

## **The complaint**

Mr S, a sole trader, complains that Lloyds Bank PLC has treated him unfairly by putting his loans into default.

## **What happened**

In 2018, Mr S borrowed around £1.1million from the bank, split between a fixed rate treasury loan ("the FRL") and a variable rate loan ("the VRL").

During the pandemic, the bank agreed to several repayment holidays on both loans. Mr S also took out a bounce back loan, which was later refinanced into a £170,000 Coronavirus business interruption loan ("the CBIL") in February 2021.

Mr S therefore had three loans and, from March 2022, three repayments to make each month, two at a variable interest rate and one for a fixed amount.

Mr S's main business current account was with another bank, so it was up to him to transfer enough money into his Lloyds' current account to cover all the repayments.

Mr S didn't always provide sufficient funds, resulting in incidences of arrears on the loans (often corrected shortly afterwards) and an intermittent unauthorised overdraft.

In February 2023, the bank issued a formal demand for the CBIL.

Also in February 2023, Mr S complained about the service provided by his relationship manager at Lloyds. Lloyds accepted that its service could have been better and paid him £100 in compensation.

In March 2023, the bank agreed a support plan. It provided spreadsheets confirming the amounts due on each loan for the next six months at the current interest rate. In return, it set out some improvements it wanted to see in Mr S's accounts. The support plan said he had to achieve this by 30 June 2023.

On 3 May 2023, the bank transferred Mr S's lending to its Recoveries department. The fixed rate on the FRL was ended early and the debt transferred to Mr S's current account.

In August 2023, Mr S made a further complaint, which was not upheld. He then referred this complaint to the Financial Ombudsman to investigate.

I issued a provisional decision on 8 November 2024. I summarised the position on each of Mr S's loans before concluding that his complaint should be upheld. In summary, I said:

I didn't think there was any doubt that Mr S didn't always pay his loans on time. Each of his variable rate loans had been in arrears on a number of occasions and there had been many instances of short term unauthorised overdrafts caused by him not providing enough funds in time to cover the loan repayments.

Mr S's argument was that the bank weren't giving him the information he needed to know how much to repay, particularly once interest rates started going up. I didn't accept this argument. I didn't think it was reasonable to expect the bank to phone him monthly telling him how much to pay, as it had never said it would do this. Mr S's contractual obligations were set out clearly in the loan agreements he signed. And I thought it was Mr S's responsibility to monitor his loans and ensure he provided sufficient funds in good time to cover all the repayments. If he was in any doubt of the exact amounts, it was my view that he should have provided some additional funds to ensure there was enough in the account.

I could also see that the bank had made what I considered to be reasonable efforts to help him. It sent several emails setting out the exact arrears position on each loan, when repayments were due and the current amounts of repayments. It also sent spreadsheets detailing the repayments over the next six months. And it also told him roughly how much difference it would make to each repayment if the base rate increased again.

Mr S has said he never received any statements for the loans or letters regarding the arrears. Lloyds has provided me with copies of a number of arrears letters, all addressed to the address Mr S has given to us. It doesn't necessarily follow that correctly addressed letters will be correctly delivered. But I wouldn't consider it fair to hold Lloyds responsible for the non-delivery of correctly addressed letters, given that the delivery of letters is undertaken by a postal service over which it has no control. Mr S also had access to online banking, so he could have seen the statements there.

Nonetheless, I didn't think the bank had behaved fairly when it transferred his accounts to Recoveries in May 2023 and demanded full repayment.

In summary, when the loans were placed in Recoveries, there were arrears on two of the loans, amounting to three payments in total across the three loans, all very recent arrears. Two of these payments could have been paid, based on available funds, although it's likely that the CBIL arrears would have remained if they had been paid. Any loan arrears represents a potential event of default, but I thought it was fair to say that none of the loans were substantially in arrears.

