DRN-5088361

The complaint

A limited company, which I'll refer to as H, complains that The Royal Bank of Scotland Plc failed to transfer a direct debit to make its bounce back loan ("BBL") repayments after it switched its current account to another bank. This ultimately resulted in the bank declaring both H's loans in default and transferring them to a debt collection agency.

What happened

In early 2020, H successfully applied to RBS for a bounce back loan ("BBL") for £17,400 and a fixed rate business loan for £15,000 (the "FRL").

In the same year, RBS's Incentivised Switching Scheme was on offer. Under this scheme, H was invited to switch its business current account to a different provider in return for a cash incentive. H chose to move and the switch was completed in November 2020.

The two loans remained with RBS after the current account switch. For the FRL, repayments were made by direct debit from the new bank current account. Repayments weren't due to start on the BBL until June 2021.

When the BBL repayments fell due, there was no direct debit in place. The BBL therefore began to fall into arrears.

The bank says it made various attempts to contact H about the BBL arrears for several months, before making formal demand for the full repayment of the BBL in October 2021.

H's director phoned the bank in November 2021 and a Pay-As-You-Grow ("PAYG") capital and interest repayment holiday was agreed. This meant that no repayments were due until June 2022 and all existing arrears were consolidated.

Both loans were transferred to RBS's recoveries department in February 2022, then later transferred to an external debt collection agency.

H contacted the Financial Ombudsman in November 2023 and our service referred the complaint back to the bank to give a response. The bank responded in January 2024. RBS did not uphold the complaint as they said they had not done anything wrong.

H was not satisfied with this response, so it asked the Financial Ombudsman to investigate.

I issued a provisional decision on 2 October 2024. I provisionally concluded that the bank should not have put either loan into default in late 2021/early 2022. I thought RBS should therefore remove any defaults relating to the FRL from H's credit file and allow H to resume paying as agreed and reach an arrangement for clearing the arrears. I made the following points:

Did the bank act fairly in relation to the BBL?

The bounce back loan scheme was a unique Government-backed scheme designed to help businesses get through the pandemic. One of its features was that there was a repayment holiday for the first twelve months. In the case of H, this meant that no repayments were due until June 2021.

Unfortunately, this also meant that, at the point when H switched its banking, there was no repayment arrangement to transfer, because repayments hadn't yet begun. There was a dispute about whose responsibility this was, and I could see why H might have assumed that repayments would be set up from its new bank, in line with any other direct debits that were switched. Nonetheless, H had accepted the terms of the BBL, which included making repayments when they fell due. So I thought H had a responsibility to ensure that it was making its repayments once they fell due.

There was also a dispute about whether any of RBS' reminders were received by H. RBS' records indicate that they sent various communications by SMS, email and post, as well as by automated alerts on online banking. H said it received none of these, but as I explained above, it is my view that H had a responsibility to monitor whether the contractually required repayments were being made. Taking all the evidence into account, I believed that H ought to have been aware that it wasn't keeping up its repayments on the loan as required.

Given the accumulated arrears, I didn't think it was unfair of the bank to issue a formal demand in October 2021 and I could see this was sent to the company's registered address, which I thought was a reasonable address to use.

The bank's records show that H's director phoned them in November 2021 and a repayment holiday was agreed. This was an error on the part of the bank, since their formal demand letter had said that H would no longer be able to make use of any PAYG options as the loan was in default.

RBS sent H's director the documentation to put in place the PAYG repayment holiday and both sides now accept that this was signed. Once this had been signed, I consider that the bank was contractually obliged to honour this agreement, even if they had agreed to it in error. This meant that H did not need to make any repayments to its BBL until June 2022. It also meant that all previous arrears were consolidated into the loan, so the loan was effectively back in order.

The bank's records show that it transferred H's loans to its recoveries function in February 2022. This meant that the loans were transferred while the repayment holiday was in place. I didn't think this was correct or fair, since the PAYG agreement had regularised the loan, so H was not in breach of anything. I therefore considered RBS had made an error in transferring H to recoveries at that point.

I am unclear as to when exactly H's debts were placed with third party debt collection agents. But given that I didn't think the transfer to recoveries was fair, it followed that I didn't think the use of a debt collection agency was fair either.

Did the bank act fairly in relation to the FRL?

H made repayments to the FRL from the outset and the direct debit used to claim these repayments was successfully switched to H's new bank. Repayments therefore continued after the current account switch until December 2021.

After December 2021, although H's new bank has confirmed the direct debit remained active, no repayments were claimed by RBS. The bank has acknowledged that this was due to their action not H's. They said this was because they were in the process of transferring both loans to their recoveries function by this point.

