

The complaint

A limited company, which I'll refer to as 'P', is unhappy with several aspects of the service it received from Barclays Bank UK PLC, including surrounding the defaulting of its accounts.

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

What happened

P took a loan from Barclays in 2018 and was making additional payments towards it beyond the monthly payments that were contractually required. Mr W felt this meant that P was in credit on the loan, but when P didn't make some of the monthly payments, it received letters from Barclays which said that the loan was in arrears.

Mr W was confused by the letters. He tried to contact Barclays by telephone to discuss the matter but found that his calls often went unanswered and that when he was able to speak with Barclays staff, no one knew which department he needed to speak with, leading to him being passed around departments on several occasions.

Mr W then received a letter from Barclays informing him that P's loan had been defaulted for non-payment of account arrears – even though Mr W felt P was still in credit on the loan because of the overpayments it had made. And, because Barclays defaulted the loan, they also issued a demand for full repayment of a Bounce Back Loan ("BBL") that P had taken, and also withdrew P's overdraft facility from its business current account ("BCA"), leaving P in an overdrawn position without an agreed overdraft and so unable to meet its financial commitments. Mr W wasn't happy about this, so he raised a complaint on P's behalf.

Barclays looked at P's complaint. But they noted that if overpayments are made to a loan, the ongoing contractual monthly payments always remain due. And so, they didn't feel they'd acted unfairly by following the account arrears process. Mr W wasn't satisfied with Barclays' response, so he referred P's complaint to this service.

One of our investigators looked at this complaint. But they didn't feel that Barclays had acted unfairly in how they'd managed the situation, and so didn't uphold the complaint. Mr W remained dissatisfied, so that 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 1 August 2023 as follows:

I'd like to begin by addressing a wider point that Mr W has made in his complaint regarding what he perceives as a gradual decline in the standard of service that P received from Barclays during the time that P has held a business relationship with them. Mr W points to the closure of Barclays branches local to P and changes with how Barclays' handle P's business relationship and interact with Mr W.

I can appreciate how Mr W might feel dissatisfied at the changes described above. But if he had become dissatisfied with the service that P was receiving from Barclays, he was free to move P's banking relationship to another provider. Accordingly, I feel that by maintaining P's business relationship with Barclays, Mr W was tacitly accepting the branch closures and changes to service implemented by Barclays, about which he now complains.

Mr W has addressed this point in his correspondence with this service and has said that changing banks isn't easy, especially when assets are frozen. But the changes that Mr W is unhappy with took place before the defaulting of P's accounts, at times when none of P's accounts were restricted. And it remains my position that if Mr W kept P's accounts with Barclays, rather than taking the action necessary to change banking provider, then he was accepting the branch closures and changes in service that Barclays had made.

Regarding the defaulting of P's loan, Mr W has explained that because P made several overpayments to the loan that P was several months in credit on the loan at the time that Barclays deemed it to be in arrears. And Mr W has questioned how P's loan can be defaulted for non-payment when the account is several months in credit.

Unfortunately, Mr W's statement that P was in credit on the loan account because of prior overpayments is based on a misunderstanding of the terms of the loan agreement – which include the following clauses:

6.4: "Any payment made in excess of your contractual monthly payment will be applied firstly towards any payment due and payable under the Agreement and any remainder shall be treated as partial early settlement, and in each case will not contribute to your next contractual monthly payment (which will still remain due on your Contractual Repayment Date)."

7.2: "If you make any payment to us other than your contractual monthly payment when due or if you make your contractual monthly before the 7 day period immediately before your Contractual Repayment Date, such payment will not contribute to the contractual monthly payment which will still remain payable on your Contractual Repayment Date."

The terms of the loan agreement quoted above explain that if overpayments are made, the loan will not be in credit and the ongoing contractual monthly payments to the loan must still be made each month. Instead, any overpayments that are made effectively reduce the term of the loan - but a contractual payment towards the loan is still required each month regardless of any overpayments made and any consequential shortening of the term.

It's for Barclays to set the terms of a loan they're willing to offer. And P accepted Barclays' terms when it accepted the loan. As such, I'm satisfied that it wasn't the case that P's loan was ever in 'credit', as Mr W believed, and I feel that Mr W's belief in this regard was based on an incorrect understanding of the terms of the loan. Consequently, this means that I'm satisfied that Barclays were correct, and weren't acting unfairly, when they considered the loan to be in arrears when P missed some of the monthly payments towards it – regardless of the overpayments towards the loan that P had previously made.

I can appreciate how, from Mr W's perspective, it may seem unfair that Barclays would consider the loan to be in arrears on the basis I've described above, given that some of the overpayments that P made towards the loan were significant.

