DRN-4587751

The complaint

A limited company, which I'll refer to as D, complains that National Westminster Bank Plc wrote to an old address regarding arrears on a bounce back loan ("BBL"). D says this resulted in the bank also putting another loan into default and then using the funds in D's current account to repay that loan.

D is represented by its director, Mr K.

What happened

D took out a £35,000 ten year business loan in 2017, since when D had made all monthly repayments as they fell due.

In May 2020, D took out a £50,000 BBL. No repayments were due for the first year. D made its first BBL repayment on time in June 2021, then applied for a six month Pay As You Grow capital and interest repayment holiday.

When the capital and interest repayment holiday expired, D extended the term of the loan and took out two further capital repayment holidays.

Full repayments were due on the BBL from April 2023, but D did not make these.

In July 2023, the bank issued formal demands on both loans and said they intended to remove banking facilities from D's business accounts.

In September 2023, the bank exercised their right of set-off and used the balance on D's accounts to repay the business loan and reduce the balance on the BBL.

Mr K complained on behalf of D. He said he hadn't received any of the bank's letters and the removal of the funds from his accounts had left D's business without any working capital to fund future jobs. NatWest did not uphold his complaint. They said that it was up to D's representatives to ensure the bank's address records were up to date and that they were entitled to cross-default D's business loan and then use the funds in D's other accounts to repay it.

Mr K asked the Financial Ombudsman to look at what had happened. He said that if the bank had written to the right address, he would have sorted out the loan arrears. He also said he was receiving certain bank correspondence at his new address, so he didn't understand why they hadn't sent these letters there.

One of our investigators looked into the matter, but didn't consider D's complaint should be upheld. She said that it was D's responsibility to ensure its loan repayments were up-to-date and D's responsibility to update its address on the bank's records. She didn't think the bank had made an error in putting the loans into default or using its right of set-off.

Mr K asked for an ombudsman to look at the matter again. He said, in summary:

- The bank had his correct address because they had sent other correspondence

there.

- D hadn't missed any repayments on its business loan. The only arrears were a couple of months on the BBL, because the bank hadn't sent the letters to the right address.

- If the bank had used the right address, he would have cleared the arrears.

- He believed he should be due some funds back on the loan because it was repaid early.

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.

Having done so, I'm sorry to disappoint Mr K, but I agree with the conclusions of our investigator, for essentially the same reasons.

First, I know Mr K says he has received other bank correspondence to his up-to-date address. I haven't seen evidence of this, but it may be that he updated his personal address but not D's address. I can also see that he's told us that the bank admitted they had made an error in not changing the address. I haven't seen evidence of that either and the bank has not admitted any error to our service. Rather, NatWest have shown me that the address they were using was last updated in July 2021 and is the same as Mr K's correspondence address on Companies House. As our investigator explained, it was D's responsibility to notify the bank of any change of address and I haven't seen that it did so. For these reasons, I don't think I can fairly conclude that the bank made any error regarding the address used when writing to D.

In any case, I can see that the majority of the bank's correspondence with D regarding the BBL arrears was by email. NatWest has provided evidence that it sent Mr K email reminders ahead of the repayments starting again on 15 and 27 February 2023. Then, following the April 2023 payment being missed, the bank sent further emails regarding the arrears on 26 and 27 April, 11 and 31 May. I note that Mr K mentioned receiving emails in his complaint form to us. So I think D was notified adequately about the arrears. It therefore had sufficient opportunity, in my view, to put things right before the bank took further action.

It was only the formal legal letters demanding repayment in full and informing D of the bank's intention to close its accounts that were sent by post. And by the time these were sent, it was too late to make up the arrears to bring the BBL back into order.

I also note that D took advantage of two six month capital repayment holidays on the BBL. During these, D should have been paying the interest on the loan, but I can't see that it was. For this reason, I think the arrears was rather greater – and extended for a longer period – than the missed repayments in April and May 2023.

The reason that no interest was paid was because the direct debit set up to make automated payments of capital and interest from D's business current account to the BBL was cancelled following the first repayment. The bank's records show that this was cancelled by D in July 2021.

For these reasons, I don't think the bank did anything wrong when they put the BBL into default in July 2023.

I know Mr K was particularly displeased that the bank also put D's other loan into default at the same time as the BBL, because this loan was not in arrears and never had been. So next I'll explain why I'm satisfied that the bank was entitled to take this action.

The BBL agreement contained a section on "events of default". This defined all the possible events of default, which included "the Customer does not pay any amount payable under this agreement within one month of its due date". This event had occurred since the BBL had arrears that had been outstanding for more than one month.

D's 2017 business loan agreement also contained a section on events of default. These included:

> "the Customer or any subsidiary of the Customer defaults under
>
> - Any liability to the Bank"

This means that the fact that D's BBL was in default constituted an event of default under the other loan agreement too. The loan agreement explains that, if an event of default occurs, the bank may "demand immediate repayment of the loan, all accrued interest and all others sums payable by the Customer under this agreement".

These clauses are normal practice in banking agreements because they enable lenders to protect their position if one loan falls into arrears. So NatWest didn't do anything out of the ordinary when they included these clauses in their loan documents. D accepted these terms when it took out the loans. I therefore consider that the bank acted reasonably and in accordance with the contract when they put both D's loans into default, even though one was up-to-date.

Another clause that is in common use in bank loan agreements is a clause giving the bank something called a Right of Set-Off. These clauses were in both D's loan agreements and gave the bank the right to take any sums out of the borrower's current account to meet amounts due under the loan agreements. Once NatWest had made formal demand on the loans, the entire balance of both loans was immediately payable. So the bank was entitled to use any funds in the current account to repay the balance of the loans. In this case, this resulted in the business loan being fully repaid and the BBL partially.

Finally, Mr K thinks that he might be due a refund of interest due to the early repayment of D's business loan. I'm afraid this isn't correct. Interest is accrued over time. This means that as a result of the loan being repaid early, D has paid less in total than it would have done if the loan had continued for its full term. But the bank have only taken the amount required to clear the loan from D's current account, so no refund is due.

My final decision

For the reasons explained above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 9 July 2024.

Louise Bardell
Ombudsman