DRN-4662470

The complaint

Mr S, a sole trader, complains that National Westminster Bank Plc are unfairly pursuing him for repayment of a bounce back loan ("BBL") that was actually taken out by a limited company, of which Mr S is the director.

What happened

Mr S opened a business current account with NatWest in May 2018, under a trading name, which I'll refer to as S. The account was inactive.

In March 2019, Mr S set up a limited company, which I'll call L. Its name was the same as the trading name of the sole trader account (but with "limited" at the end). Mr S opened a business account for L with a different bank.

In May 2020, the limited company needed a BBL. Its bank didn't participate in the scheme so Mr S asked NatWest, as he had a business account there. He applied for a BBL for £31,250, which was approved.

Mr S believed he had applied for the BBL in the name of the limited company. NatWest, however, had sent him an agreement in his sole name and set up the loan in that name.

The BBL proceeds were paid into the sole trader account, from where Mr S transferred them to L's account at the other bank.

Trading never recovered post the pandemic and in January 2023, Mr S decided to put L into voluntary liquidation.

After the company went into liquidation, NatWest continued to write to Mr S about the BBL arrears. Mr S says this led to him realising, in May 2023, that the BBL was in his sole name.

Mr S complained, but NatWest didn't uphold his complaint and maintained that he was personally liable for the BBL.

Mr S asked the Financial Ombudsman to look into the matter. I issued a provisional decision on 24 January 2024. I provisionally upheld Mr S's complaint and said, in summary:

- I didn't think there was much question about Mr S's intent when applying for the BBL. I thought it was clear that he was trading as a limited company and had intended to apply for a BBL in that name. I can also see that the proceeds of the BBL were transferred out of NatWest into L's account and used for business purposes there.

- I thought that there was enough in the application that should have alerted NatWest to the fact that the entity applying was not their customer.

- I said this because the application form quoted the registered company number of the limited company. It also quoted its registered address, which did not match the address they held. And in the Business in Difficulty questionnaire, Mr S responded

"no" to the question "are you a sole trader?". I thought this should have been enough for the bank to identify that there were some anomalies with the application, which warranted further investigation.

- I appreciated that the BBL scheme was designed for speed and that banks were therefore encouraged to process applications at pace and not conduct unnecessary checks. But I was also conscious that this shouldn't have – and didn't – prevent banks from doing additional checks where warranted.

- I thought if NatWest had correctly identified the anomalies in the application, they ought reasonably then to have had a conversation with Mr S. This would then have brought to light the fact that it was L applying for the loan. In this counterfactual scenario, I thought it more likely than not, that NatWest would then have required Mr S to open a business account in the name of L with them. I saw no reason why he would not have done this and then reapplied for the BBL using the new account number. If everything had gone to plan, my conclusion was therefore that L would have been the borrower.

- I also noted that Mr S said he had an online chat with NatWest before applying in order to ascertain precisely whether he could apply to NatWest for a BBL, even though L didn't bank there. I'd asked the bank and they hadn't been able to find a record of this conversation. But Mr S's recollection was clear and I was minded to believe him.

- I thought that the bank should reasonably have said in that chat that if he used his existing account number on the BBL application, then the BBL would be opened in the same name as that account, regardless of any other information he included. Alternatively, the bank could have told him that he'd need to open a current account in the name of L before applying for the BBL.

- I accepted that Mr S signed the BBL agreement even though it contained his own name next to the word "customer". But Mr S had submitted an application in the name of L and had no reason to expect that he would get back an agreement in another name. I also note that Mr S's name is mentioned once, in small, lower case type, in a seven page agreement.

- The fact that Mr S put his position as "Managing Director" in the signature box at the end was a further indication, in my view, that he believed he was signing as the director of L.

- My provisional conclusion was that Mr S's mistake in not noticing the name on the loan agreement only occurred because of the bank's prior error in putting the agreement in a different name from that applied for. I didn't think it would be fair to hold Mr S responsible for a failure to spot the bank's mistake.

- I'd looked at all the correspondence that followed the application. None of the emails I'd seen since the agreement showed what name the loan was in. So I thought it was understandable that Mr S then didn't notice the error until 2023. I can also see that, when he applied for a repayment holiday, he signed "Managing Director, L Ltd", further indicating that he still believed the loan to be in L's name.

