DRN-3475216

The complaint

A company which I'll refer to as 'G' complains that Starling Bank Limited unfairly closed its business current account and recalled its Bounce Back Loan facility.

The complaint is brought on G's behalf by its director, Mr B.

What happened

On 8 May 2020, G opened a business current account with Starling. On 11 May, the bank wrote to Mr B to say it would be closing G's account on 18 May. Starling explained this was because G had used virtual currencies, which was a breach of the account terms and conditions.

G applied for a Bounce Back Loan ("BBL") of £50,000 with Starling on 12 May. Its application was successful, and the loan was paid into G's current account the following day. G intended to use the funds to make a significant purchase.

A few days later, the bank identified that it had made an error in providing the BBL as it was closing G's account. It wrote to G to say it would be withdrawing the loan, which it duly did.

Mr B didn't think this was fair. He believed Starling had breached its own terms and conditions by withdrawing the BBL funds from G's account and then closing it shortly after.

Starling didn't uphold the complaint initially as it said its actions were reasonable in light of the breach of the terms and conditions of the account. However, after the complaint was referred to us, Starling changed its decision and upheld the complaint in part. It said that the currency transactions that had prompted its decision related to a different entity (albeit another company that was owned by Mr B).

The bank accepted that it shouldn't have closed G's account and offered £200 compensation for the inconvenience this had caused. However, Starling said its decision regarding the BBL remained unchanged, as on review it didn't think that G had been trading prior to 1 March 2020 – and therefore G hadn't met the BBL eligibility criteria.

Our investigator recommended the complaint be upheld in part, as he thought Starling should increase the compensation payment to £400 in light of the inconvenience G had been caused by its account being closed. But he thought Starling had reasonably decided that G wasn't eligible for the loan, and so its withdrawal was legitimate.

Starling agreed with the investigator's view. Mr B didn't agree and asked for an ombudsman to look into G's complaint. He doesn't believe the compensation is enough to cover the loss of opportunity caused by the bank's actions – in particular the withdrawal of the BBL funds, which he still thinks was a breach of Starling's terms and conditions. So the case has been passed to me to decide.

I issued a provisional decision on 27 April 2022. I said the following:

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've reached a different conclusion to our investigator.

It's not in dispute by either party that Starling made an error in closing G's business account. The bank has explained its reasons for this, apologised and offered to open a new account for G.

When Starling incorrectly closed G's business account, it also exercised an event of default
on G's BBL on the basis that the application was outside of the bank's risk appetite. The terms of the BBL agreement say that Starling can recall the funds in the event of a default. However, as the bank had made an error when deciding to close G's account, I don't think it should've have cancelled G's BBL agreement and recalled the funds for this reason. The bank has acknowledged its error in this respect but has still declined to reinstate the BBL to G - as it doesn't think the company was eligible for the loan in the first place. I think this decision is reasonable - I'll explain why.

Applicants had to meet certain criteria to be eligible for a BBL. This included the requirement to have been carrying on business on 1 March 2020, and that the amount borrowed be no more than 25% of their annual turnover. In addition to these criteria, there were checks that had to be made - with some discretion for lenders to have the final say as to whether to approve the loan.

In light of what happened, Starling reviewed G's entitlement to the BBL. It had approved the application on the basis of G's self-declaration that it was trading prior to 1 March 2020 and had an annual turnover of £200,000. But on review, it concluded that G wasn't eligible as the company hadn't been trading prior to 1 March 2020 and couldn't verify the £200,000 annual turnover figure Mr B had declared on G's application was accurate.

I think Starling's position was reasonable. Mr B says that the turnover figure he provided was an estimate. I acknowledge that such estimates could be used for businesses established after 1 January 2019 – as G was. However, lenders weren't obligated to accept any figures provided. When Starling looked at G's account history, there was no evidence to show it was trading and the personal account statements Mr B provided to show this, only displayed two transactions for G totalling £1,500 – so even if I accept that G was trading at the requisite time, I think Starling reasonably concluded that there was insufficient evidence to support the turnover figure Mr B had declared.

Mr B is unhappy that Starling withdrew the BBL having decided G was ineligible after the loan had been approved. But lenders were entitled to keep things under review even after a loan was granted and, ultimately, wouldn't be expected to provide facilities to applicants that were considered ineligible. So I don't think Starling did anything wrong in reviewing G's eligibility after the BBL had been granted, albeit prompted to do so by its own error.

The BBL agreement says that if the bank isn't satisfied a borrower meets the Scheme eligibility criteria within a month of the agreement being signed, it can terminate the agreement immediately. I think that this was an appropriate course of action in the circumstances here.

However, I do think Starling made some errors when dealing with the account closure and granting the BBL initially. I say this because, when G applied for the BBL

initially, Mr B told the bank that G was a start-up business, didn't have a bank account and couldn't provide any invoices or sales receipts. So I think at this point the bank should have either declined G's application or at least asked for further information to see if G met the Scheme eligibility criteria (which would ultimately have led it to decline the application, for the reasons I've explained above).

