

The complaint

A limited company, which I'll refer to as 'T', is unhappy that The Co-operative Bank Plc has registered a CIFAS marker against it for evasion of payment.

T's complaint is brought to this service by its director, whom I'll refer to as 'Mr B'.

What happened

In August 2020, Mr B successfully applied to Co-op for a £50,000 Bounce Back Loan ("BBL") on T's behalf, with the loan funds being received into T's business current account ("BCA") that same month. The terms of the BBL meant that T would become contractually required to begin making monthly payments to the loan in September 2021. However, Mr B later applied for a Pay As You Grow ("PAYG") payment deferral option, which meant that T's contractual requirement to begin making payments towards the BBL was put back until March 2022.

However, T didn't make any payment towards the BBL in March 2022. Mr B spoke to Co-op about this and explained that T was waiting for a large payment from a client which, when received, would be used to repay the BBL in full.

A further BBL payment was missed by T in April 2022, meaning that the loan was now two months in arrears. Mr B spoke with Co-op about this again and reiterated that T was waiting for payment from a client and said that legal proceedings had been initiated by him on T's behalf to recover the money that T was owed. Co-op explained to Mr B that they could consider providing T with a capital payment deferment plan, but that they would need to see evidence of the outstanding payment and ongoing legal action that Mr B had advised them of before doing so.

Following this, Co-op didn't receive any contact from Mr B and further BBL payments were missed by T. This led to Co-op defaulting T's BBL for non-payment and to apply a CIFAS marker against T. Mr B wasn't happy about this, so he raised a complaint on T's behalf.

Co-op responded to Mr B and explained that they didn't feel they'd acted unfairly by defaulting T's account or by applying the CIFAS marker as they had. Mr B wasn't satisfied with Co-op's response, so he referred T's complaint to this service.

One of our investigators looked at this complaint. But they didn't Co-op had acted unfairly in how they'd managed the situation and so didn't uphold the complaint. Mr B remained dissatisfied, so T's complaint 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.

I also note that Mr B has provided several detailed submissions to this service regarding T's complaint. I'd like to thank Mr B for these submissions, and I hope he doesn't consider it a discourtesy that I won't be responding in similar detail here. Instead, I've focussed on what I consider to be the key aspects of this complaint, in line with this service's role as an informal dispute resolution service.

This means that if Mr B notes that I haven't addressed specific points that he's raised, it shouldn't be taken from this that I haven't considered those points – I can confirm that I've read and considered all the submissions provided by both T and Co-op. Rather, it should be taken that I have considered that point but that I don't feel it necessary to address it directly in this letter to arrive at what I consider to be a fair resolution to this complaint. Mr B should also refer to comments on those points that he's received from our investigator, with whom I can confirm I'm in agreement with regarding those points.

For a BBL application to have been successful, the applicant business must have self-declared that it met the BBL eligibility criteria set out by the British Business Bank, who administered the scheme.

Under the rules of the BBL scheme, an applicant had to have been carrying on business prior to 1 March 2020 and could borrow up to 25% of their annual turnover – up to a maximum amount of £50,000 – for which the 2019 calendar year's turnover was to be used. If the applicant had only been established after 1 January 2019, then the applicant could provide an estimate of projected annual turnover in support of its application – from the date it started business.

When Mr B applied to Co-op for a BBL in T's behalf, he declared that T had annual income of over £250,000. This meant that T qualified for a BBL of £50,000 – the maximum borrowing permitted by the scheme – and T received £50,000 into its BCA following its successful application.

But while lenders such as Co-op weren't expected to verify the accuracy of the information self-declared by businesses such as T at the point of application, they are expected and entitled to confirm the accuracy of the information declared in BBL applications on an ad-hoc basis now that the scheme is closed to new applicants.

In this instance, following the conversations that Co-op held with Mr B about T's failure to meet its repayment commitments towards the BBL, Co-op have developed concerns about the accuracy of the information declared on T's BBL application. Specifically, Co-op note that T's annual accounts appear to show that T hasn't traded and has zero annual turnover – which is in obvious contradiction to the £250,000 annual turnover that Mr B declared on T's BBL application.

Mr B has explained that T was dormant until late 2019, and that because of this he used T's estimated turnover in the BBL application, as was permitted by the BBL scheme rules. But as explained above, the scheme rules only allow estimated turnover to be used if the business was established after 1 January 2019, and T was established in 2017.

Additionally, it also appears that when T received the BBL funds, some of the money was transferred to Mr B's personal bank account while other money was used to purchase items for another company owned by Mr B – neither of which are permitted by the scheme rules. And while Mr B referenced the payment to his own account as being a payment of his salary,

T's annual accounts for the time that Mr B made this payment don't show any trading or turnover or declare any salary paid to Mr B – as the sole director of T.

Ultimately, despite benefitting from the twelve-month payment deferral period that was a feature of the BBL scheme, as well as from a further six-month deferral period provided by the PAYG option, T hasn't made any payments towards the BBL.

Given the actions and events which I've described in the preceding paragraphs, I don't feel that it was unreasonable for Co-op to have concerns about T's BBL. And I don't feel it was unreasonable for Co-op to want evidence of the money T was expecting to receive and the legal proceedings T had initiated to try to recover that money before committing to providing T with further payment deferral options on the BBL.

But Mr B didn't provide the evidence of the interactions he'd had with the company that owed T money or of the legal action he'd initiated on T's behalf. And T continued to not make the payments that were contractually required of it on the BBL. Because of this, I'm satisfied it wasn't unfair for Co-op to issue the formal demand to T and to later default T's BBL for non-payment. And I'm also satisfied it wasn't unfair for Co-op to apply the CIFAS marker to T's record. This is because I feel that it's reasonable for Co-op to have concluded, from the actions of Mr B and T as described above, that T has evaded making BBL payments.

Mr B denies that he failed to contact Co-op on T's behalf after the conversation in April 2022, and he's provided letters to this service dated 17 June and 2 November 2022 which he says were sent to Co-op but not responded to. And Mr B has also explained that he tried to call Co-op on several occasions but was unable to get through because of long hold times.

Co-op don't have any record of receiving these letters from Mr B. And while I can appreciate there may have been long hold times when Mr B tried to call Co-op, this doesn't exonerate Mr B of his responsibility to contact Co-op on T's behalf. He could have done this either by continuing to hold on those calls, by visiting a Co-op branch, or by emailing Co-op using the email address that Mr B had successfully contacted Co-op on previously, but which he appears not have utilised in this instance. In short, I don't feel that Mr B did make a reasonable effort to contact Co-op as he claims.

Finally, Mr B has said that he feels that Co-op have discriminated against him because of he has a foreign surname. Having looked at all the evidence here, I don't feel that that Co-op have done so. Nor do I think that Co-op has acted unreasonably or unfairly. Indeed, I've seen nothing to suggest that Co-op's actions here aren't reasonably justified by the events that have taken place, or that such actions wouldn't be taken by Co-op against other businesses under similar circumstances. I hope it helps Mr B to know that someone independent and impartial has considered this aspect of his complaint.

All of which means that I don't feel that Co-op have done anything wrong or acted unfairly here, and it follows that I won't be upholding this complaint or instructing Co-op to take any action. I trust that Mr B will understand, given what I've explained, why I've made the final decision that 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 T to accept or reject my decision before 12 October 2023.

Paul Cooper
Ombudsman