DRN-3936424

The complaint

Mr N is a sole trader. He complains that Lloyds Bank PLC ignored his attempts to make repayments and settlement offers in relation to his Coronavirus Business Interruption Loan ("CBIL"). He also says that the bank opened the loan in his name, when it should have been in the name of a limited liability partnership ("LLP").

What happened

Mr N ran a business that had banked with Lloyds for some years.

In 2020, the pandemic prevented him from trading and he successfully applied for a CBIL. His business later failed completely.

In mid-2021, repayments on the CBIL were due and Mr N said he had no money to cover them.

In August 2021, Mr N wrote to the bank and offered £3,000 in full and final settlement of the CBIL. The letter mentioned that he had previously offered £7,000. The bank didn't reply.

In November 2021, the bank issued a formal demand for the CBIL for £25,001 plus a small amount of interest. The letter said the bank might begin enforcement action if the loan wasn't repaid in 14 days.

Mr N complained that the bank was ignoring his attempts to contact them. The bank initially said they could find no record of any contact from Mr N. They then found his August 2021 letter and apologised for not responding to it, but didn't accept his offer.

Mr N asked the Financial Ombudsman to look into what had happened. In the course of our investigation, he also argued that the loan should have been in the name of a limited liability partnership ("LLP"), not a sole name (or a non-limited liability partnership).

One of our investigators looked into what had happened and didn't recommend upholding Mr N's complaint. She thought the bank had acted reasonably by setting up the CBIL in the name of the entity that held the bank account and that C should have queried that if it was wrong. She also said that, although the bank should have replied to Mr N's letter, it was reasonable for Lloyds to have rejected his settlement offer.

Mr N asked for an ombudsman to look at the matter again. He made the following points, in summary:

- He had ticked the LLP box and written in the registered number for the LLP on the application form.
- Lloyds had set up the loan, so how would he know which name they'd put it into?
- Lloyds had later sent correspondence to "the partners" and asked for both partners' signatures – but his existing business current account was a sole trader account.

- His settlement offers had been (and were still being) ignored.

- Given the 80% Government backing, he couldn't see why the bank was ignoring a fair offer.

- Our investigator had mentioned that the bank needed to obtain income and expenditure information before considering a lower settlement offer. So why hadn't the bank asked for this information?

- He had also made several small payments in an attempt to pay down his loan. He thought it was illegal for the bank not to accept these into the loan and let him pay what he could afford.

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.

There have been some arguments made in this case about what is lawful in relation to repaying the loan in question. So I'd like to begin by explaining 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. Whilst we take relevant law and regulation into account when arriving at our decisions, my role is to determine whether a fair outcome has occurred, after taking all the circumstances of the complaint into consideration.

It may be worth highlighting that the loan Mr N has taken out is a commercial loan to his business. This means that he doesn't have all the protections he would have if he'd taken out a regulated personal loan. This is why as part of the CBIL application, Mr N had to sign a "Declaration for exemption" confirming that "I/We understand that I/We will not have the benefit of the protection and remedies that would be available to me/us under the Financial Services and Market Act 2000 or under the Consumer Credit Act 1974 if this agreement were a regulated agreement under those Acts".

There's been some confusion about some small payments Mr N told us he'd made, so I'll start with my findings on those. I can see from the statement for the Loan Servicing Account ("LSA") that Mr N made three payments into this account during 2022. At the time these payments were made, the CBIL was already in arrears. Interest on the loan was being debited to the LSA, resulting in the LSA becoming overdrawn. The bank was also adding unpaid item and unauthorised borrowing fees each month, so Mr N's small payments were swallowed up by these fees and interest.

I know Mr N feels the bank acted unfairly in not paying these amounts into the loan account. But I'm not aware of any rules requiring the bank to transfer these amounts into a business loan in these circumstances. In any case, these payments were too small to have made any difference to the loan going into default and being transferred to the bank's Recoveries department. I say this as they amounted in total to a fraction of the amount due each month. So I don't think it would have made any difference if the bank had used them to reduce the loan balance or the accumulated overdraft on the LSA.

I've also seen that the bank have recently decided to refund the fees charged to the LSA and have written to Mr N to explain that this is because they don't feel the fees were explained clearly enough.

