

The complaint

A company, which I'll refer to as S, complains that Santander UK Plc wrongly told it that its Coronavirus Business Interruption Loan Scheme ("CBILS") overdraft could not be extended.

S is represented by its director, Mr O.

What happened

In May 2020, S successfully applied for an £85,000 overdraft facility from Santander, as part of the Coronavirus Business Interruption Loan Scheme. This was a government-backed scheme designed to help small and medium-sized businesses get finance more quickly if they were adversely affected by the coronavirus outbreak.

In late 2022, Santander wrote to S to say the facility was coming to an end. In February 2023, Mr O had a conversation with the bank, in which Santander said it would only consider an application to continue the overdraft if S provided a director's personal guarantee. S said it was pursuing external refinancing to repay the overdraft and provide additional funding.

In April 2023, it became apparent that S would not have alternative funding in place in time. The overdraft was transferred to Santander's Recoveries function and S's director spoke to the bank to discuss his options.

Following this discussion, Santander made some enquiries of the British Business Bank ("BBB"), which runs the CBILS, to investigate whether there was any way of renewing S's loan.

Santander gave S a temporary extension of its overdraft, which subsequently expired without repayment.

S complained to Santander that its RM had misled him by saying there was no possibility of renewing the CBILS overdraft, when Recoveries later told him there was. Mr O's understanding was that S's request to renew the CBILS overdraft had only been turned down because it had already expired. He thought S had therefore missed out, because he hadn't been told about the possibility of an extension earlier. He also complained that S was being charged 30% interest on its unauthorised overdraft.

Santander didn't uphold Mr O's complaint and said that they hadn't done anything wrong.

I issued a provisional decision on 6 June 2024. I provisionally upheld the complaint because I thought Santander should have mentioned the possibility of renewing the CBILS overdraft earlier. I could not say for sure what would have happened had the bank done so, but I thought it possible that an extension would have been granted. I said:

There's no debate that Santander contacted S in good time about the upcoming overdraft expiry. There was then a delay of some two months, before S responded and a conversation took place on 13 February 2023. No recording is available of this call, but the bank's notes say:

"£85K overdraft is due to mature on 7th May, customer had contacted San UK in April 22 to discuss additional finance but was reluctant due to requirement for personal guarantee (PG). Confirmed the security requirements for £50K borrowing would be PG & debenture, [Mr O] advised he was reluctant to provide a PG and this would potentially be a last resort. Business is currently in conversations with external providers for additional borrowing. Confirmed with [Mr O] will catch up next week to discuss how the business wants to proceed."

I had no reason to doubt this record of the conversation as I thought Mr O's recollections are similar. It showed that there was no mention of the possibility of renewing the CBILS overdraft. The only option for ongoing facilities mentioned involved the provision of a personal guarantee. I thought that Mr O was therefore left to believe that there was no point in pursuing an extension from Santander if he was unwilling to provide a guarantee.

It was not until 26 April 2023, eleven days before the expiry of the CBILS overdraft, that the bank had told Mr O in another phone call that extending the CBILS overdraft might be an option, subject to credit approval and S's ability to meet the BBB's stringent terms and conditions.

I could see that Santander then contacted the BBB on 4 May 2023, to explore whether there was any possibility of a term extension. The BBB's response seemed to me to confirm that this was possible, but only where an extension would be in line with a lender's normal forbearance policies for non-Government-backed lending. But by then the facility had expired and the bank seems to have concluded that there was no way of extending an expired facility.

My provisional conclusion based on this evidence was that it might have been possible to extend S's CBILS overdraft had an application been made in time before expiry.

Santander had argued that Mr O wasn't interested in renewing until late April anyway. But I wasn't persuaded that was fair. I thought it was clear that he wasn't interested in any facility that required him to provide a personal guarantee, but a CBILS extension would not have required this. I thought it was more likely than not, given that Mr O was seeking private equity funding that was likely to take time to procure, he would have sought an overdraft extension had he been told in February 2023 that that was a possibility. I also thought that there would have been ample time to pursue this course of action before expiry at that point.

CBILS overdrafts are subject to credit approval by the lender, so this was not to say that S's application for a term extension would necessarily have been sanctioned. But my provisional thinking was that S was effectively unfairly deprived of the opportunity to apply. I was therefore minded to direct Santander to put this right.

I thought that the fairest way forward would be for Santander to put S's request for a term extension through its credit sanctioning process as though the facility was still in place and hadn't yet expired. If it was approved on this basis, Santander should provide an overdraft facility at the CBILS scheme interest rate and terms and for the duration agreed. No arrangement or other fees should be charged and no personal guarantee should be required, in line with the CBILS scheme rules. (I appreciated that this would now be without a Government guarantee).

