

The complaint

Mr G is unhappy that Bank of Ireland (UK) Plc, trading as Bank of Ireland (UK), (“BOI”) defaulted his account.

What happened

To briefly summarise, Mr G held a loan with BOI which fell into arrears. On 20 September 2022, BOI sent a default notice to Mr G. This default notice explained that Mr G needed to clear the full outstanding arrears amount – which at that time was £1,473.87 – by 9 October 2022, and that if Mr G didn’t clear the full outstanding arrears by that date, that BOI may then move to default his account.

Mr G called BOI on 5 October 2022 – before the 9 October 2022 deadline given in the default notice – and discussed his financial position with them. On this call, Mr G explained that he was out of work with no income and that he was living off his savings. Mr G also explained that he was behind on his Council Tax at that time.

In consideration of the information provided by Mr G, the BOI agent that Mr G spoke with applied a 30 day ‘breathing space’ hold to Mr G’s account, during which time Mr G wouldn’t be contacted by BOI. However, the requirement for Mr G to clear the arrears in full by 9 October 2022, as per the default notice, wasn’t affected by the ‘breathing space’ hold. And because Mr G didn’t clear the account arrears in full by 9 October 2022, BOI defaulted his account for non-payment of account arrears on 18 October 2022.

However, while Mr G’s loan was defaulted by BOI on 18 October 2022, this wasn’t clearly recorded as having happened on BOI’s systems. This meant that when Mr G called to discuss his account with BOI on 11 November 2022 – after the default had taken place – the BOI agent he spoke with believed that the account hadn’t yet defaulted and advised Mr G that he could avoid the defaulting of his loan if he made a payment to clear the arrears in full – as per the default notice.

Matters were confused further when Mr G spoke with BOI again a few days later, on 15 October 2022. At that time, a different BOI agent again incorrectly told Mr G that his loan hadn’t yet defaulted. And BOI’s agent also said that Mr G didn’t need to clear the full arrears as the previous agent had explained, but only had to come to an arrangement to clear the account arrears in instalments, to be paid alongside his ongoing monthly contractual loan payments – which Mr G did. Mr G wasn’t happy at being told that he had to clear his arrears in full on the previous call. So, he raised a complaint.

BOI responded to Mr G’s complaint on 9 January 2023 and once again incorrectly told him that his account hadn’t been defaulted at that time. And BOI’s complaint response also incorrectly explained that the arrears payment plan Mr G had agreed with them would be sufficient, should Mr G continue to make payments in accordance with that plan, to avoid the defaulting of his loan account. However, Mr G did later discover that his account had been defaulted by BOI, contrary to what he’d incorrectly been told on several occasions. So, he referred his complaint to this service.

One of our investigators looked at this complaint and liaised with Mr G and BOI. During their investigation, BOI re-investigated Mr G's complaint and, while they felt that Mr G's loan had been defaulted by them fairly, they acknowledged the several instances of incorrect information that Mr G had been given about the status of his loan account and offered to pay £500 compensation to Mr G for the impact of that incorrect information.

Our investigator agreed that the defaulting of Mr G's loan hadn't been unfair. And they felt the £500 compensation offered by BOI for the impact on Mr G of the incorrect information he'd been provided about the status of his loan was a fair compensation offer for what had happened. Mr G didn't agree and felt that his loan shouldn't have been defaulted by BOI. 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.

I issued a provisional decision on this complaint on 5 March 2024 as follows:

The first thing I've considered is whether – taken in isolation – the defaulting of Mr G's loan account by BOI in October 2022 was fair and reasonable. Having done so, I feel that it was fair for BOI to have defaulted Mr G's loan account at that time. This is because Mr G had missed several of his contractually required loan payments such that his account was in a position of multiple arrears. And because of these arrears, BOI had issued a notice of default to Mr G which explained that unless Mr G cleared the full outstanding arrears on his loan by 9 October 2022 – which Mr G didn't do – that his loan may be defaulted.

However, it's abundantly clear that BOI made several mistakes regarding the information that they provided to Mr G surrounding the defaulting of his loan. These mistakes appear to have begun when Mr G called BOI on 5 October 2022, before his account was defaulted, at which time it doesn't appear to have been confirmed to Mr G that his loan may still be defaulted if he didn't clear the full arrears amount by 9 October 2022, regardless of the financial difficulty that he was experiencing at that time. And, as explained in the section above, BOI made several further errors in that they repeatedly gave Mr G incorrect information about the status of his loan, after the loan had been defaulted by them.