Another event that I thought highly relevant was that on 9 March 2023, the bank wrote to Mr S to say it was putting in place what it called a Business Support Plan for him. This followed various emails where Lloyds had informed him that it was transferring him to their Business Support Unit and that a Business Support Manager would get in touch with him. It may also have followed a conversation with Mr S, as it is written as though it is setting out in writing something already agreed upon.

The Business Support Plan letter said that it was "a plan to help you through this time". It went on to say:

"What needs to be done

Action 1. Date this action should be completed: 30 June 2023

Further to our previous discussions, we have agreed to provide detailed spreadsheets confirming the monthly repayment schedule for each loan confirming set amounts until final repayment. This has been issued. A Formal demand has also been issued due to the arrears seen since December 2022. Due to the concerns over the trading performance of the business we have agreed that you will monitor the account to improve the below with the support of BSU.

- Reduce returned items
- Reduce re-occurring arrears
- Continue to reduce the amount of days overdrawn”

There are no other actions listed and the letter concludes by saying that the relationship manager will “be in touch to see how you’re getting on with your support plan”. The term BSU is not defined, but I understand that this is the bank’s Business Support Unit. I haven’t seen any evidence that this unit ever got in touch with Mr S or offered any support.

Mr S said that he lost online access to his accounts in April 2023. I could see that by 3 May 2023, his relationship manager had informed him that the accounts were with Lloyds’ Recoveries function. This was less than two thirds of the way through the period set out in the plan letter.

The “actions” required of Mr S by this plan were in my view, poorly defined and subjective. It did not say there had to be no further instances of arrears or overdrafts, just a reduction. In any case, I hadn’t seen any evidence that any reviews of the Business Support Plan were carried out. If they had been, I did not think it was at all clear that Mr S would have failed.

In March, the only returned items were the VRL and FRL repayments, which were reverse, even though Mr S paid in enough funds to cover them the same day. In April, I cannot see that any items were returned, although the bank used the funds that could have covered the VRL and FRL instalments in March to make up the CBIL arrears. There were no overdrafts in March and an overdraft for three days in April, of less than £1,000 (which, in the context of monthly loan repayments of over £9,500 I do not consider substantial).

In any case, the Business Support Plan clearly set out a deadline of 30 June 2023. So I didn’t think it was fair to cut this short, particularly without any further communication to explain why the bank had taken that action.

I also noted that before a borrower can be called upon to repay loans in full, a formal demand letter must be sent to give notice that there has been an event of default causing the loans to become repayable in full. I accepted that potential events of default existed on each loan, as repayments had been missed. But a formal demand is still a necessary legal step in requiring repayment and I hadn’t been provided with evidence that one was sent for each loan.

I could see that a formal demand was sent for the CBIL in February 2023, at which point this loan was two payments in arrears. The notice said that the bank was ending the agreement due to an event of default and “the full amount owed, as shown below, needs to be repaid within 14 days of the date of this letter”. However, after this letter, the bank allowed the loan to continue to run as usual for over two months, collecting monthly instalments and making up the arrears. In these particular circumstances, I was provisionally minded to regard this formal demand as withdrawn, since the bank had chosen to disregard the fact that it had declared the loan repayable in full and allowed it to be brought back into order without any further communication.

Mr S’s loans were all unregulated. That means there were no regulations set out by the Financial Conduct Authority that must be followed. However, Lloyds is a signatory to a body called the Lending Standards Board (“LSB”) that sets out standards for business lending. In reaching my decisions, I needed to have regard to best practice amongst other things and I thought it reasonable to regard the LSB’s guidance as best practice for business lending. This includes, under “Treatment of Customers in Financial Difficulty”, the following:

6. If a Firm is aware that a customer is, or suspects that they are, in financial difficulty but is able to uphold their borrowing commitments to the Firm, the customer should be given the opportunity to take action to turnaround the business.

The standards also include a section on Business Support Units, that contains the following:

4. Firms should provide clear communications to customers to enable them to understand why they have been transferred to a business support unit, the firm’s concerns and the proposed next steps.

