

The complaint

A limited company, which I'll refer to as 'P', complains that National Westminster Bank Plc ("NatWest") told it to apply for a Bounce Back Loan ("BBL") having been informed by P that it was no longer trading.

P's complaint is brought to this service by one of its directors, whom I'll refer to as 'Mr R'.

What happened

P held a business bank account and business credit account with NatWest. P had ceased trading, having seen its business severely affected by the impact of the Covid-19 pandemic, and Mr R was planning on dissolving the company.

Mr R contacted NatWest's business credit account team, who advised Mr R that once P was officially showing as struck off, they would write off P's credit account balance. However, when Mr R then contacted NatWest's business bank account team, he was told that because of the overdrawn balance outstanding on P's account, he should apply for a BBL on P's behalf and use the loan funds to clear P's overdrawn balance.

Mr R had misgivings about NatWest's instructions, but he applied to NatWest for the BBL as requested and was approved for a BBL of £2,000. P used the funds to clear the overdraft balance with NatWest and repay other creditors. However, when Mr R then attempted to strike off P, NatWest wouldn't allow him to do so because of the outstanding BBL balance owed by P. Mr R wasn't happy about this, so he raised a complaint on P's behalf.

NatWest looked at P's complaint. They didn't acknowledge that they'd told P to apply for a BBL, and they noted that P had self-declared in the BBL application that it met the criteria necessary for a BBL to be approved. As such, NatWest didn't feel that it had acted unfairly towards P and didn't uphold the complaint. Mr R wasn't satisfied with NatWest's response, so he referred P's complaint to this service.

One of our investigators looked at P's complaint. But they didn't feel that it could reasonably be confirmed that Mr R had acted under NatWest's instructions when applying for the BBL as he maintained. And our investigator also noted that P had benefitted from the BBL funds, and so didn't feel that NatWest had acted unfairly in how they'd managed the situation. Mr R remained dissatisfied, so P's complaint was escalated to an ombudsman for a final 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.

I issued a provisional decision on this complaint on 9 December 2022 as follows:

I note that the versions of events put forwards by Mr R and by NatWest as to what happened here are in contradiction with one another, and also that NatWest haven't been able to provide any recordings of what appears to be the crucial

telephone call – when Mr R claims he was told by NatWest to apply for a BBL – or any notes of that call written by the NatWest agent who completed it.

In circumstances such as this, I have to decide – if I feel it's reasonably possible for me to do so – what I think is most likely to have happened, on balance, and in consideration of all the information and evidence available to me. In this instance, this evidence consists of testimonies from Mr R and NatWest, as well as emails between Mr R and NatWest and between Mr R and P's accountant. Finally, several recorded telephone calls have been provided to this service by NatWest, including Mr R's call with NatWest's business credit account team.

Assessing all this information, I arrive at the following timeline:

Mr R calls NatWest and speaks with their business credit account department. Mr R explains that P has ceased trading and is going to be dissolved. NatWest's agent advises that once P shows as being officially dissolved, NatWest will write off the balance owed by P on the credit account. NatWest's agent also explains to Mr R what specific forms P's accountant would need to complete to achieve this. Notably, there is no mention from either Mr R or NatWest's agent that P might or should apply for a BBL or any other form of borrowing.

On that same day, Mr R emails P's accountant and details the conversation he'd just had with NatWest's business credit account team, including the specific forms that NatWest's agent had said would need to be completed. P's account responds that same day and confirms the form type advised by NatWest is correct. Again, notably, there is no mention of a BBL or any form of borrowing by Mr R or his accountant.

Five days later, NatWest's business bank account team attempt to contact Mr R by telephone, but without success. The team then send Mr R an email which reads as follows:

"I have tried to contact you today by telephone to discuss your business account. It's important I speak with you at the earliest convenience. Please could you reply back with the best time and number for us to call.

If you have been affected by Covid-19, I have attached a few hyperlinks in this email for you to view. They will direct you to the Bank's and the Government's websites where you will be able to see what support you might be eligible for."

The next day, Mr R called NatWest and speaks with an agent, who then transfers Mr R to another agent. This second agent wasn't the business banking team member that had sent the email asking Mr R to contact NatWest the previous day, and while NatWest have been unable to provide a recording of this telephone call, they have provided a copy of the email sent by the second agent following the call to the team member who'd sent the email asking Mr R to contact them.

This email confirms that Mr R told the agent that P had been badly affected by the Covid-19 pandemic such that it has no income, and that Mr R was in the process of completing the forms needed to dissolve the company. The email also states that Mr R rejected the offer of potential assistance from one of NatWest's specialist teams because there was no prospect of P recovering as a going concern. Finally, the email asks the other team member to call Mr R back and confirms Mr R's telephone number for that other team member to do so. And once again, notably, there is no mention of a BBL or any other form of borrowing.

The business bank account team member did call Mr R back as requested. But NatWest have confirmed that there's also no recording of this telephone call, as well as nothing on their systems, such as typed call notes by their agent, which confirms what was or wasn't said during this call.

This is unfortunate, because it's during this telephone call – where Mr R was called back by NatWest's agent – that Mr R has said that the agent wouldn't follow the example set by their colleague in the business credit account team, and write off the balance outstanding on the business bank account overdraft when P's dissolution was made official, and instead insisted that Mr R should take out a BBL on P's behalf – even though Mr R made NatWest's agent aware that P had no business income nor any predicted business income in the future.

NatWest have asked the agent in question here for their recollections of the call with Mr R. And while the agent hasn't been able to recall exactly what was said, they've stated that if Mr R had informed them that P was no longer trading and had no income that they would have referred Mr R to one of their specialist support teams and that they most definitely wouldn't have told Mr R that he needed to apply for a BBL.