Mr G feels that because he complied with the incorrect information that BOI gave to him and set up an arrears repayment plan, that the defaulting of his account by BOI was unfair and should be rescinded. I'm not in agreement with Mr G in this regard because, as explained previously, I do feel that Mr G's loan was fairly defaulted by BOI.

But I do feel that it's important to consider whether Mr G may have been able to avoid the fair defaulting of his loan account, had he been given correct information about the status of his account when he spoke with BOI on 5 October 2022 – which was when Mr G was given a 30 day 'breathing space' hold by BOI, but at which time it doesn't appear to have been explained to Mr G that his loan may still be defaulted if he didn't clear the full arrears present on his loan - £1,473.87 – before 9 October 2022.

If it were the case that Mr G could have made a payment of £1,473.87 to clear the full arrears present on his loan before 9 October 2022 – but didn't do so because he was given the incorrect impression by BOI on the 5 October 2022 call that he didn't need to do so – then I'd feel that the defaulting of Mr G's loan was unfair. And this is because, in this scenario, Mr G could and would have avoided the defaulting of his loan by making a £1,473.87 payment – but didn't do so because of incorrect information given to him by BOI.

However, in consideration of BOI's notes from the 5 October 2022 call, it doesn't seem likely to me that Mr G would have been able to have made a £1,473.87 payment by 9 October 2022, even had he been correctly told by BOI on 5 October 2022 that he needed to do so. And this is because BOI's notes from the 5 October 2022 call include that Mr G was out of work with no income and that he was behind on his Council Tax and was living off savings.

It also must be noted that banks such as BOI have an obligation to not knowingly place their account holders into a position of significant financial stress. And so, having been advised by Mr G that his financial position at that time was so strained, I feel it may have been remiss of BOI to have accepted a full arrears payment from Mr G, had he offered to make it – because I feel that to have accepted such a payment from Mr G under those circumstances would have been unfair and irresponsible of BOI.

Unfortunately, this means that I can only reasonably conclude that Mr G's BOI loan was always going to default in October 2022. This is because the loan was in multiple arrears such that a default notice had been fairly issued, and because Mr G's financial position at that time was such that he had no realistic chance to avoid the defaulting of his loan in accordance with that default notice.

Should Mr G disagree with my position on his ability to have made a £1,473.87 payment by 9 October 2022, I invite him to provide an evidenced counterargument to the contrary. Although it must be noted that such a counterargument would need to include clear evidence of available funds.

As a consequence of the above, while I accept that BOI made several mistakes regarding the information they gave to Mr G about the status of his loan, I don't feel that these mistakes should fairly or reasonably result in the rescindment of the default as Mr G would like – because as per the above, I feel that had BOI not made these mistakes but had given Mr G the correct information, his loan would still have been defaulted.

However, what I do feel should happen here is that Mr G should be fairly compensated by BOI for the upset and inconvenience that the repeated provision of incorrect information about the status of his loan account had on Mr G.

In their recent correspondence with this service, BOI have expressed the same sentiment and have offered to pay £500 to Mr G as compensation for the trouble and distress he's unfairly experienced here.

This amount feels fair to me, given what's happened and in consideration of the general framework this service uses when assessing compensation amounts – details of which are on this service's website. And it must be reiterated that this compensation amount isn't regarding the defaulting of Mr G's loan account – which I feel was fair – but is only regarding the several instances of Mr G being given incorrect information about the status of his loan by BOI.

Accordingly, my provisional decision is that I uphold this complaint in Mr G's favour and instruct BOI to make a compensation payment of £500 to him.

Mr G responded to my provisional decision and advised that if he had been correctly told on the 5 October 2022 phone call that he needed to clear the £1,473.87 account arrears in full before 9 October 2022 to avoid the defaulting of his account, he would have done so. This led me to issue an updated provisional decision, on 4 April 2024, as follows:

Mr G has explained that while he was in financial difficulty at that time, he was expecting a

significant influx of money by the end of October 2022. And Mr G has also explained that in October 2022 he had recently started a business – which I note was alongside other businesses he already owned – and so was eager to avoid incurring a default as he feared it might affect his professional, as well as his personal, financial standing.

