

The complaint

A limited company, which I'll refer to as B, complains that Barclays Bank UK PLC obstructed its attempts to clear the arrears on its Bounce Back Loan ("BBL"). B also complains that Barclays withdrew its online banking and made it difficult for it to use its current account.

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

What happened

B took out a BBL in May 2020. Under the BBL Scheme, no repayments of capital or interest were due for the first twelve months.

When repayments became due in 2021, B successfully paid the first few instalments. However, in September 2021, the loan fell into arrears and no monthly repayments were made after this date.

On 27 January 2022, Barclays withdrew B's overdraft facility, as a result of the arrears on the BBL. Internet banking was also withdrawn.

On 28 January 2022, Barclays issued a formal demand, requiring the immediate repayment of the outstanding BBL balance of £19,216 in full.

On 30 March 2022, Mr B phoned the bank and explained that he was now in a position to make up the arrears on the BBL and keep it in order. The bank informed him that this wasn't possible at that point and the account was in the process of being outsourced to a debt collection firm.

B's Member of Parliament complained to Barclays on its behalf. But the bank said they had followed their procedures correctly and had therefore not done anything wrong. They said B could continue to use its other accounts as normal.

On 8 April 2022, Barclays says it transferred B's BBL to the debt collection firm, although on 9 April, Barclays sent a letter saying they would be transferring B's loan "shortly". The debt collection firm sent a letter of introduction on 20 April 2022.

Mr B continued to write to both Barclays' Recoveries Department and the debt collectors to try and arrange to repay the arrears and bring the BBL back to order.

On 21 October 2022, the bank exercised their right of set-off to use the balance in B's current account to repay the BBL.

One of our investigators looked into what had happened. She took the view that the bank hadn't done anything wrong in telling Mr B that it was too late to make up the arrears because a formal demand had been sent and the loan was about to be outsourced. She also thought Barclays were within their rights to set off the current account balance against the loan. But she did feel that the bank's service regarding the restrictions on the current account had been poor. She recommended Barclays pay compensation of £100.

B disagreed with our investigator and asked for an ombudsman to look at the matter again. Over a series of emails, Mr B has made a number of points. In summary, he said:

- On 30 March 2022, Barclays had told Mr B that it was too late to pay the arrears because the loan had already been transferred to the debt collectors. This wasn't true.
- The bank statement for the BBL said it was for a Barclayloan for Business and showed an opening balance as at 5 May 2022. The directors therefore thought that Barclays had paid down the BBL and created a new loan in the company's name without telling them and without providing any rationale.
- Without ever communicating about this new loan, Barclays had then taken B's money to repay the new loan.
- The letter confirming the repayment of the loan didn't mention the type of loan.
- The BBL agreement didn't quote an account number.
- Barclays had failed to supply a continuous statement for the BBL from inception to closure.
- The act of set off had left B in a very difficult position.
- As at January 2023, B still didn't have online access to its current account. Barclays' refusal to reinstate this was likely to force B out of business.
- He thought Barclays should pay for an independent report to define the costs to B caused by Barclays' errors, along with an assessment of the level of reputational damage.
- The "document properties" of the documents sent by Barclays showed that they had been altered. This proved that their Recoveries department had failed to send originals and had instead been altering documents before sending them to our service.
- B had no record of receiving some of the letters Barclays claimed to have sent. Amongst these, B hadn't received the letters Barclays claimed to have sent saying they had missed payments from September to December 2021.
- Given the alterations, there was no way of proving the bank's letters had been sent. He considered that several of them had been falsified and some might be complete forgeries.
- B's current account statements didn't show any attempt to debit B for the loan instalment due in August 2021, or September 2021 to December 2021. On each occasion, there was enough money in B's current account to cover them.
- In responding to a letter from B's MP, Barclays' Corporate Affairs department made a number of inaccurate statements. Did they not perform any checks?
- Mr B was also the director of another company that obtained a BBL from Barclays and had never made any repayments, but the loan hadn't been passed to debt collectors. Barclays had singled out B for unfair treatment.

I asked the bank for some more evidence regarding the loan repayments, following which they provided a letter dated 28 August 2021 confirming the amount for September's instalment and a letter dated 4 September confirming the direct debit had been cancelled. I shared these with Mr B and also explained that I could see the August repayment had been paid. Mr B accepted that the non-payment of the monthly BBL instalments was due to the direct debit being cancelled.