Both sides agree that Lloyds should have communicated better, and in particular, should have responded to Mr N's letter of August 2021. However, the bank wasn't obliged to accept

his offer in full and final settlement. Given the information the bank had at that point, and the amount of the offer compared with the amount of loan, I'm satisfied that they would not have accepted this offer had they responded. So I don't think the lack of response has made a difference to the outcome.

As our investigator explained, the Government backing for the BBL makes no difference to the approach the bank is expected to take when it goes into default. Banks are expected to make reasonable efforts to recover the debt, they can't just call in the Government's guarantee. So the guarantee shouldn't be a consideration in deciding whether a settlement offer is acceptable or not.

Since Mr N referred his complaint to our service, Lloyds have written to Mr N making it clear that they would like to have a discussion with him to agree a mutually acceptable repayment plan and explaining who Mr N should contact in their Recoveries department. So I think that the bank have now taken steps to correct their earlier lack of responsiveness. Indeed, it may be that Mr N has now reached some kind of arrangement with them or its debt collection agents.

Our investigator mentioned that the bank needed to obtain income and expenditure information before making a decision on a settlement offer. That may well be a part of its process, particularly before any repayment plan is agreed. I agree with Mr N that if the bank considers this information is required, then they should ask for it. But I don't think the absence of a request takes away any of Mr N's obligation to repay the debt. I think income and expenditure is generally part of the discussion with Recoveries so I think it would follow from Mr N making contact with the bank as described above.

In summary, although Lloyds' communication could have been better on several fronts here, I don't think Mr N has suffered a loss or ended up in a worse position as a result.

Should the CBIL have been in the name of a LLP?

Mr N has said that he applied for the CBIL in the name of a LLP that he had set up in 2019. This company has since been dissolved and he therefore argues that the CBIL should be written off.

Having looked carefully at the application form for the CBIL, I think it's likely that Mr N intended to apply for the loan in the name of the LLP of which he was a partner. I say this because he ticked the LLP box on the form and provided the correct registered number of the LLP. It's clear that the bank didn't notice this and sent back the agreement with the unincorporated sections filled in. Mr N then signed this agreement, thereby accepting it in his own name.

I agree that the bank should ideally have noticed the mention of the LLP on the CBIL application. That said, I can understand why they didn't as they were under pressure to process these loan applications fast in the midst of a pandemic, when everyone was newly working from home.

I've thought about what I think would have happened if Lloyds had noticed the discrepancy. I don't think it's likely that the bank would have agreed to grant the loan to an LLP that didn't bank with them and of which they had no previous knowledge. So I don't think a CBIL in the name of the LLP would have been the outcome.

Mr N was very keen to obtain the funds at that point, so I think it's more likely than not that if Lloyds had noticed the LLP name, they would have rejected the application and he would have reapplied for a CBIL in his sole trader name – or else applied for the slightly later Bounce Bank Loan scheme in his sole trader name. (Lloyds only accepted bounce back loan applications from existing customers, so he couldn't have had a bounce back loan in the name of the LLP either).

Mr N has argued that the correct legal form for the account is governed by Companies House not the bank, but I don't think it's as straightforward as that suggests. It's possible for a sole trader business - or an unincorporated partnership - and a LLP with the same name to exist at the same time. So the bank couldn't just assume that a sole trader business had turned into a company, even if Lloyds had known the LLP existed, which I don't think they did. There's no evidence that Mr N informed the bank of the LLP's existence before the CBIL application.

I accept that Lloyds' letters after the CBIL was agreed didn't make it clear in what name the loan had been set up. They addressed some letters to "the partners" and asked for both partners to sign a Data Protection agreement. So I don't think it's surprising that Mr N hadn't noticed or queried what name the CBIL was in. But for the reasons explained above, I don't think that changed the outcome, as I don't think Lloyds would ever have given the LLP a loan.

In order to decide what would be a fair outcome in this case, I need to take into consideration the fact that, regardless of what name Mr N would have liked the loan to be in, the funds were transferred to his business account and that business had use of them from there. Mr N has confirmed the money was used to keep the business going for a time. And Mr N's actions in trying to agree a settlement have implied that he accepted he was liable. Overall, as Mr N's business had use of the funds, I don't think it would be fair to say that the loan should be written off because the LLP is dissolved.

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 Mr N to accept or reject my decision before 23 August 2023.

Louise Bardell
Ombudsman