I asked for a copy of the formal demand sent for the FRL and RBS have now told us that no formal demand was ever sent. This is a further error on the part of the bank. A formal demand is a legal document and an important step in taking any recoveries action. Without it, the bank has not notified its customer that an event of default has occurred. This is particularly relevant in this case, when the FRL was actually up-to-date on its repayments until RBS ceased to claim them. My provisional view is therefore that, without this formal demand, the bank have not exercised their right of cross-default and the FRL is therefore not in default.

In my view, H was effectively prevented from keeping the loans in order through the bank's actions. Once in recoveries, the bank ceased to claim the FRL payments and they were seeking repayment in full of both loans rather than a resumption of monthly instalments. My provisional thinking was that it was not fair to use what happened after the incorrect transfer to recoveries to argue that H would never have made repayments anyway.

H's director had repeatedly told us that the bank urged him to repay the FRL and not the BBL. I hadn't seen any evidence of this. But given the fact that there is a personal guarantee for the FRL and the FRL is at a far higher interest rate, I didn't think this advice would be against his interests. And I didn't think any compensation for this would be warranted if it occurred.

The bank agreed to my provisional decision, although they pointed out that if H is not in a position to repay both the contracted loan repayments and arrears, it would end up reverting back into recoveries and be passed again to debt collection agents. Therefore, they said it might suit H to stay with the debt collection agency.

H's director replied to say he had some concerns. He said:

- He had not differentiated between H and himself when escalating the complaint but our service had assumed that it was just H's complaint. There was a personal guarantee for one of the loans.
- I had suggested the bank's advice effectively to bust his company due to the UK government guarantee was in his favour.
- The tone of my provisional decision had suggested that he did not have the funds to repay, which he did not appreciate. H had always had the funds and RBS had failed to ask for them.
- H was willing to pay a reasonable lump sum settlement figure once RBS had taken the actions I had proposed, although he did not expect this to include any interest on the original loan. He assumed I would levy an inconvenience penalty on the bank.

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 haven't been persuaded to change my provisional view. I still consider that the bank didn't act fairly in putting either loan into recoveries in the circumstances.

That said, as I explained in my provisional decision, I don't think H was without fault. H's obligations to make monthly repayments were clearly set out in its loan agreements and I consider it should therefore have ensured its BBL repayments were being made. For that reason, I am not going to award any compensation for the inconvenience caused to H, because I think it could have avoided that inconvenience with more proactive action itself. I therefore think putting things back in the position they would have been in, as I have described, is sufficient redress.

H is a separate legal entity from its director or guarantor. The complaint form the Financial Ombudsman received was for a complaint on behalf of H and this is the only complaint I am considering here. If its director wishes to bring a complaint in his capacity as a guarantor for the fixed rate loan, this would be a separate complaint, to which the bank would need the opportunity to respond. I make no findings here regarding the jurisdiction or likely success or failure of such a complaint, were it to be made.

I realise that H's director has very strong feelings about some of the advice he says the bank have given him. I haven't seen any evidence of this advice so I don't intend to make any findings on it. I certainly did not intend to suggest that "busting" his company was in his, or H's, interests. However, my role here is to decide if the bank did something wrong and if so, what they should fairly do to put things right. I explain how I consider things should be put right below. I don't think the bank needs to do anything further to put right any alleged advice given, as I do not think it affected the events complained of.

Putting things right

First, I think it's worth mentioning that it is not my role to punish the bank, but rather, where I uphold a complaint, to put the complainant back in the position they would have been in but for the bank's error.

I explained in my provisional decision why I did not think writing off the two loans would be fair or proportionate. And I have explained above why I do not intend to award any compensation for inconvenience to H either. I also note that H's director has not made any submissions about inconvenience suffered by H, although I know he feels he has suffered personal distress.

I make no findings on H's comments regarding making a lump sum offer to the bank. This is a matter for the bank and H to resolve.

To put things right, RBS must:

- Bring both loans back from the debt collection agency and resume dealing with H direct.

- Permit H to resume making repayments in line with the original loan agreements on both loans.

- Amend H's credit file to show that the FRL is not in default or arrears and to show an accurate credit record for the BBL.

- Permit H to make use of its remaining PAYG options for the BBL if it so wishes.

- If everything had gone as it should have done, H would have been making monthly repayments on the BBL since mid-2021 (with the exception of the PAYG period) and on the FRL since the start of 2022, when RBS stopped claiming the direct debit. I think it is fair that H should make up the payments it has missed to bring the loans back to where they should have been. RBS must therefore agree a plan with H for it to make up those arrears over a reasonable timeframe, alongside its monthly repayments.

My final decision

I uphold this complaint and direct The Royal Bank of Scotland Plc to put things right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 14 November 2024.

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Louise Bardell
Ombudsman