But it's notable that Mr W cancelled P's direct debit that had previously been in place to

make the contractual monthly loan payments in June 2020, and that P made manual monthly payments towards the loan from that point onwards. And by electing to make the loan payments manually, I feel it was Mr W's responsibility to have understood the terms of the loan regarding loan payments – including that at least the minimum contractual payment amount needed to be made each month.

Barclays sent missed payment letters to P about the arrears on the loan account in November and December 2021 and in January and February 2022, and then sent a formal demand for full repayment of the balance outstanding on the loan on 29 March 2022. And I'm satisfied that this is in alignment with guidance issued by the Information Commissioner's Office regarding the defaulting of accounts, which includes that a formal demand should generally be issued when an account has been in arrears for longer than three months but before an account has been in arrears for six months.

Barclays have explained that it's their process that, in instances where a business customer has several different accounts – as P did here – that when an account is defaulted, they also default or withdraw any other credit facilities that might be present. And it was for this reason, following the defaulting of the loan for non-payment, that Barclays withdrew the credit facility from P's overdraft and issued a formal demand for full repayment of P's BBL.

Again, it's for Barclays to set their own policies and processes here, and it seems clear that Barclays followed their process correctly. However, it doesn't follow that because a process has been followed correctly that the process has resulted in a fair outcome. And so, I've considered whether I feel it was fair for Barclays to withdraw P's overdraft facility and to default its BBL as Barclays did.

Regarding the withdrawal of the overdraft facility from the BCA, I feel it was fair for Barclays to take this step in March 2022. This is because P had displayed a reduced capacity to make payments towards its existing credit by not making the contractual monthly payments towards the loan from October 2021 onwards – either by not making any payment in a particular month or by making a monthly manual payment which was less than the contractual amount required. As such, I feel it was reasonable for Barclays to have had concerns about continuing to provide P with an overdraft facility, and to have withdrawn that facility accordingly.

However, I don't feel that it was fair for Barclays to have issued a formal demand to P regarding its BBL at that time. This is because P wasn't behind on its payments for the BBL and was in the middle of an agreed payment deferral plan whereby it wasn't required to resume making payments towards the BBL until June 2022. And whereas an overdraft is an instance of revolving credit, where the facility holder can take further credit up to the agreed overdraft limit, the BBL was fixed credit, whereby P had already received the full credit available to it, such that there was no risk of P taking any further credit on the BBL.

Additionally, it's notable that following the removal of P's overdraft facility in March 2022, P was able to make payments to bring the BCA into a position of credit and was able to resume using the account for business purposes within a few weeks – by early April 2022. As such, I feel it's both plausible and likely that P would have been able to make the BBL payments required of it after the payment deferral period ended in June 2022.

It also must be remembered that the purpose of the BBL scheme was to help businesses such as P negotiate the difficult financial circumstances surrounding the emergence of the Covid-19 pandemic without falling into debt and incurring adverse credit file reporting. So, it doesn't seem fair to me that Barclays would default P's BBL at a time when the BBL wasn't in arrears and when I don't feel that it can reasonably be said that P was highly likely to have missed payments on its BBL in the immediate future – especially given that the monthly

payments for the BBL were £258.33 per month, which feels reasonably affordable for P.

This isn't to say that I would consider the cross-defaulting of all loans such as a BBL to be unfair, and I can understand why banks such as Barclays would have policies in place regarding cross-defaulting loan accounts. But it is to say that in the circumstances specific and unique to this complaint, that I don't feel it was fair for Barclays to have defaulted P's BBL in this instance.

These circumstances include that the BBL wasn't in arrears, that I don't feel that P was likely to miss future payments on the BBL, that there was no risk of P taking any further credit on the BBL, and that one of the purposes of the BBL scheme was to enable small businesses such as P to avoid adverse credit file reporting where possible.

Additionally, I feel it should fairly be recognised that P may only have fallen into arrears on its business loan because Mr W misunderstood the payment terms of that loan. And I also feel that if Mr W had kept the overpayment amounts back instead of paying them, it's possible that P would have had the money available to it to make the contractual monthly payments due on the loan at the time that it fell into arrears.

Furthermore, it's notable that the balance outstanding on the business loan at the time it was defaulted by Barclays was approximately £990, whereas the balance outstanding on the BBL – on which P wasn't in any arrears – was over £14,500. And it doesn't feel fair to me that Barclays would cross default such a large outstanding balance in the unique and specific circumstances of this complaint – as I've described them above.

