DRN-4620222

The complaint

Mr D and Ms L are business partners. Mr D complains on behalf of the partnership that Lloyds Bank PLC is unfairly holding them personally liable for a Bounce Back Loan ("BBL") that was applied for in the name of a limited company.

In this decision, I'll refer to the partnership as P and the limited company as L.

What happened

Mr D told us:

- In 2015, Mr D and Ms L set up a limited company, L. In 2016, their son also became a director of L.
- L used an existing bank account with Lloyds in the name of the partnership for its trading. The directors didn't tell Lloyds about the limited company.
- In 2020, one of the directors applied for a £45,000 BBL on behalf of L.
- L was struck off in July 2021 and hence no longer exists.
- The bank was still pursuing the partners to repay the BBL, because it said it was in the name of P rather than L.

Lloyds said:

- The partners had opened the current account in question in 2012 and as far as the bank knew, operated it ever since.
- L had never had a bank account with Lloyds and they weren't aware of L's existence.
- When the online application for the BBL was completed, P's account number was used.
- BBL applications were largely automated for speed and were opened in the name of the entity that held the account number given.
- The loan proceeds of £45,000 were credited to P's bank account on 5 May 2020.

Mr D complained to Lloyds in September 2022, saying that the BBL should be written off because L had been dissolved. Lloyds didn't uphold his complaint, as they said the BBL was in the name of the partnership.

Mr D referred the partners' complaint to the Financial Ombudsman. I issued a provisional decision on 4 January 2024. I said, in summary:

- Mr D said that when L was set up and began to trade, no-one remembered or noticed that the bank account was in P's name not L's. So when they came to apply for a BBL, there was never any question in their minds that L was the eligible entity.

- P and L had the same name, except for the addition of "limited" at the end. This meant that the difference between the two entities was easy to miss.

- Mr D said that the bank made an error by providing the BBL to what was effectively a non-existent entity. However, I didn't know how the bank could reasonably have been expected to know that. As far as the bank was concerned, P was a trading entity, whose name matched the BBL applicant and had operated the bank account quoted on the BBL application form since 2012.

- There was no automatic information exchange between Companies House or tax offices and banks regarding changes of trading entity. So the only way that the bank could reasonably have known that the partners had switched to a different trading entity was if one of the partners had told the bank. It was in my view their responsibility to take this step. I'd seen no evidence that this was ever communicated.

- It seemed to me that all the events surrounding the BBL flowed from the failure to obtain a bank account in the name of the entity that was actually trading.

- The only piece of evidence that might suggest that the bank knew about L was the 2019 letter confirming the signatories on the account, which referred to L's full name. I asked the bank for their comments on this and they suggested that this must have been an error on the part of a bank employee in providing the requested letter without checking properly. Lloyds haven't been able to find any reference to the limited company elsewhere.

- On balance, I was more persuaded by the argument of human error with one letter than by the alternative one, which would require Lloyds to have somehow known, then forgotten, that the account was in the name of the limited company, despite no records of a requested change and despite the fact that all subsequent correspondence was to the partnership. I said this partly because Lloyds had also explained that it was not possible just to change a business account from a partnership name to a limited company - a new application and a new account would have been required.

- I didn't think the error on this one piece of correspondence was responsible for any of the subsequent events complained of here.

- I understood that the partners' son believes he remembers putting in L's company number when applying online. But Lloyds had provided me with a document showing the full application process and I was satisfied from this that at no point was the company number requested.

- I noted that Mr D had seen another lender's BBL application form, which asked for a company number at the start. But not all lenders' forms are identical. This in part reflected the fact that some lenders were willing to lend to non-customers, whereas some more traditional banks were not. My understanding is that Lloyds did not lend to new customers. This suggested that it would never have lent to L under the BBL scheme, since as far as Lloyds knew, L didn't bank with them.

- It was my provisional conclusion that the bank account number, which was quoted on the BBL application, was in the name of the partnership at that time. I therefore thought Lloyds had acted reasonably in granting the loan in the name of P.

