

The complaint

A limited company, which I'll call R, complains that Conister Finance & Leasing Ltd mis-sold it a bounce back loan ("BBL") and unfairly used part of the proceeds to repay other debts.

R is represented by its director, Mr H.

What happened

Conister told us:

- Mr H had an existing relationship with them because he had other companies which had borrowed from them.
- One of his other companies' borrowing had fallen into arrears in June 2019, since when no payments had been received.
- In August 2020, they spoke to Mr H, who said he would consider novating and consolidating the existing debts into R's name.
- On 1 October 2020, Mr H applied for a BBL for £50,000 in the name of R. The application was agreed and on 6 October, £33,677 was paid into R's current account. The remainder of the £50,000 was used to repay Mr H's other company's borrowing.
- Various phone calls have taken place since this date, but R hadn't made a single repayment to its BBL.

Mr H told us:

- In 2020, Conister phoned him out of the blue and offered a BBL. They pushed him to apply in the name of a different limited company from the one with the debt.
- Conister told him this was his best option to clear his other company's debts and told him there was no risk to him as no personal guarantee was required.
- He would never have applied for the BBL were it not for the call.
- Conister had breached the BBL terms by not giving R the full proceeds. So he felt R should only be pursued for the £33,677 not the £50,000.

In April 2023, Mr H complained to Conister. Conister didn't uphold the complaint, as they said that they had followed their proper procedures at all times.

Mr H referred the complaint to the Financial Ombudsman. One of our investigators looked into what had happened. She didn't recommend upholding the complaint, as she didn't think Conister had acted unfairly.

Mr H asked for an ombudsman to look at the matter again. He said Conister were clearly

deliberately withholding or had deleted the key phone call, in which they had pushed him to take the loan and lied. He thought Conister had got him to take the loan to improve the risk to them, which was not allowed.

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.

Mr H has based his case on two main points – first, that Conister pressurised him into taking out the loan. And second, that in using the proceeds to repay other debt, Conister has breached the terms of the BBL scheme.

Mr H and Conister both seem to agree that prior to the BBL application, there was a telephone conversation regarding existing debt, which was in the name of another limited company owned by Mr H. Conister says this took place in August 2020, after which their employee made a note on the file that Mr H wanted to consider novating and consolidating the existing loans into one new BBL.

It is frustrating that Conister has not been able to locate a recording of this call, in which Mr H claims Conister lied to him and coerced him to take out the BBL. Mr H believes I should draw a negative conclusion from its absence, but I don't consider this would be fair. Conister accept that they spoke about debt consolidation on that call and told him that he could apply for a BBL and use the proceeds to repay his other company's debts with them. This is what happened and Mr H accepts that he was aware that that was the plan. It may be the case that Mr H only applied for a BBL as a result of that phone conversation. But I don't think that means Conister did anything wrong.

Mr H has argued that Conister had confirmed in their response to his complaint that they had listened to the call, indicating they must have lost it since then. But I'm satisfied that is not the case. Their response letter mentioned that they had "listened to all telephone calls dating back to 2018". I think this meant that they had listened to every call on their system. It didn't mean that they had located the August 2020 call.

Mr H has also suggested that Conister deliberately told him to apply for the BBL in the name of R. But I don't think this had any particular negative implications for Mr H, so I don't think it indicates bad faith on the part of Conister if they did suggest this. And having checked Companies House, I can see that Mr H's other company with outstanding debt had entered voluntary liquidation in 2019. So I think Conister would have been correct if they'd told him that the other company wasn't eligible for a BBL.

I think it's important to note that Mr H had to apply online for the BBL himself. And that he did this on 1 October 2020, a month and a half after the missing phone call. Even if there was a call closer to the date, of which there is no record at all, then I still think Mr H ultimately took the decision to apply himself and wasn't under pressure to do so. He also chose to apply for the maximum £50,000 loan (requiring him to certify that R's turnover was at least £200,000). There was no real advantage to Conister in him borrowing the maximum, so I don't think Conister is likely to have suggested that amount.

I note that R spent the c. £34,000 of additional funds that Mr H applied for on R's behalf. I think it's fair to say that Mr H could have returned those funds if R didn't want or need them, or if he had any concerns about R's eligibility under the scheme.

I know Mr H would like me to reach a judgment on whether Conister's actions are in accordance with the spirit of the BBL scheme. I don't intend to do that, as it is not within my remit. Rather, my role is to decide if Conister has acted unfairly in the circumstances of this case and if so, whether that led to an unfair outcome for R.

I'm not aware of any rule that says BBLs cannot be used to repay other debt. Neither was there anything in the BBL agreement that Mr H signed that said the funds shouldn't be used in that way. Furthermore, Mr H has told us that he knew how Conister were going to use the proceeds. Had that not been the case, I would have expected Mr H to complain in 2020, not 2023.

In conclusion, I'm not persuaded that anything that has happened here was against Mr H's will or has put his companies in a worse position. As a result of taking out the BBL, there was only one company associated with Mr H that owed money to Conister and only one loan agreement instead of three. R was also able to borrow over £33,000 of additional funds, which R spent.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 20 March 2024.

Louise Bardell
Ombudsman