If it was approved, the bank should also refund the excess interest paid over and above the CBILS scheme interest rate on the overdraft from the date of expiry of the original facility until the date the new facility was in place. Santander should also remove any adverse information that might have been added to S's records with credit reference agencies.

I thought that depriving S of the opportunity to renew its CBILS overdraft had caused inconvenience to S by taking the directors' time away from running the company to engage with Santander's Recoveries function and come up with repayment proposals. My current thinking was that compensation of £300 for this inconvenience would be fair.

If the term extension was declined, then Santander should still make the inconvenience payment to compensate S for the impact of its poor communication, but need take no further action. I said this because, in this scenario, S would not have been disadvantaged by Santander's error, as it would never have been able to renew the overdraft anyway.

I was reliant on Santander's good faith in carrying out this credit review. But given that credit approval would always have been a requirement and there was no obligation on Santander to lend, I could currently see no alternative to this approach.

S did not reply. Santander asked for the following points to be taken into consideration:

- It was not obligated to approach the BBB but had done so as an additional measure in an attempt to achieve a positive outcome for their client.
- The bank had reached out to their client several times before the expiry and S had been unwilling to commit to a "business as usual" facility as it would require security.
- Under the terms of the CBILS, any extension beyond 36 months was only available on the grounds of forbearance, which at that time S did not indicate would be applicable.
- My proposal would significantly increase the bank's risk exposure, since at the moment they had an 80% Government guarantee.
- Since April 2023, the bank had received no proposals to repay the debt, which was currently in excess of £90,000.
- The bank was now aware of County Court Judgments registered against their client.

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 think Santander has made an error by not considering – or communicating – the possibility of renewing the CBILS overdraft sooner.

I agree with the bank that it was not obligated to contact the BBB. Indeed, I am not sure why it chose to do so. The BBB's position is clear: Term extensions of CBILS overdrafts are possible for up to ten years, despite them being initially capped at three years. Such extensions are at the discretion of the lender and in the context of the provision of forbearance. I don't think the bank needed to check with the BBB to establish this, but if it considered it needed to check, then I think it should have done so several months earlier, when there was time to do something with the information.

I acknowledge that the bank had made contact with Mr O in good time before the expiry of the overdraft. But I don't think it gave him accurate information when it did so. The bank told him the only option for renewal was to switch to a business as usual overdraft, which required security.

I consider Santander should have told Mr O that there was a possibility of renewing the CBILS overdraft if it met the bank's forbearance criteria. And I think that, had Santander given Mr O that information, it's more likely than not that he would have chosen to pursue that option, if only to give him more time to find equity investors. In this counterfactual scenario, I think the bank's relationship manager would have submitted an application to renew the overdraft in time for it be considered before expiry.

The bank argues that S did not indicate that forbearance was applicable at the time. Mr O may not have mentioned financial difficulties explicitly, but I think S's situation, with a hardcore £85,000 overdraft that it clearly had no way of repaying unless it secured equity funding, should have demonstrated that it was in need of forbearance. And I think subsequent events have shown that to be the case.

I would like to emphasise that any term extension would always have been subject to Santander's credit approval and to it being in line with Santander's forbearance policies. I am not saying it would have been approved and I am not telling the bank to approve it now. Only Santander can judge whether S's application would have been successful, had it been made in or around February 2023. But it is my view that S should have been given the opportunity to have an extension considered.

I fully appreciate that, should Santander conclude they would have approved the extension, this puts them in an unwelcome position in terms of risk and reward. But I'm afraid I think this is the consequence of its error.

Putting things right

My starting point in assessing fair compensation remains to try and put S in as close as I can to the position it would have been in without Santander's mistake.

Santander should put S's request for a term extension through its credit sanctioning process as though the CBILS overdraft was still in place and hadn't yet expired. If it is approved on this basis, Santander should:

- Provide an overdraft facility at the CBILS interest rate and terms and for the duration agreed. No arrangement or other fees may be charged and no personal guarantee should be required, in line with the CBILS rules.

- Refund the excess interest paid over and above the CBILS interest rate on the overdraft from the date of expiry of the original facility until the date the new facility is in place.
- Remove any adverse information that may have been added to S's records with credit reference agencies.

Whether the renewal is approved or not, I am directing Santander to pay compensation of £300 for the inconvenience caused to S by its poor communication, which took the director's time away from running the company and seeking equity finance. I say this because I think even if the extension was declined, this would have been apparent much sooner and the position would have been clear. So I think S has suffered inconvenience from Santander's late communication even if the lending would never have been renewed.

My final decision

I uphold this complaint and direct Santander UK Plc to put things right and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 7 August 2024.

Louise Bardell
Ombudsman