- Like other lenders, Lloyds' BBL application process was put together in a hurry, under pressure to get money to where it was needed as soon as possible in the pandemic. A longer process requiring customers to input more detailed information - and the bank to run more checks on it - might have prevented the scenario here. But that didn't mean that Lloyds had made an error.

- I also took into consideration Mr D's arguments about his son not being a partner or a signatory on the bank account mandate. But I wasn't persuaded that made any difference to a fair outcome. I said this because there was no allegation of fraud here. Mr D's description of events indicates that his son applied for the loan on behalf of and with the consent of the partners, who were also directors of L. The proceeds were credited to an account that the partners operated. The evidence suggests that the proceeds, having been paid into the account, were used from there for the benefit of the trading business.

- I also noted that, under Lloyds' process, applicants had to certify that the application was being made in accordance with the bank account mandate.

- Mr D argued that the application must have been made by L, because only L met the eligibility criteria. But in fact, I provisionally concluded that the limited company wasn't eligible to apply for a BBL from Lloyds, because it didn't bank with Lloyds. Only P banked with Lloyds, so only P could apply under Lloyds' process. That is not to say that P met the other eligibility criteria, but these were self-certified during the application and I considered that Lloyds was entitled to take the applicant's word that they qualified, even if there was a misapprehension about which entity was applying.

- I acknowledged that the BBL facility agreement was only sent to the partners' son at the time of application, not to the partners. So they had no opportunity to review it. But I didn't think this would have made any difference anyway. Given the similarity in names between the two entities, I didn't think it likely that the partners would have noticed the missing "limited". After all, by their own argument, they hadn't noticed the name of the current account was the partnership's after many years of correspondence. The facility letter didn't explicitly say "partnership" anywhere, but I don't think this was an error, since it used the correct trading name of P, as provided by the partners and never amended.

- I also thought it was more likely than not, that had the bank known the application was from L, the loan would not have been granted, as L wasn't a customer. So the funds would never have been available for the use of the trading business.

- In summary, I wasn't persuaded the bank made an error with the BBL application. Nor did I think Lloyds made an error by not changing the name of the current account, as they had never been asked to do so. It followed that I didn't think the bank were acting unfairly in asking the partners in P to repay the loan.

The bank accepted my decision. Mr D disagreed and made the following points, in summary:

- The current account was opened as an additional account for the existing partnership of Mr D and Ms L, which traded under a different name. They had never traded under the same name as L.

- The partners had only discovered the bank thought a partnership with the same name as L existed after L had been struck off.

- I had mentioned that none of the current account statements had included the word "limited". This was true, but neither did they include the word partnership. And the statements were from Lloyds Bank, not Lloyds Bank PLC, which similarly he did not question.

- Lloyds had opened the BBL in the name of the entity that held the account number given, not the person who made the application or the name supplied on it.

- Every contract set up online is verified using personal information. If Lloyds used the information on the bank mandate for the account number given, then that wouldn't have matched, because neither of the partners were involved in the application or subject to any checks. Lloyds should have obtained the agreement of a partner.

- He disagreed with my statement that the events surrounding the BBL flowed from the failure to obtain a bank account in the name of the trading entity. This only applied if you accept that solely using the account number to verify the application was acceptable.

- He thought I had trivialised the 2019 letter, which had been sent to another lender as confirmation that L, which was applying for a loan, had a bank account. The letter provided documentary evidence that the bank details were those of L.

- The 2019 letter was entirely responsible for all subsequent events. It could have provided Lloyds with an opportunity to confirm that the bank mandate was in the name of the partnership, but it did the opposite.

- Due to Ms L's need to isolate during the pandemic, the partners' son was given complete charge of all L's financial transactions. The BBL was credited to an account that Lloyds had confirmed to their son was in the name of L.

- L was eligible to apply for a BBL. P was not as it did not exist.