6. Firms should support a customer’s turnaround plan where the firm has assessed the business to be viable. Firms should ensure that where a turnaround plan is agreed with the customer, the terms of the support are documented.

I thought it was reasonable to regard Mr S’s Business Support Plan as a “turnaround plan” as referred to by the LSB. Having agreed such a plan, I thought the bank should have supported Mr S in achieving it and ensured he had sufficient time to carry it out. For the reasons set out above, I did not think that Lloyds did this in Mr S’s case.

Given the lack of clarity of the objectives of the plan, and the reasonable account conduct up until 3 May 2023, I thought it was more likely than not that Mr S would have achieved the Business Support Plan as at 30 June 2023 and the loans would not have been put into default at that point. I therefore intended to direct the bank to take some action to put things right.

My proposal below was based on Mr S’s business being able to afford the loan repayments. I said this on the basis that he had told us that the business is capable of servicing its debts. If this was no longer the case, my proposal likely not to be the best solution for Mr S. He should liaise with bank’s Recoveries function to come up with an acceptable and affordable repayment plan if that was the case.

My provisional intention was to direct the bank to put Mr S back in the position he would have been in if the bank had not transferred his accounts to Recoveries prematurely in May 2023. So I considered the bank should:

- Reinstate the VRL and the CBIL and permit Mr S to resume making monthly repayments as set out in the respective loan agreements.
- Re-establish the FRL on a variable interest rate of base rate plus 2.35%, which is what was set out in the agreement as payable once the fixed rate ended (and it would have ended in 2023 in any event).
- Remove any defaults from Mr S's credit file, although any arrears records should remain so that the record is accurate.
- Were it not for the bank's actions, Mr S would have continued making loan repayments from May 2023 up until now. Mr S and the bank would need to reach a suitable agreement for dealing with the considerable arrears on all three loans, including those that have now accumulated since they have been in Recoveries.
- There was little doubt that the bank's errors would have caused Mr S both considerable distress and inconvenience. The bank demanded full repayment of a very large debt, which would require him either to refinance (difficult given the likely state of his credit file after these defaults, particularly at an affordable interest rate) or to sell the properties that are his family's livelihood. Generally in such cases, I would think that some compensation for the stress and time these events have caused would be warranted. However, in this case, I could see that the bank has not charged Mr S any interest since the loans have been in Recoveries. This represented a considerable saving to Mr S, which I was minded to think was sufficient to compensate him. Needless to say, the bank must not add this frozen interest on to the loan balances.

The bank agreed with my provisional findings, but said that it was not possible to reopen or reinstate Mr S's loans, so it would need to open new ones. It proposed refinancing Mr S's debts onto two new loans as follows:

- Base rate loan for £483,456.59 to consolidate the overdraft and FRL balance over a term of nine years at 2.35% plus Bank of England base rate. This is in line with the original expiry date and interest rate (once the fixed rate finished) of the FRL.
- Base rate loan for £524,398.11 to combine the balances of the CBIL and the VRL over a term of 14 years at 2.35% plus Bank of England base rate. This is in line with the original expiry date of the VRL.
- Mr S might prefer to make a single contribution to reduce his borrowing up front, based on the funds he will have retained while not servicing the loans. This is something he could discuss with his relationship manager.
- In order to demonstrate serviceability, before the refinancing could proceed, the bank would require the business's accounts for the last three years, the latest lease agreements for all rented properties secured to the bank and a statement of personal assets, liabilities, income and expenditure from Mr S.

- Reporting to credit reference agencies was automated and the bank was unable to see exactly what was on Mr S's credit report. If Mr S obtained and provided a copy of it, Lloyds would take steps to remove any incorrect data. If Mr S incurred a fee for this report, it would also reimburse this.

