DRN-5013624

The complaint

A sole trader, who I'll refer to as Mr W, complains that Barclays Bank UK PLC is unfairly pursuing him for a bounce back loan ("BBL") applied for in the name of a limited company.

What happened

Mr W had had a business current account with Barclays in the trading name of his sole trader business for more than twenty years.

In 2017, Mr W set up a limited company, with a similar, but not identical, name to his trading name.

In 2020, Mr W completed a BBL application online to borrow £30,000. He filled in the applicant name as his sole trader trading name, but also supplied the registered number and registered address of the limited company. He also gave the account details of his sole trader account.

Barclays sent back a loan agreement in the sole trader trading name

At the end of 2021, Mr W topped up the BBL by borrowing an additional £3,300 as permitted under the scheme.

In June 2023, Mr W applied to have the limited company struck off and this was completed in September 2023.

In August 2023, Barclays carried out a review of BBLs to identify those where there was a possible mismatch between the loan applicant and the name in which it was currently held. Mr W replied that the intended borrower was the limited company and said that the company had traded using his sole trader bank account. The letter also asked for a verified company tax return and confirmation from his accountants as to how the BBL had been accounted for. Mr W did not provide these so the bank took no further action.

Repayments to the BBL stopped in December 2023.

In early 2024, Mr W complained that the bank was pursuing him personally. Barclays did not uphold his complaint as they said the borrower of the BBL was Mr W as a sole trader.

Mr W asked the Financial Ombudsman to look at the matter again. One of our investigators did so, but concluded that Barclays hadn't made an error.

Mr W disagreed and made the following points:

- He had applied for the BBL online on behalf of the limited company and supplied its registration number.
- Surely Barclays should just have rejected the application and then the company would have been dissolved, saving everyone time and expense.

- The funds were used by the limited company.

I asked Mr W some further questions regarding the BBL but he did not reply, so I am making this decision on the basis of the information I already hold.

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 have reached the same conclusion as our investigator, that is, that it is not unfair for Barclays to hold Mr W personally liable for the BBL. I realise this will be a disappointment to Mr W, so I'll explain why.

First, I've looked at the BBL application that was completed online. I think it's fair to say that is ambiguous. The name given matches the trading name on the sole trader account (which differs from the limited company by the addition of a "The" at the start, as well as by the omission of the "Limited" at the end). But the registration number of the limited company is included, as is the registered company address.

Mr W also ticked a box to indicate that he was applying for a BBL from a lender with whom he had a business current account and gave the details of that account. This was true for Mr W as an individual, but not for the limited company, which had no account in its name, although Mr W says it was using the sole trader account given.

Finally, Mr W signed as "managing director", a title not really relevant to a sole trader. On balance, although there were inconsistencies, my conclusion is that he meant to apply for the BBL in the name of the limited company. That's a relevant factor for me to consider. But I also need to think about what's fair and reasonable in all the circumstances. That includes thinking about what happened after the application and the circumstances of the dissolution of the company.

In May 2021, Barclays began what is known as a "know your customer" check on Mr W's account. These checks are a regulatory requirement and include a number of questions designed to check that the account holder is who they say they are. I think this is relevant, because the reviews include a considerable amount of detail about the type of trading entity and the nature of the business and they often go on for some time. In Mr W's case, the check wasn't concluded until November 2022. Barclays' records indicate that at no time during this check did Mr W inform them that the trading entity was incorrect and Mr W's business was not operating as a sole trader.

It seems to me that there are only two possible interpretations of the evidence from the "know your customer" check – either Mr W was trading as a sole trader at that time, or he deliberately chose not to inform Barclays of the fact that the trading entity was actually a limited company.

In August 2023, Barclays wrote to Mr W because they were undertaking a review of all BBLs to identify cases where there was a possible mismatch between the entity which applied for the loan and the name in which it was currently held. Mr W responded by filling in the enclosed form to say that the intended borrower was the limited company and the proceeds of the loan had been used by that company.

Barclays' letter asked for some supporting information to show that the position regarding the BBL should have been as Mr W had indicated - in other words, a loan to a limited company used for the benefit of that company. But Mr W didn't supply any of this supporting evidence.

If applicants were able to provide the evidence Barclays asked for, the bank's process was that they would then consider whether it was appropriate to move to the name of the intended entity, in a process known as novation. I consider that it was reasonable of the bank to require this evidence before considering novation. And in the absence of the requested evidence, I don't think the bank acted unfairly by leaving the loan in the existing name.

At the point Barclays wrote to Mr W to invite him to tell them if there was a mismatch, the limited company still existed. But by the time Mr W signed and returned the form on 27 November 2023, the company had already been struck off. This meant that it no longer existed and the BBL could not have been novated.

I think it's also relevant that the BBL does not appear to have been correctly included in the company's balance sheet (it's possible that it was included as a short term liability rather than a long term liability, but this would not have been correct).

It's not clear to me whether Mr W or the limited company had the economic benefit of the funds. I realise Mr W says it was the limited company and that some of it was used to pay company tax, but he hasn't provided any evidence on that point and it is not clear from the bank account. Even if it could be shown that the limited company used the funds, I don't think it would change my view that the bank has not acted unfairly here, given Mr W's failure to notify them.

A further relevant consideration is that companies with large debts cannot simply dissolve themselves. They need to notify their creditors and go through an insolvency process. So if Mr W, and his accountant, thought the BBL was a company debt, he should have notified the bank, in accordance with his responsibilities as a company director.

Finally, I also note that Mr W's sole trader current account remains open and active (or it was so as at October 2024), even though the limited company that he says was trading through it ceased to exist in November 2023.

Mr W argues that his BBL was a company liability and should never have been in his personal name. But I think if this were the case, he ought reasonably to have informed Barclays of this position before dissolving the company. He would have known by the time of the 'know your customer' review that Barclays thought he was a sole trader, even if he hadn't known before that his business account was in his sole name. Had he informed the bank at that stage, it might have been possible to novate the loan. Even in August 2023, when the bank wrote to him about the mismatch, the company still existed and novation might have been possible, had he supplied the evidence requested.

Because Mr W didn't notify Barclays that the borrower was incorrect until the entity he says was the intended borrower had ceased to exist, I think it is fair and reasonable for Barclays to continue to hold Mr W personally liable for the BBL.

My final decision

My final decision is that I do not require Barclays Bank UK PLC to take any action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 21 November 2024.

Louise Bardell
Ombudsman