- Why did Lloyds not follow Government guidelines regarding Know Your Customer ("KYC") checks? Their son would have expected the application to be checked.

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 assure Mr D that I have thought carefully about all the points he's made, both in response to my provisional decision and earlier. I haven't been persuaded to change my provisional view and I'll explain why below.

First, I'd like to make it clear that I'm not disputing that the partners and their son acted in good faith. Unfortunately, this seems to me a clear example of a situation where one party thought they were doing one thing and the other side thought they were doing something else. What I need to decide though is whether the bank have done anything wrong – and if so, whether their error resulted in something that should be put right.

In legal terms, a partnership does not have a separate “legal personality”, it is simply an arrangement between individuals who want to work together. Mr D has argued that the partnership with the same name as L (minus the limited) has never existed and hence could never have applied for a BBL. But partnerships can use any trading name, they are still the same partnership. He doesn’t dispute that a partnership existed, as he’s said the partners also operated another business with a different trading name.

The bank have shown evidence of the information gathered when the current account was opened. This shows that it was opened for a partnership and it always had the same trading name. This predated the existence of L. Clearly, the bank didn’t invent this trading name. I’m satisfied that it must have been given to them by the partners. So I don’t think the bank made an error in operating an account for the partners in that name. And as I said in my provisional decision, I don’t think Lloyds made an error in not changing the account to a limited company account, since there’s no evidence they were ever asked to do so.

It's true that Lloyds’ BBL process used the account number quoted to produce the applicant name. But I don’t think that is pivotal here. In this particular case, the intended applicant name was the same as the name on the account number anyway. I do not agree with Mr D’s argument that the name on the BBL agreement was the result of a flawed bank process.

Mr D argues that Lloyds should have carried out KYC checks that would have picked up that the loan was not being applied for by a partner, nor by someone on the current account mandate. But, although banks were expected to carry out some anti-fraud checks, the BBL scheme was a self-certified one.

The British Business Bank, which set up and administers the scheme, specified that “The application follows principles of self-certification. Lenders are not obliged to verify the responses supplied by the borrower”. So Lloyds were entitled to rely on what the partners’ son declared online, which included a declaration that the application was being made in accordance with the mandate. I don’t agree that the bank did anything wrong by not carrying out further checks, given that the applicant declared themselves to be an existing customer with a bank account that had been conducted satisfactorily for several years.

I also consider, as I said in my provisional decision, that even if Lloyds had sent the agreement to the partners named on the mandate, it is more likely than not that the partners would have signed it, given that the name was the name they were expecting.

I said in my provisional decision that I thought the events complained of flowed from the partners’ failure to hold a bank account in the correct name. Mr D has put forward an alternative scenario. He thinks the events all flow from the 2019 letter. This was a letter addressed to the limited company confirming the signatories to the current account. The bank has told us that this letter was probably the result of human error.

If this letter was not human error, it would seem to me to imply that the bank had fraudulently changed the bank account back to a partnership one subsequently and then falsified the evidence provided to our service about the name on the account. Or at least that they had somehow known about the limited company, then forgotten about it without making any record of any of the changes. I’m satisfied that human error is the more likely explanation.

A human error is still an error and can have consequences. But I'm not persuaded that the name on the loan can reasonably be said to have resulted from this error on the part of the bank. I think it's relevant here that the prior error was that of the directors of L in trading through an account that wasn't in L's name. I accept that the 2019 letter could have provided a point at which the bank spotted that error. But I don't think that it would be fair to say that not picking it up and instead providing the directors with what they'd asked for should result in the bank having to write off the loan.

In summary, I see no reason how the bank could have known that Mr D's son was actually intending to apply for a loan in the name of a different entity from the one that, as far as they knew, banked with them. I therefore don't see how I can fairly conclude that the bank made an error with the BBL application. It follows that I don't think the bank have acted unfairly in asking the partners to repay the loan and I am not going to direct them to do anything differently.

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 the partners to accept or reject my decision before 13 March 2024.

Louise Bardell
Ombudsman