible for B to repay its BBL arrears – for which I feel it should bear some responsibility, along with Lloyds – rather than B being asked to repay a significant arrears lump sum that it's presently unable to do. And should such an arrangement be put in place, it would be expected, moving forwards, that Lloyds would treat any failure by B to meet the arrangement in line with their standard arrears processes, including that they would accurately report B's repayment of the arrangement to the credit reference agencies.*

Mr P responded to my provisional decision and asked whether Lloyds shouldn't be instructed to write off B's outstanding BBL balance. However, where a borrower has received and had the benefit of borrowed funds – as B did in this instance – it will almost always be the position of this service that it's fair that the borrower should repay the money that it borrowed, usually on the agreed terms. And I see no reason why this shouldn't be the case in this instance.

Mr P has also explained how this ongoing situation has caused him a great deal of distress which he feels he should be compensated for. But this complaint has been raised in the name of B as a limited company. And given that a limited company can't experience distress, this service is unable to award compensation for upset or distress to a limited company. Additionally, as explained in my provisional decision letter, I feel that B and Lloyds both bear some responsibility for what happened here, and it isn't the case that I'm finding solely against Lloyds in this instance.

Lloyds also responded to my provisional decision and explained that they agreed in principle with it but that there may be an alternative way forwards that they're able to offer which may be preferable to B, rather than the instructions I provisionally gave.

I've considered the alternative proposal put forwards by Lloyds. But I feel that the remit of this service – to return a complainant to the position it should have been in, as much as reasonably possible, had the incident being complained about never occurred – is better met by my provisional instructions in this instance.

However, this isn't to say that Lloyds shouldn't contact B and put their alternative offer to it. Indeed, I encourage Lloyds to do so, in a timely manner. But it is to say – should B formally accept this final decision such that it becomes binding on Lloyds – that Lloyds must follow the instructions given in this final decision if B declines the alternative offer that they make.

All of which means that I remain satisfied that the outcome as outlined in my provisional decision is a fair and reasonable resolution to this complaint. And so, it follows that my final decision is that I uphold this complaint in B's favour on that basis accordingly.

## Putting things right

Lloyds must reinstate B's BBL and calculate the first part of the repayment structure on the basis of the total that B has left to pay, not including any accrued arrears. B should then be allowed to avail of any PAYG options that should reasonably remain of it. And Lloyds must instruct the removal of any record of the default that it registered with the credit reference agencies.

The total amount of the accrued arrears to date – as they presently stand, and not in amendment of any potentially missed PAYG options – should then be spread equally over the remaining term of the BBL, with interest calculated on the arrears amount at the same rate as the BBL.

## My final decision

My final decision is that I uphold this complaint against Lloyds Bank PLC on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 13 June 2023.
Paul Cooper
**Ombudsman**