Accordingly, my provisional instructions to Barclays are that they must reinstate P's BBL as it was at the time of the default. This includes any time that remained on the payment deferral plan that P was benefiting from, as well as any potential that P may have had to request further payment deferral options. In short, Barclays must reinstate the BBL as if it had never been defaulted, and must remove all adverse credit file reporting incurred by P resulting from the defaulting of the BBL.

Mr W is also unhappy with the service he received from Barclays when he contacted them to discuss his accounts, and notes that he made verbal agreements with Barclays in October 2021 and February 2022 which weren't recorded or implemented by Barclays.

But Barclays don't have any record of the calls or agreements which Mr W refers to. And after a phone call that took place in October 2021, Barclays don't have record of speaking with Mr W again until April 2022. Additionally, Mr W hasn't provided any evidence of these calls or any similar communication with Barclays himself. As such, I don't feel that I can reasonably concur with this aspect of P's complaint.

Finally, Mr W has commented on how Barclays actions have affected him personally. However, while I sympathise with Mr W in this regard, this complaint is brought in the name of P as a limited company, and so I'm unable to consider any personal impact on Mr W. All of which means that, while I will be provisionally upholding this complaint in P's favour, I'll only be doing so in relation to the BBL, which I feel was unfairly defaulted by Barclays.

Barclays objected to my provisional decision and noted that they had a contractual right to default the BBL upon the defaulting of the business loan as per the terms of their lending products. This is known as a cross-default. And Barclays also explained that because the BBL guarantee given to lenders by the British Business Bank – who administered the BBL scheme – included that lenders were expected to follow their standard recovery processes (which in Barclay's case include cross-defaulting), that Barclays were obliged to cross-

default the BBL and would be in breach of the BBL guarantee if they didn't do so.

It isn't for this service to decide on the legal obligations of Barclays under the BBL scheme. But I do note that the BBL guarantee applies to the BBL – which in this case wasn't in arrears such that any recoveries process was 'directly' required – and the BBL guarantee isn't applicable to the non-BBL business loan which Barclays defaulted. And as I explained in my provisional decision letter, I accept that Barclays followed their own process to cross-default the BBL correctly, and it is for this reason that I haven't awarded any form of compensation against Barclays regarding this point in my provisional decision.

But as I also explained in my provisional decision letter, this service is focussed on fairness of outcome. And it doesn't follow that because a business has followed a process correctly that the outcome of the correctly followed process is a fair one. And if I feel that a correctly followed process has led to an unfair outcome – as I do in this instance – it is within my remit to instruct a business such as Barclays to act to undo the results of the correctly followed process that has resulted in the unfair outcome. So, for the reasons I explained in my provisional decision letter – I will be instructing Barclays to undo the BBL cross-default.

Mr W also responded to my provisional decision letter. I feel that several of the points Mr W raised, such as his dissatisfaction at the service provided by Barclays, have already been addressed in my provisional decision letter. But Mr W did question why a significant aspect of P's overall complaint – that Barclay's didn't properly or adequately respond to the complaints he was making about their actions on P's behalf – wasn't addressed at all.

The reason for this is because this isn't an aspect of P's complaint that this service can consider. This is because, as per the rules by which this service must abide – which can be found in the Dispute Resolution ("DISP") section of the Financial Conduct Authority ("FCA") Handbook – this service is only able to consider complaints about specified activities, of which complaint handling isn't one. In short, this service can't consider a complaint about how a business has handled a complaint, because it's not within our remit to do so.

What this service can consider is the actions of Barclays which led to the complaint. And as explained in my provisional decision letter, I feel that Barclays acted fairly by considering P's business loan to have been in arrears and to have subsequently defaulted that loan and withdrawn P's overdraft facility. And while Mr W has highlighted what he feels are failings in the service P received from Barclays, I don't feel that any of these potential factors did reasonably influence the key point here – that P didn't make the business loan payments that were required of it.

However, as explained above, I do feel that the cross-defaulting of P's BBL has resulted in an unfair outcome in this specific instance. And because of this I'll be upholding this complaint in P's favour on that basis, as was described in my provisional decision above.

I realise this outcome may not be entirely satisfactory to either Mr W or Barclays, but I hope that all parties will understand, given what I've explained, why I've made the final decision that I have.

Putting things right

Barclays must reinstate P's BBL as it was at the time of the default. This includes any time that remained on the payment deferral plan that P was benefiting from, as well as any potential that P may have had to request further payment deferral options.

Barclays must also remove all adverse credit file reporting incurred by P resulting from the defaulting of the BBL.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 12 October 2023.

Paul Cooper
Ombudsman