- I could also see that, when L went into liquidation, the BBL was included in the statement of affairs for the company. This showed that Mr S and the liquidator both believed it to be in the name of the limited company. Mr S's correspondence with the

liquidator also indicates his genuine belief that the liquidation would settle the matter of the BBL and the bank would have no reason or power to pursue him further.

- In summary, I was satisfied that Mr S applied for a BBL on behalf of L and believed that is what NatWest had provided. NatWest, however, set it up in his sole name in error. I therefore intend to uphold this complaint and put Mr S back in as near as I can to the position he should have been in but for the bank's error.

- My provisional intention was therefore to direct the bank to write off the BBL in Mr S's name (retrieving it from the debt collection agency first if necessary). I said this on the basis that there was unlikely to be any distribution to unsecured creditors in S's liquidation.

- I also intended to direct NatWest to remove any entries relating to the BBL from Mr S's personal credit record and to pay him £300 in recognition of the distress the realisation that they were holding him personally liable for the BBL had caused Mr S.

Mr S responded to say he had nothing to add to my provisional conclusions. NatWest, however, disagreed and asked me to consider the following points, in summary:

- BBL applications were submitted after being self-certified by the customer. At the time, the bank wasn't required to carry out checks on applications.

- They had processed the application correctly using the information provided by Mr S, who knew he did not hold a limited company account with them.

- Mr S had ticked a box on the application to say that he held a business account with NatWest and had used that account to receive the funds.

- Mr S had also used a personal email address rather than a company one when applying.

- The loan agreement clearly stated that the customer should seek independent legal advice prior to signing.

- They enclosed some paperwork from when Mr S had applied to use the Pay As You Grow ("PAYG") repayment holiday options. This showed his sole name.

- Mr S hadn't raised any concerns about the initial loan paperwork or the subsequent PAYG documentation. NatWest thought he should have raised this at the time.

- They had carried out a thorough search and found neither phone calls nor webchats from Mr S from 2020 regarding the BBL. Therefore they had no evidence that a member of staff had provided any incorrect information about the application process.

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'll explain why below.

I have seen clear evidence that L was a trading entity with its own active bank account at the time of the application. At the same time, there's no evidence of Mr S trading as a sole trader and his sole trader bank account with NatWest was unused. The proceeds of the BBL were transferred to L's bank account, so L had the benefit of them, and the BBL was shown as a liability in L's accounts.

Based on all these factors, as well as the information on the application form, I have concluded that Mr S intended to apply for a BBL in the name of L.

I appreciate that the BBL scheme was self-certified. Banks were therefore entitled, broadly speaking, to take applicants at their word. But I think the concept of self-certification becomes less clear and less helpful when one considers that applications are made by individuals, but businesses can take different forms. An individual can thus "self-certify" on behalf of more than one business entity. Mr S was the individual who was filling in the form. He was an existing customer of NatWest. I don't think that anything he said on the application was wrong or inconsistent with an intention to apply for the BBL on behalf of L.

The bank have argued that Mr S's intentions were less clear than I had portrayed them. They say they processed the application correctly using the information Mr S self-certified. I have looked again at all the evidence concerning the application, but I haven't been persuaded that the bank processed it correctly.

The application form started by asking for details of the company or business and its registration number and address. Mr S provided L's name (albeit without the "limited"), registration number and address. It then asks for "applicant" details. This is, in my view, ambiguous, given that these were business loans so the applicant is the business whose details have already been provided at the start. Mr S interpreted that as requiring his personal details including his email. I think this was a reasonable interpretation, since whatever distinction was being made between "business" and "applicant" was, as far as I can see, unclear.

The next section of the form had a choice of four boxes from which to select the one applicable. Mr S selected the box which said "You are applying for a BBL from a lender with whom you have a business current account or charity account". Mr S did have a business current account, although L did not, so I don't think it was wrong of him to tick this box. There was nothing to indicate that ticking this box would result in the loan being put in the same name as that account.

Mr S has provided detailed testimony about a webchat he says he had with NatWest before applying for the BBL. NatWest have found no evidence of this. However, I find Mr S's recollections of the webchat persuasive. It seems very plausible to me that he would have made enquiries as to whether the unused NatWest business account would enable L to apply for a BBL with NatWest. I say this because most banks, including I believe NatWest, did not accept BBL applications from non-customers. But the sole trader account made Mr S a known customer to them. Given that L's own bank did not offer BBLs, this made NatWest L's best option.