Mr S accepted my provisional decision as well, but asked me to take the following into account:

- He was seeking compensation for his business and for the stress his family had been put through and as a deterrent to Lloyds not to do the same again.
- His family had lived under the threat of losing everything for two years. Their lives had come to a standstill and the anxiety had been immense.
- In view of the above, he would like a different relationship manager.
- He would like his internet banking to be reinstated.
- While his accounts were in Recoveries and neither the bank nor we were agreeing with him, he felt obliged to try and refinance via a broker, incurring fees of £6,504 plus VAT. Lloyds should pay this.

### **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 would like to thank both parties for their helpful engagement and constructive responses to my provisional decision.

Lloyds has explained that it is impossible for it simply to reinstate Mr S's old loans. Its systems do not permit this, the FRL was closed to the current account and the CBIL scheme no longer exists. I've carefully considered the bank's proposal for two new loans to refinance Mr S's borrowing and I think this proposal is fair and equivalent to what Mr S had before. Mr S's fixed rate would have expired anyway by this point and managing two loans will be slightly easier for him than three.

I think Lloyds' information request from Mr S is also reasonable. As I said in my provisional decision, this outcome is only right for Mr S if it is affordable for his business. He has told me that it is, but I consider it is responsible for Lloyds as a lender to ask for evidence of this before it moves Mr S's debts out of its Recoveries function.

I have thought carefully about Mr S's request for compensation for the stress that Lloyds has put him and his family through. I do not doubt this stress and I have taken into account that the period of time this has been hanging over him has been prolonged. However, I think Mr S may have overlooked the fact that he has not been paying interest on borrowing of over £1 million for some time. If Lloyds had not made an error, he would have been paying interest for the entire period. The bank has not told me exactly when interest was frozen, but I know Lloyds confirmed to Mr S that it was frozen as at 15 January 2024, if not before. Interest at base rate plus 2.35% over that period is a considerable sum that Mr S has saved. I am therefore not going to direct the bank to pay any additional compensation on top of this amount.

For the same reason, I am not going to direct the bank to cover Mr S's consequential losses from the broker's fees. I think the interest Mr S has saved, which will be far more than this cost, is sufficient. I am not able to make awards as a deterrent.

The question of how and by whom Mr S's accounts are managed within Lloyds is a matter for the bank's discretion. I am not going to make a direction on that front, but as it is clear that Mr S has lost confidence in his previous relationship managers, it might work better for all parties if different relationship managers are put in place.

### **Putting things right**

My aim here is to direct the bank to put Mr S back in the position he would have been in if the bank had not transferred his accounts to Recoveries prematurely in May 2023, but without adjusting for the interest which has been frozen.

The below is on the basis that Mr S can demonstrate affordability of the debt. If he cannot do this, then I do not direct the bank to refinance as shown below, but rather the borrowing should remain in Lloyds' recoveries department.

Subject to Mr S providing his annual accounts, any lease agreements for properties used as security and a personal asset, liability, income and expenditure statement showing that he can afford the repayments, the bank should:

- Refinance Mr S's old fixed rate loan (and overdraft balance) on to a new variable rate loan at 2.35% plus Bank of England base rate. The expiry date for the new loan should be the same as Mr S's old fixed rate loan.
- Refinance Mr S's old CBIL and variable rate loan on to one variable rate loan at 2.35% plus Bank of England base rate. The expiry date should be the same as for the old variable rate loan.
- The bank may not charge any fees to set up these new loans and may not add back the interest not charged while the accounts were in Recoveries.
- Open a new loan servicing account for Mr S and fully reinstate Mr S's internet banking, so he can see all his accounts.
- If Mr S provides a copy of his credit report and it shows defaults or recovery action, the bank should correct this. The bank should also refund any costs of such a report, on provision of evidence of that cost from Mr S.

### **My final decision**

For the reasons set out above, I uphold this complaint and direct Lloyds Bank PLC to put things right as specified.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 January 2025.

Louise Bardell  
**Ombudsman**