Additionally, Mr G has provided confirmation that he did hold sufficient money in his savings account to have cleared the £1,473.87 account arrears in full before 9 October 2022. And he's also provided confirmation that he did receive a significant amount of money at the end of October 2022, which it seems clear to me would have eased his financial position.

In consideration of the information provided to me by Mr G, I accept Mr G's statement that he would have cleared the £1,473.87 account arrears before 9 October 2022 to avoid incurring a default on the loan.

It therefore follows from this that I feel that by not giving Mr G accurate information about the need to clear the full loan arrears before 9 October 2022 on the 5 October 2022 phone call, that BOI have directly led to Mr G incurring the default on his loan that he would otherwise have avoided.

Because of this, my amended provisional decision here now includes that BOI must reinstate Mr G's loan and remove the default from Mr G's credit file. This is on the condition that Mr G can clear the £1,473.87 arrears that were present on the account at the time that it was defaulted within 30 days of the date of any final decision that I might potentially issue confirming this provisional in the future. And this requirement for Mr G to clear those arrears is so that the reinstated loan is up to date and as it should have been had Mr G cleared the arrears in October 2022. Additionally, BOI should report no adverse credit file reporting from October 2022 to when the loan is reinstated.

Furthermore, given that I feel that Mr G has incurred the defaulting of his account because of the misinformation provided to him by BOI, I no longer feel that the £500 compensation I'd previously instructed is a fair and reasonable amount here. Accordingly, I'll also be provisionally instructing BOI to pay an increased amount of £750 compensation to Mr G.

I'm aware that Mr G feels that a much larger amount of compensation should be instructed here. But it must be remembered the Mr G was already incurring adverse credit file reporting because his BOI loan was in arrears. Also, the arrears repayment plan that BOI had (erroneously) agreed to with Mr G meant that this adverse credit file reporting would have continued to have been present on Mr G's credit file for several further months.

Accordingly, and in consideration of the general framework this service uses when assessing compensation amounts – details of which are on this service's website – while I accept that Mr G has been impacted by what happened, I feel he already was impacted to a lesser degree, and would continue to be, such that £750 is a fair compensation amount.

Mr G responded to my updated provisional decision and confirmed that he was happy to accept it. BOI also responded, on 17 April 2024, and said that they were trying to locate a copy of the income and expenditure review that Mr G conducted with them when he discussed his account arrears with them. But BOI haven't subsequently provided any further updates or comments within the timeframe given for them to do so.

Upon consideration, I don't feel that the income and expenditure information that BOI have referenced would have any impact on my decision here. And this is because I'm satisfied from the availability-of-funds information that Mr G has provided to this service that he did

have the money to make the necessary payment to avoid the defaulting of his account, and that he was keen to do so – as his actions in contacting BOI and arranging a repayment plan demonstrate.

Because of this, it remains my position that if Mr G had been given correct information by BOI about what he needed to do to avoid the defaulting of his account, that he would in all reasonable likelihood have made the required payment so that his account would not have been defaulted. And this is regardless of whatever income and expenditure information Mr G may have given to BOI.

All of which means that I see no reason not to uphold this complaint in Mr G's favour on the basis explained in my updated provisional decision above. And I therefore confirm that my final decision is that I do uphold this complaint on that basis accordingly.

Putting things right

BOI must reinstate Mr G's loan and remove the default from Mr G's credit file.

This is on the condition that Mr G clears the £1,473.87 arrears that were present on the account when it was defaulted within 30 days of his formal acceptance of this final decision.

This requirement for Mr G to clear those arrears is so that the reinstated loan is up to date and as it should have been had Mr G cleared the arrears in October 2022.

In consideration of the above, BOI should report no adverse credit file reporting from October 2022 to when the loan is reinstated – because the loan should have been up to date from October 2022.

BOI must also pay £750 to Mr G.

My final decision

My final decision is that I uphold this complaint against Bank of Ireland (UK) Plc, trading as Bank of Ireland (UK), on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 31 May 2024.

Paul Cooper
Ombudsman