

## **The complaint**

A limited company, which I'll refer to as 'G', is unhappy that Metro Bank PLC defaulted its Bounce Back Loan (BBL).

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

## **What happened**

G had a BBL with Metro and was making the required contractual monthly payments towards it. Towards the end of 2022, Mr J travelled overseas, but he sent dated cheques to Metro to cover G's BBL payments for the time he would be away. However, Metro didn't cash the cheques Mr J had sent. And this meant G's BBL payments weren't considered by Metro as being made, and that the BBL was considered to have fallen into arrears. This ultimately led to Metro defaulting G's BBL for non-payment. Mr J wasn't happy about this, so he raised a complaint on G's behalf.

Metro responded to Mr J and explained it had no record of receiving the cheques Mr J claimed to have sent. Metro also confirmed it was satisfied it hadn't done anything wrong by following the account arrears process which had led to the defaulting of G's BBL. Mr J wasn't satisfied with Metro's response, so he referred G's complaint to this service.

One of our investigators looked at this complaint. But they didn't feel Metro had acted unfairly in how it had managed the situation and so didn't uphold the complaint. Mr J remained dissatisfied, 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.

In his correspondence with this service, Mr J has made several arguments of a legal nature. As such, I'd like to begin by confirming that this service isn't a regulatory body or a Court of Law and doesn't operate as such. Instead, this service is an informal, impartial dispute resolution service. And while we do take relevant law and regulation into account when arriving at our decisions, our remit is focussed on determining whether we feel a fair or unfair outcome has occurred – from an impartial perspective, after taking all the factors and circumstances of a complaint into consideration.

Mr J is unhappy that Metro defaulted G's BBL for non-payment. Accordingly, the question I must ask is whether I feel Metro's defaulting of G's BBL was fair or unfair.

Metro has explained that the reason it defaulted G's BBL was because G didn't meet its contractual payment obligations. Specifically, the monthly payments due in November and December 2022, and January 2023 were not paid by G. And Metro has further explained that the reason the payments weren't made was because there wasn't sufficient money in the bank account from which G was making the BBL payments for the direct debit claims that Metro put forward in those months to be honoured.

As the loan account holder, it was the responsibility of G to ensure it had sufficient funds in the relevant bank account to allow the monthly BBL payments to be taken. And, having reviewed the account statements, this clearly wasn't the case during the three months in question. As such, I'm satisfied that G didn't meet its contractual repayment obligations and that it was fair and reasonable for Metro to have considered G's BBL to have fallen into arrears as a result.

Mr J has explained that he sent Metro cheques to cover G's BBL payments for the months while he was away. And he feels that Metro received those cheques but failed to apply them to the bank account from which G's monthly direct debit was being taken. As such, Mr J feels that it wasn't G's fault that the BBL was considered to have fallen into arrears, and that G met its contractual payment obligations by sending the cheques to Metro. Rather, Mr J feels it was Metro's fault that G's BBL fell into arrears, because Metro didn't process and apply the cheques it received from G as it should have done.

Metro doesn't agree with Mr J's position here. It has explained that it has no record of receiving any cheques from or for G. Metro also note that once the first payment was missed in November 2022, it sent arrears notices to G which it feels should have reasonably alerted G's directors that payments to the BBL hadn't been made and that they needed to take action regarding the account.

In instances such as this, where the positions of the complainant party and the respondent business sit in opposition to one another, and where there is no clear evidence to confirm what did or didn't take place, I must decide which of the two versions of events I feel to be more persuasive – on balance, and in consideration of all the information and evidence that is available to me.

In this instance, I find Metro's position to be the more persuasive. There are several reasons for this. Firstly, Mr J has been asked to provide evidence of the cheques he claimed to have sent to Metro, such as the cheque stubs. But Mr J has said he no longer retains these.

Additionally, Mr J has said that he sent the cheques addressed to Metro's CEO, apparently without any prior discussion with Metro to inform it that he would be sending the cheques or to confirm the appropriate address to send those cheques to. I also feel it's reasonable to question why Mr J didn't make a payment arrangement by standing order or some similar mechanism, rather than by sending cheques to Metro without prior notification to an address he hadn't confirmed was appropriate.

In consideration of the above – the absence of any evidence that the cheques were sent or of any prior discussion or arrangement with Metro by Mr J – I find Metro's position that they didn't receive any cheques from G to be the most persuasive here. And because I feel that it is more likely than not that Metro didn't receive any cheques from G to cover the BBL payments, I don't feel that Metro have acted unfairly by considering G's BBL to have fallen into arrears or to have then followed the account arrears process that resulted in the defaulting of G's BBL.

Furthermore, despite taking such unusual steps to make G's BBL payments while he was overseas, G's directors don't appear to have monitored G's BBL account to have confirmed whether the monthly payments had been received or not – which I would reasonably expected them to have done. And I'm also satisfied that Metro sent out arrears' notices to G by a variety of channels to the contact details registered with them by G.

Ultimately, I'm satisfied that G didn't meet its contractual repayment obligations regarding the BBL. Metro sent several arrears notices to G about the missed payments. Additionally, the fact that BBL payments had been missed was always available to G's directors, had they

monitored G's BBL account. And the fact that the sent cheques hadn't been cashed by Metro would also have been evident to G's directors, had they monitored the account from which those cheques had been sent.

Because the BBL arrears weren't addressed, and because payments continued to be missed, I don't feel it was unfair for Metro to have sent a formal demand to G for full repayment of its BBL, or to have then defaulted the BBL when the requirements of that formal demand weren't met by G. In short, I don't feel that Metro have acted unfairly or unreasonably here, and so I won't be upholding this complaint against it.

I note that Mr J has described difficult personal circumstances that he's unfortunately encountered and which he feels should be taken into consideration. And that he's asked for more time to provide further information which he feels is relevant to this complaint.

I can sympathise with Mr J on a personal level regarding the difficult personal circumstances that he's encountered. But this complaint relates to G – a limited company – and to G's contractual payment obligations regarding the BBL. Mr J isn't the sole director of G. And I don't feel that G's contractual payment obligations are fairly or reasonably diminished by the personal difficulties which one of its directors has faced.

I also note that Mr J was given an initial deadline to provide further evidence in support of his position of 20 December 2023, but that this was extended to 10 January 2024 at Mr J's request. To date, this service hasn't received any further evidence from Mr J. And while I note that Mr J has said that he feels the further evidence he will provide is materially relevant to the outcome of this complaint, Mr J hasn't described what this further evidence is or why he feels it might reasonably impact my decision here.

Furthermore, given what I've explained above, I find it difficult to hypothesise what further information Mr J might be able to provide that would impact my decision here. Indeed, even if Mr J could provide evidence that he'd sent the cheques – such as the cheque stubs, which Mr J has already confirmed he no longer retains – or that those cheques had been received by Metro – such as by evidence of recorded delivery – I'd still most likely find against G in this complaint.

This is because even if Mr J was able to evidence that Metro had received the cheques he claims to have sent, the fact remains that it was the responsibility of G's directors to have monitored the BBL and to have been aware that the payments they thought should be being applied to the BBL weren't in fact being applied, and to then have done something about it.

All of which means that I see no fair or reasonable cause to delay issuing this final decision at this time. And I confirm that my final decision is that I do not uphold this complaint or instruct Metro to take any further or alternative action here.

I realise this won't be the outcome Mr J was wanting. But I hope he'll understand, given what I've explained, why I've made the final decision that I have.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 12 March 2024.

Paul Cooper

**Ombudsman**