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.

Did Barclays act unfairly in making formal demand and then declining to discuss monthly repayment proposals?

A large number of arguments have been made in the course of this complaint. But I believe the core of it remains about the fairness of the bank's actions relating to the repayment of the BBL.

Mr B suggested recently that the arrears were caused by Barclays failing to claim the monthly instalments by direct debit even though funds were available. However, Barclays have now provided evidence that the direct debit was cancelled in early September 2021 and Mr B has accepted this. In any case, B was responsible for making these loan repayments, whether by direct debit or other means, and I'm satisfied that after August 2021, B failed to make them. B's BBL thus went into arrears in September 2021 and by the time the bank issued a formal demand, it was five months in arrears.

Failure to make a repayment when it falls due is an event of default, as detailed in the BBL loan agreement. I have considered this agreement carefully to decide if the bank acted fairly. Following an event of default, the agreement says that the bank will give the borrower "a reasonable period to remedy any breach". Depending on the circumstances of the arrears, it is usually considered good practice for banks to permit loans to go three payments in arrears before issuing a formal demand. In B's case, Barclays allowed longer than this, so I don't consider they were unreasonable in making formal demand in January 2022.

A formal demand is a legal document requiring repayment of the debt in full. It marks the end of the original loan agreement, under which monthly instalments were payable.

I understand that B was ready to resume monthly repayments on 30 March 2022 – or at least, that's when Mr B communicated that readiness to the bank. However, this was some two months after the formal demand had made the loan repayable in full. My conclusion is therefore that the bank didn't make any error in declining to discuss re-establishing instalments at that point.

Did the bank act fairly in relation to the timing of the transfer to debt collectors?

I appreciate that B may feel that Barclays could have been more patient and shown more forbearance in its case. Mr B has also referred to another business where a different approach has been taken. But I can only consider whether Barclays have made any errors in this particular case. Banks are under obligations to take prompt action with regard to unpaid lending and in particular, not to delay matters while customers get further into debt. Given that it was around seven months from B going into arrears to being transferred to debt collectors, I don't think I can fairly conclude that Barclays acted unreasonably or prematurely here.

It's clear that, even if B had not received Barclays' letters and not realised it was getting into arrears in late 2021, by early 2022, Mr B was aware of the arrears. I have listened to his telephone conversation with Barclays on 30 March 2022, in which he told them he was in a position to clear the arrears. In this call, he also says that he wasn't in a position to make payments earlier because he needed the agreement of B's shareholders. In my view, this shows that he had been aware of the arrears on the loan for some time.

I don't think Barclays made an error on the 30 March 2022 phone call. Barclays said that B's loan was going to be sent to the debt collectors and B therefore needed to await correspondence from the new firm. They didn't say it had already been transferred.

I note, however, that there is an inconsistency between Barclays' statement that they transferred the loan on 8 April 2022 and their letter of 9 April 2022 saying the account would be transferred "shortly". But I don't think this is of particular significance, as I don't think it put B in a worse position. I say this because Barclays had made formal demand on 28 January 2022, following which the full loan balance became due. It was therefore already too late to make good the arrears and resume paying in instalments by the end of January, over two months before the transfer to debt collectors.

Did Barclays tamper with documents to disadvantage B?

The allegation that the bank has falsified the evidence they've provided to the Financial Ombudsman Service in the course of our investigation is a very serious one. I don't consider that the evidence supports this. I accept that Mr B has provided screenshots showing that the document properties have been amended. But I don't think this proves that the contents of the documents have been altered.

I need to reach my conclusions on the balance of probabilities, in other words, what I think is more likely than not to have happened. Whilst I accept there's no firm proof that the documents haven't been altered, I'm satisfied that it's far more likely than not that they haven't. I say this partly because they tell a consistent story and are automated letters sent in a format we frequently see. Even if Barclays wanted to falsify evidence or create letters that didn't previously exist - which I don't accept - it's not clear what they would have to gain by doing so. Rather, I consider it was in the bank's interests to remind their customer of overdue debts promptly and frequently.

In my opinion, the changes to the document properties are simply a side effect of the way documents are stored and handled in large organisations. The changes to dates simply reflect the dates on which the information was sent to us.

