

The complaint

A company, which I'll refer to as "S", complains that Santander UK PLC unfairly terminated its Bounce Back Loan and closed its bank account.

Mr G is S's director and brings the complaint on the company's behalf.

What happened

S was incorporated in November 2016. It held a bank account with Santander and successfully applied to the bank for a Bounce Back Loan of £50,000, which was drawn down on 12 May 2020.

In August 2020, Santander conducted a review of S's Bounce Back Loan application and blocked the company's access to its bank account – and the remaining loan funds held therein – while it did so.

Santander wrote to S on 11 August, explaining that it had some concerns as to the company's eligibility for the loan it had obtained. It said:

- When requesting the loan, S had declared an annual turnover of £204,000 but the bank's records showed income of approximately £37,000. This was relevant as a business was only entitled to borrow up to 25% of its annual turnover under the Loan Scheme rules.
- It had identified that S may not have used the loan funds for business purposes, as was intended under the Loan Scheme. This was based on S's transfer of the majority of the loan funds to Mr G's personal account, also held with Santander.

Santander asked Mr G to provide information to demonstrate that S met the eligibility criteria and had used the loan funds appropriately. On review of what Mr G was able to provide, the bank concluded that S wasn't eligible for the loan it had obtained – so it terminated the agreement.

Santander recovered around £5,800 from Mr G's personal account with the bank and applied this, along with the remaining balance in S's account, to the loan balance. This left an outstanding amount of around £40,000, which became repayable immediately. Santander also closed S's bank account.

Mr G sought to appeal Santander's decision, ultimately leading to this complaint, as he maintained that S was eligible for the loan. He said that the annual turnover figure he'd used had been a projection, based on a purchase order to the value of £300,000 it had received. He didn't think Santander had investigated the matter thoroughly before reaching its decision and said that the bank's actions had caused the company to lose its £300,000 deal. But Santander maintained its decision, so Mr G referred the matter to us.

One of our investigators looked into things but didn't think Santander had done anything wrong in terminating the loan agreement and closing S's account. He said that S wasn't

entitled to use a projected turnover figure when applying – and that the application form had been clear in asking for the company's *actual* trading income. So the figure Mr G provided was incorrect and, in turn, this amounted to an event of default under the terms of the facility.

Our investigator did, however, note that Santander had offered to refund charges applied to S's account while it was restricted – but some of these hadn't been reversed. So he thought it should refund any charges that had remained.

Santander accepted our investigator's view and agreed to refund charges of £15 that had been missed previously.

Mr G didn't accept our investigator's view. He said he hadn't intended to deceive the bank, but had mistakenly believed that he could use an income forecast when applying. He said the online application was vague on this point, and that it wasn't uncommon to apply for finance based on expected revenue.

Mr G also queried whether Santander would be refunding any amounts charged to the Bounce Back Loan during what should've been the first year of repayments. He was also unhappy that debt collectors had been appointed and contacted him about the outstanding debt. And he believed Santander had made a "libellous accusation" that he had fraudulently tried to apply for another loan with another company, and wanted any records to that effect corrected.

With no resolution, S's complaint was passed to me to decide.

My provisional decision

I issued a provisional decision last month. While my conclusions were largely similar to those of our investigator, my reasons were slightly different. So I wanted to give both parties the chance to respond with anything else they wanted me to take into account when making a final decision. I said:

There were a number of eligibility requirements that had to be satisfied before a business could obtain a loan under the Bounce Back Loan Scheme. Of particular relevance here, these included that the loan amount could be no more than 25% of the applicant's annual turnover, which was to be based on turnover during the 2019 calendar year. Businesses established *after* 1 January 2019 could use an estimate.

S was established in November 2016, meaning it wasn't entitled to use an estimate when applying.

I understand Mr G believes the application questions to have been unclear in this regard. Santander's online application form asked for the applicant's "*2019 annual turnover*". A short explanatory note said that estimated figures could be used "*if your business was established after 1 January 2019*". I don't think this ought reasonably to have led Mr G to believe that S – having been established *before* 1 January 2019 – could use an estimate.

Santander approved S's application on the strength of the company's self-declaration that it met these criteria. In keeping with the nature of the Loan Scheme, applicants self-attested to eligibility with minimal checks by lenders in order to process applications and provide funds quickly. It wasn't expected or required to verify the information provided by an applicant, and I can't say it made an error in approving the application on the basis of the information that Mr G provided.

When Santander subsequently reviewed things – as it was entitled to, in line with its anti-fraud obligations both under the Bounce Back Loan Scheme and its wider legal and regulatory requirements – it concluded that S wasn't eligible for the loan it had obtained and that it had grounds to terminate the agreement. I think that decision was reasonable, as it is evident that S didn't have the turnover it declared, and wasn't eligible for the loan it had obtained. It also gave S sufficient time and opportunity to respond to its concerns before reaching a decision.