I also think it's likely that Mr S would not have disclosed personal data in this webchat, so it might not have linked to his customer record. And it's not unusual for banks not to find chat or call records anyway after almost four years have passed.

On balance, my finding is that I believe a webchat occurred and Mr S was told that the existing business account made him eligible to apply. But I think he was not told that using that account number would automatically result in a BBL agreement being generated in the name on that account, regardless of any other information on the application form. I also don't think this was something he could reasonably have been expected to deduce in the absence of any explanation from the bank.

NatWest's automated process of using the account name to populate the BBL agreement was expedient when it came to authorising BBLs at speed and I don't doubt that it delivered accurate results in the vast majority of cases. But in this particular case, it delivered an agreement in a name that differed from the business details on the application. Mr S may have self-certified, but he had self-certified that the business had a company number and was not a sole trader.

In summary, I still consider that there were enough anomalies in the application to have reasonably triggered additional enquiries by the bank. And had any enquiries been made, I think Mr S would have explained that he was applying on behalf of L. I think this would have led NatWest to require that L opened a bank account before Mr S reapplied for a BBL in the name of L. So I think that if NatWest had noticed the name on the application, the net result would have been that the BBL was in the name of L. I think this is further borne out by NatWest saying that this would have been the outcome had Mr S raised any concerns on receipt of the BBL agreement.

The bank considers that Mr S' failure to notice that the agreement was in his sole name effectively makes all that followed Mr S's responsibility. They have pointed out that the agreement recommended taking legal advice in capital letters at the top and contained Mr S's name in red. I have thought about this, but I still think that Mr S's undeniable error in not noticing his name next to "customer" right at the top of the agreement only occurred because the bank put the agreement in a different name from that applied for. I think this is different from simply not reading the small print of a contract. I don't think it would be fair to hold Mr S responsible for failing to spot NatWest's mistake.

I am satisfied that Mr S did not realise that the BBL was in his sole name until around May 2023. I say this because he has provided evidence of email exchanges between him and the liquidators of L in early 2023 in which he asks why the bank are emailing him and why they are mentioning his personal credit file. It's also clear from the bank's internal call notes that Mr S was very upset once he discovered the bank regarded it as a personal liability.

Nonetheless, NatWest argues that, even if Mr S didn't notice, he ought reasonably to have done so – if not before he signed the agreement, then later. They have sent me copies of the paperwork for the PAYG holidays Mr S applied for the BBL. In each case, a letter was produced addressed to Mr S, with a supplemental loan agreement attached, each of which had Mr S's name as customer at the top.

In the case of each supplemental agreement, Mr S had applied for the PAYG option, so he knew what he was expecting. I think it is understandable if he focused on checking the repayment holiday he was expecting had been correctly applied, rather than noticing mistakes he wasn't expecting.

I also note that on each supplemental agreement, Mr S signed as director of L, something that NatWest never noticed or queried. So I don't think these agreements show that Mr S had accepted or understood that it was in his sole name, but rather that he continued in his belief that it was in L's name.

Mr S has also provided evidence that, in response to a business review by NatWest in 2022, he told them that the trading entity was a limited company and that that limited company had the BBL (because that was his understanding), without this prompting any further enquiry by the bank.

In summary, I remain satisfied that Mr S applied for a BBL on behalf of L and believed that is what NatWest had provided. NatWest, however, set it up in his sole name in error.

Putting things right

My intention here is to put Mr S back in as near as I can to the position he would have been in but for the bank's error.

The bank should therefore write off the BBL in Mr S's name (retrieving it from the debt collection agency first if necessary).

My understanding is that there is unlikely to be any distribution to unsecured creditors in L's liquidation. If this is not the case, then it is a matter for the bank whether they wish to prove in the liquidation, bearing in mind that the BBL was included in the liquidator's statement of L's debts.

NatWest should arrange to have any entries relating to the BBL removed from Mr S's personal credit record, since it should never have been a personal debt.

The bank is aware that Mr S has found these events extremely distressing. Having put his company into liquidation and thought he had wound up everything in good order, Mr S discovered that he had a personal debt that he hadn't applied for and didn't know existed. I am directing the bank to pay compensation of £300 in recognition of this distress.

My final decision

I uphold this complaint and direct National Westminster Bank 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 Mr S to accept or reject my decision before 9 April 2024.

Louise Bardell
Ombudsman