Instead, Starling made a further error when deciding that G had breached the account terms and conditions on 11 May - as it still allowed G to make a BBL application on 12 May. It then approved the application and provided the loan – when for the reasons above – it should not have done.

It's clear the bank's closure of the business account and initial agreement of the loan has caused G inconvenience. Although the account was closed in error, I don't think this had much of an impact on G because there was little money held in the account and it wasn't really being used at that point so there were no missed direct debits or payments. However, Mr B has explained that G had already committed to using the BBL funds for a significant purchase once the application was agreed and the money was in its account – so when the funds were withdrawn this was very problematic for G.

Mr B has told the service that G incurred professional costs of $472.50 when he believed Starling had breached the terms and conditions of the loan – which he's provided copies of invoices for. I don't think G would have incurred these costs if the bank had explained its actions for recalling the loan more clearly. Therefore I think that the bank should reimburse G for them.

I can also see that Mr B has spent time dealing with the issues caused by Starling's actions - both with the bank directly and the external parties involved. So to put things right, I agree with our investigator's opinion that the bank should increase the amount of compensation to a total of £400 to address the inconvenience caused.

I invited Mr B and Starling to give me any more evidence and information they wanted me to consider before issuing my final decision. Starling accepted the decision – albeit it can only refund the costs in sterling equivalent – which Mr B has confirmed is satisfactory.
Mr B didn't agree. He maintained that G was eligible under the BBL rules and that Starling hadn't reviewed this properly when reaching its conclusion. He also didn't accept that Starling had the contractual right to recall the loan in the manner I'd described.

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've reached the same conclusion as I did in my provisional decision.

I've considered Mr B's further comments as to why he still believes that G was entitled to a loan under the Scheme rules, but he hasn't said or provided anything that leads me to a different view of this. I still think Starling reasonably determined that G wasn't eligible for the reasons given in my provisional decision.

I acknowledge Mr B feels Starling should have asked him for supporting documentation if it was concerned about the company's eligibility. But the bank isn't obligated to do this. Starling has told us that when it reviewed the information Mr B had provided prior to the bank account being opened, this conflicted with what was declared on the BBL application. So Starling was satisfied a misrepresentation had taken place and chose not to reinstate the

BBL it had recalled. I think this was reasonable.

Mr B has said he doesn't agree with my interpretation of clause three of the BBL agreement when its reviewed with the context of clause four – which he believes is contradictory. Clause 3 says:

> "3.1. Starling's obligation to provide the Loan is subject to the following conditions precedent:
>
> 3.1.1. the representations and warranties set out in Clause 12 (Representations and Warranties) are true and correct and will be true and correct immediately after Starling has made the Loan;
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> 3.1.2. no Event of Default or Potential Event of Default is continuing or would result from the Borrower receiving the Loan;
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> 3.1.3. the Borrower satisfies the eligibility requirements of the BBLS and evidences such to Starling's satisfaction; and
>
> 3.1.4. the Borrower completes in the form provided and duly signs, dates, and returns to Starling the BBLS Application Form, all to Starling's satisfaction.
>
> 3.2. If the conditions in this Clause 3 (Conditions Precedent) have not been satisfied by the date falling one calendar month from the Effective Date, this Agreement will automatically terminate on such date and such termination shall be without prejudice to the accrued rights or remedies of Starling."

I said in short, that this meant Starling could terminate the loan agreement immediately within one month of it being signed if it wasn't satisfied that G met the eligibility criteria. Mr B doesn't agree with this, as he thinks that this power could only be exercised before the loan funds were credited, and before the agreement was signed or requisite documentation having been provided. Clause four of the agreement says that Starling will credit the loan once it determines that the clause three conditions precedent are satisfied – so Mr B says that, with Starling having credited the loan to G's account, it no longer had the power to terminate or withhold the loan in the manner it did.

I don't agree with Mr B's interpretation of these conditions. Although clause four refers to conditions which needed to be met prior to the loan being received, it also says the conditions should be met on a continuing basis – not just a single point in time – such as upon drawdown.

However, even if I were to accept Mr B's interpretation of these clause's, Starling had the power to cancel the agreement – at any point – in certain circumstances. This included where any information given by the borrower proves to have been incorrect or misleading. As I think Starling reasonably concluded that the turnover figure provided in G's application wasn't accurate, it follows that I think it had the right to exercise an event of default and cancel the agreement.

It's not in dispute that Starling made a mistake when it incorrectly closed G's business account, before later deciding that G wasn't eligible and calling an event of default. However, I don't think it was unreasonable for Starling to maintain its decision not to provide the BBL when it reviewed the information G had declared and decided it didn't meet the eligibility criteria. So my final decision – and the compensation I'm requiring Starling to pay in order to put things right - remains the same as that of my provisional decision.

My final decision

My final decision is that I uphold this complaint in part. I instruct Starling Bank Limited to do the following:

- Refund the sterling equivalent of $472.50 for the professional costs incurred by G; and
- Pay G £400 compensation for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 24 June 2022.

Jenny Lomax
Ombudsman