Under the terms and conditions of S's Bounce Back Loan agreement, Santander was entitled to terminate the loan and demand its immediate repayment in certain circumstances. This included where any information provided in the loan application was found to have been misleading, incomplete or incorrect. Mr G says that he didn't intend to deceive Santander and didn't knowingly misstate S's turnover. Even accepting that, the fact remains that the information he provided was incorrect and that the company wasn't entitled to the loan it had obtained as a direct result of the misinformation. So I don't think it was unreasonable for Santander to terminate the agreement in the circumstances.

Santander also had legitimate concerns as to how the Bounce Back Loan funds had been utilised. A Bounce Back Loan could only be used to provide economic benefit to the business – and not for personal purposes. The majority of the loan funds had been transferred to Mr G's personal account, with significant payments then made to various finance providers and personal payees. And although the payment of a salary could well amount to a legitimate business expense, this seems difficult to justify in the circumstances here – with around £50,000 paid to Mr G within three months, a far greater amount than was being paid prior to S's receipt of the loan. So it also seems that the loan wasn't used for the requisite purpose. This also entitled Santander to terminate the agreement, being a breach of the terms and conditions.

Under the terms and conditions of S's account and the loan agreement, Santander also had the "right of set off" – in short, it was entitled to use any credit balance held by S in any other account with Santander towards the repayment of any amounts the company owed to the bank. So I don't think Santander did anything wrong in removing the funds from S's account and applying these to reduce the amount it was owed under the Bounce Back Loan agreement. The bank's recovery of funds from Mr G's personal account is the subject of a separate complaint, so I won't comment on that further here.

I've noted that Mr G is concerned that additional amounts may have accrued on the Bounce Back Loan, but I've not seen anything to suggest that S has been asked to pay any more than it borrowed. The loan was terminated within the first 12 months of the term, during which time no interest was applied and no payments had fallen due.

The actions Santander took when restricting and later closing S's bank account were in line with the applicable terms and conditions and – given all I've said about the validity of its concerns over S's entitlement to (and use of) the loan – were reasonable steps for the bank to take. And the bank was free to appoint a debt collector to pursue repayment of the amount due, with its right to do so unaffected by the ongoing complaint.

So based on what I've seen so far, I don't think Santander did anything wrong in how it terminated and recalled the Bounce Back Loan from S, or in its restriction and closure of the company's bank account. It follows that there is no basis on which I could fairly hold the bank responsible for any impact this may have had on the company.

Santander has already agreed to refund any charges that accrued on the account while S was unable to access it. That's as much as I could fairly require it to do in the circumstances.

Lastly, I've considered what Mr G has said about Santander's suggestion in one letter that S (or a group of companies to which it belonged) had illegitimately obtained more than one Bounce Back Loan. This was a mistake. While regrettable, I've not seen that it has prejudiced the company's position in any way – including, for example, as a result of information being registered about this with credit reference and/or fraud prevention agencies. But if it has done so, I'd expect this to be removed. The bank should confirm the position when responding to this provisional decision.

Santander responded to say that it hadn't reported anything to the effect that S had made more one than Bounce Back Loan application, and had nothing further to add.

Mr G responded to say that the transfer of funds to his personal account had been to repay himself for invoices he'd settled on S's behalf. In response to further queries about these transactions, Mr G provided some copy invoices and said they'd been paid in cash. He acknowledged that this meant it was difficult for him to evidence the position and, therefore, that he accepted my provisional decision.

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, and with little by way of further information or evidence from either party for me to consider, I see no reason to depart from my provisional conclusions.

Mr G has suggested that the transfer of the loan funds to his personal account represented the repayment of a director's loan used to settle invoices. But he's been unable to substantiate that. He's sent us some copy invoices, but there's no evidence that he paid them out of his own pocket – or indeed that they were settled at all. So this hasn't led me to reach a different view as to the inappropriate usage of the loan funds. Although even if it had, I still think Santander would've had sufficient grounds to terminate the agreement on the basis of S's ineligibility as set out in my provisional decision – to which Mr G didn't respond with anything further for me to take into account.

In my provisional decision, I said that Santander should instruct the removal of information recorded with any third parties in relation to its apparent mistaken belief that S had obtained more than one Bounce Back Loan, if any was recorded. The bank has confirmed that it didn't register any such information and, as I've not seen anything to suggest otherwise, I don't think it needs to take any action in this respect.

That means, therefore, that the only action I think Santander needs to take in response to this complaint is to refund any of the bank account charges it applied from 11 August 2020 onwards. There was evidently some delay in Santander closing the account, which in the event only happened in June 2021. So this refund ensures that S isn't left out of pocket. Given that there were no funds within the account to which S was entitled to use – in light of the bank's reasonable decision to use its right of set-off to pay down the Bounce Back Loan debt – I don't think there was any other impact on the company for which any further compensation is warranted.

My final decision

I uphold this complaint in part and require Santander UK PLC to refund to S any account charges applied from 11 August 2020 onwards that it hasn't already reimbursed.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 7 March 2023.

Ben Jennings
Ombudsman