

The complaint

Mr M, a sole trader, is unhappy with the actions of National Westminster Bank Plc (“NatWest”) surrounding their pursuit of him for an outstanding Bounce Back Loan (“BBL”).

What happened

Mr M received a £10,000 BBL from NatWest in January 2021, and he became liable to make monthly payments towards the loan from February 2022 onwards. But Mr M didn’t make any payments towards the BBL from that time, which meant that the loan fell into arrears.

Mr M explained to NatWest that his sole trader business was no longer operating and that because of this he didn’t feel he was obliged to repay the BBL. But NatWest didn’t agree, and because Mr M continued to not make any payments towards the loan, they defaulted the BBL and passed Mr M’s debt to a debt recovery agency (“DRA”). Mr M wasn’t happy about this, so he raised a complaint.

NatWest responded to Mr M and said they didn’t feel that they’d done anything wrong by administering the BBL as they had, including that they continued to consider Mr M to be personally liable to repay the balance outstanding. Mr M wasn’t satisfied with NatWest’s response, so he referred his complaint to this service.

One of our investigators looked at this complaint. But they didn’t feel NatWest had acted unfairly in how it had managed the situation and so didn’t uphold the complaint. Mr M remained dissatisfied, 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.

Having done so, I’d like to begin by confirming that this service isn’t a regulatory body or a Court of Law and doesn’t operate as such. Instead, this service is an informal, impartial dispute resolution service. And while we do take relevant law and regulation into account when arriving at our decisions, our remit is focussed on determining whether we feel a fair or unfair outcome has occurred – from an impartial perspective, after taking all the factors and circumstances of a complaint into consideration.

Mr M states that he applied for the BBL on the basis of government guidelines which said that BBL borrowers faced no penalty or consequence should they fail to repay the loan. And Mr M has explained that this stipulation was written into the BBL contact he signed.

However, the guidelines that Mr M refers to here apply to limited companies – which can benefit from a limitation of liability regarding corporate borrowing. But Mr M didn’t receive the BBL on a limited company basis. He received the BBL on a sole trader basis. Because of this, the limitations of liability to which Mr M refers here don’t apply. And it must be noted that an individual who receives a loan on a sole trader basis remains personally liable for that loan, even if the sole trader business for which the loan was taken ceases to trade.

It also isn't the case that the limitation of liability to which Mr M refers is written into his BBL contact. I've read the BBL agreement which Mr M signed and accepted in January 2021, and I note that the first section on the first page of that BBL agreement includes the following:

"The customer is responsible for the repayment of this loan... The Customer remains responsible for repaying the whole of this loan at all times (including in the event of a default) and if the Customer fails to do so this may negatively affect the Customer's credit score or rating with credit rating agencies."

It therefore seems that Mr M's belief that he shouldn't be considered liable for his outstanding BBL balance is based on a misunderstanding by Mr M regarding liability restrictions which don't apply to him. And in accordance with the above, I'm satisfied that because Mr M received the BBL on a sole trader basis, it is fair for NatWest to continue to consider him liable to repay the BBL balance, even in consideration that Mr M's sole trader business no longer trades.

Mr M has also said that he believes NatWest have already recovered the BBL balance via the government guarantee and so should no longer pursue him for that balance. But the government guarantee requires lenders to attempt to recover a BBL balance by all reasonable means. And it's only when a lender can confirm to the government that they have tried to recover the balance from the borrower by all reasonable means that the lender can then seek to reclaim the money that they've lost from the government.

Additionally, NatWest aren't expected or obliged to provide information or evidence to Mr M about any recovery they may or may not have made regarding the government guarantee. Although given that the BBL borrower remains liable for the debt at all times, NatWest would be expected to reimburse any money recovered from the borrower to the UK Government if such a need arose.

Mr M is also unhappy that NatWest have passed his BBL debt to a DRA. But the transfer of debt to DCA's is a common practice and one which is addressed and permitted by the terms of the BBL agreement – specifically, section 12 – which Mr M agreed and consented to when he took the BBL. And NatWest didn't require any further authorisation from Mr M beyond this to transfer his debt to a DRA as they did.

Finally, Mr M feels that his repaying the BBL should be contingent on the position of his sole trader business. But, as alluded to above, there is no legal distinction between a sole trader and the person who is the sole trader. And this means that when a person takes a loan on a sole trader basis, and then the sole trader business ceases to trade, that person who was the sole trader remains personally liable for that loan.

All of which isn't to say that Mr M can reasonably afford to repay his BBL here, and I accept that Mr M's personal financial position may be such that repayment of the BBL isn't reasonably affordable for him at this time. But I am satisfied that it's fair for NatWest to consider Mr M to be personally liable to repay the BBL, regardless of the state of his sole trader business. And I'm also satisfied that it's fair for NatWest to pursue Mr M for the outstanding BBL balance in the manner they see fit, in order to satisfy their own requirements and obligations, including in regard to the government guarantee.

Ultimately, Mr M received £10,000 from NatWest here, which he hasn't paid back. And it's almost always going to be the position of this service that it's fair that a person who has received loan funds can be pursued for that money in line with the terms of the loan. And given all that I've explained above, I see no reason why that shouldn't be the fundamental expectation here.

I realise this won't be the outcome Mr M was wanting, but it follows from the above that I won't be upholding this complaint or instructing NatWest to take any alternative action. I hope Mr M will understand, given all I've explained, why I've made the final decision I have.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 December 2023.

Paul Cooper
Ombudsman