I also don't think there is any bad faith indicated by the absence of a statement for the BBL from inception to repayment or in the fact that the statement and some other correspondence describes the BBL as a Barclayloan. I don't believe this shows that the bank chose to repay B's BBL and create an identical business loan instead. This is not, in my view, the most likely explanation and it would be against the bank's interests to take such action.

The BBL scheme was set up in a hurry and banks therefore often used processes already in place for other loan products, such as standard letters. As a result, not all paperwork actually identifies the product as a BBL, but that doesn't mean that it isn't one.

I can see that the letters Barclays sent about the missed payments were sent to the correct address and the same address B used when referring its complaint to our service. My conclusion is therefore that it's more likely than not that they were sent, even if Mr B can't locate them. So I don't think Barclays made an error in relation to these letters.

I think it's also worth noting that B took out the loan and was aware of its terms and conditions. It was therefore B's responsibility to ensure repayments were made as they fell due – and to make good any arrears - whether or not it received Barclays' letters about them.

Did the bank unfairly exercise its right of set-off?

I don't doubt that the bank choosing to use B's current account balance to repay the loan left B in a difficult position. However, I consider that this was an action that the bank was entitled to take. The terms and conditions applicable to B's current account said:

"If you owe us money under an agreement with us and you haven't paid it back when you should have done, then we can use the money in any of your accounts with us including personal accounts to pay off some or all of the money you owe us... This is called 'set-off'"

I'm satisfied that this covers the position here. B owed Barclays the balance of the BBL, which had all become due following their formal demand. From that point on, Barclays were within their rights to set-off the balance in the current account against the loan. This of course didn't alter the net position of B with Barclays, although it clearly had an immediate negative impact on B's cashflow.

Did the bank act unfairly in withdrawing internet banking?

Mr B has suggested that Barclays is consciously trying to put B out of business by depriving it of access to its current account. I don't agree that the bank has been deliberately making things difficult, although I do agree with our investigator that Barclays' customer service and particularly communication in relation to the withdrawal of internet banking was inadequate.

I think it's worth pointing out that the terms and conditions for B's current account said:

"We may also end this agreement or stop providing services or close your account immediately if we reasonably believe that you are... unable to repay debts as they become due"

I consider this entitled the bank to stop providing internet banking if it so chose, in the light of the BBL default. But the bank should have communicated this clearly. Mr B shouldn't have been left with an inconsistent message as to whether the current account was with Barclays or the debt collectors and Barclays shouldn't have acted inconsistently with regards to whether they would permit payments to be arranged in branch. They also shouldn't have said in their letter to B's MP that B could continue to operate other accounts as normal, if they didn't intend to allow this.

I can see that there was also a period starting October 2022 when the bank's records show the account was restricted because Barclays were awaiting the answers to a request for up-to-date information. This was to complete regulatory "know your customer" checks and I don't consider the bank was at fault in taking this action.

I note that Mr B told us in January 2023 that B still didn't have online account access. I am unclear if this remains the case, but if so, I don't consider I can investigate this as part of this complaint, as I think it would need to be the subject of a separate complaint to the bank.

B has also suggested that Barclays should pay for the preparation of an independent lawyers' and accountants' report into the financial impact of Barclays' errors, including on B's reputation. I don't think it would be reasonable to expect the bank to pay for such a report in

this case, particularly given the limited nature of the errors I have found here.

Summary

I can see that B has been going through a difficult trading period. It was very unfortunate that during this time, B couldn't make arrangements to bring the BBL back into order before Barclays placed it into default. But I have concluded that Barclays made no errors in doing this.

In my view, all the other events complained of here, other than the bank's poor communications, then flowed from that failure to make repayments on time. Included in this are the withdrawal of internet banking and the setting off of the current account balance against the loan, which undoubtedly made life much harder for B.

Putting things right

Taking everything into account, I take the view that Barclays' errors here were limited to some inconsistent and unhelpful communications. I haven't been persuaded that these caused significant detriment to B. I therefore agree with our investigator that a payment of £100 is sufficient and fair to compensate for these minor failings.

My final decision

For the reasons set out above, I am not upholding the part of the complaint about the arrears on B's BBL. I am upholding the part about internet banking and direct Barclays Bank UK PLC to pay B £100 as compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 7 December 2023.

Louise Bardell
Ombudsman