But it's notable that the support team that NatWest's agent says they would have referred Mr R to, is the same support team that the previous agent with whom Mr R spoke also referred Mr R to, but whose support Mr R rejected on the basis that there was no reasonable possibility that P would be able to continue as a going concern. Also, the fact that Mr R had declined the referral to that support team was explained by the other agent in the email sent to the business bank account team member who then called Mr R back.

Additionally, it's evident from the email chain between Mr R and his accountant that following being called back by NatWest, Mr R then messaged his accountant and explained that the filing of the forms to dissolve P would have to be put on hold because NatWest's business banking team weren't taking the same approach as NatWest's business credit account team and instead were insisting that Mr R apply for BBL on P's behalf. And Mr R also states in his email to his accountant that he has concerns about applying for a BBL because he knows that P won't have any income to pay the BBL back.

All of which means that one of two things appear to have happened here. Either, after NatWest's agent called Mr R back, Mr R then decided to apply for a BBL having seemingly not considered it before, with Mr R then sending an email to his accountant fabricating a story about how NatWest had told him he must apply for the BBL. Or, when NatWest's agent called Mr R, that agent did either directly tell or strongly imply that Mr R must apply for a BBL on P's behalf.

I find the second of these possibilities to be more plausible. There are several reasons for this, including that Mr R made no mention of taking a BBL prior to being called back by NatWest's agent, and that he seemingly had no reason to apply for a BBL, given that I'm satisfied he'd already committed to dissolving P for the reasons outlined above.

Additionally, while Mr R can point to several things in support of his position, such as the emails and recorded telephone calls referred to above, there is correspondingly little firm evidence to support NatWest's position. This is because there's no

recording of the vital telephone call where Mr R was called back, or any note typed by NatWest's agent at that time detailing that call.

And while NatWest's agent has explained what he hypothetically would have said if Mr R had told him the information that he did, the agent hasn't been able to recall what he did actually say, having been told by Mr R that P had effectively ended as a going concern and was going to be dissolved.

As such, my position here is that I feel it's more likely than not, in consideration of all the above, that NatWest's agent did tell or strongly imply to Mr R that he should apply for a BBL on P's behalf. And so, I've thought about how this complaint should fairly be resolved having taken this position.

Matters are complicated by the fact that Mr R did then apply for a BBL on P's behalf, despite his misgivings, and I acknowledge that ideally, Mr R should have simply refused to take this course of action. But as explained above, I feel it's likely that Mr R did this following a conversation with NatWest in order to enable the outstanding business bank account overdraft balance to be cleared, on that understanding that after clearing that balance, NatWest wouldn't then block the planned dissolution of P.

NatWest have highlighted several declarations on the BBL application form which they contend Mr R adhered to and confirmed by submitting the application, some of which refer to the applicant business not being in financial difficulty. For instance:

"I/We confirm at the time of submitting this application, I am/we are not subject to a debt relief order or an individual voluntary arrangement, an undischarged bankrupt nor, if we are applying for the loan as a partnership, in a voluntary arrangement with my/our creditors nor in liquidation, or (in Scotland) subject to a debt management plan, debt payment plan, trust deed - whether protected or not - or an undischarged bankrupt."

I can appreciate NatWest's concerns here, but at the time that Mr R made the BBL application in P's behalf, P wasn't subject to a debt relief order, an IVA, or in any form of voluntary arrangement with creditors. And it's also notable that other declarations within the BBL application refer to the applicant company not being in financial difficulty on 31 December 2019 – which P wasn't – while another declaration asks the applicant to confirm that the BBL funds will be used for business purposes, which was the case.

Notably, Mr R did declare P's business turnover for 2019 to have been £10,000, which enable P to apply for the minimum BBL loan amount of £2,000 – which Mr R then did. It's unclear whether P's turnover for 2019 was indeed £10,000, or whether it might in fact have been higher. But I feel the fact that Mr R only applied for the lowest possible BBL amount aligns with my calculated opinion that Mr R applied for the BBL solely to satisfy NatWest's requirements as told to him by NatWest's agent – that the outstanding overdraft balance on the business current account must be repaid before NatWest would allow P to be dissolved.

All of which means that I do feel that NatWest have acted unfairly towards P here, and it follows that my provisional decision will be that I'm upholding this complaint in P's favour.

I've thought about what would constitute a fair resolution here and having done so my provisional instruction to NatWest is that they must write off the BBL balance and

allow P to be dissolved. In arriving at this position I've considered what I feel should reasonably have happened – which is that when Mr R contacted NatWest's business banking team they should have taken the same approach as was taken by NatWest's business credit account team.

This would have resulted in P's overdraft balance – which was approximately £300 – being written off, and in P being dissolved. And while I acknowledge that P has had the benefit of the BBL money, this money should never have been lent to P by NatWest, given that Mr R had explained to NatWest on multiple occasions before applying for a BBL that P had no income or any projected future income.

So, while my provisional instruction will result in NatWest now having to write off a larger balance than the business bank account overdrawn balance that I feel should have been written off, I feel that it's the unfair actions of NatWest that are ultimately responsible for this, and I don't feel that P should incur any ongoing detriment or inconvenience as a result of those actions.

In my provisional decision letter, I gave both Mr R on P's behalf and NatWest the opportunity to provide any comments or further information they might wish me to consider before I moved to issue a final decision. Mr R responded and confirmed that P was happy to accept my provisional decision. However, NatWest did provide some comments on my provisional decision which they asked me to consider.

NatWest began by stating that they felt the reason I had provisionally upheld this complaint was because they had been unable to provide a copy of the call recording in which Mr R claims he was advised to apply for the BBL by one of NatWest's staff.

NatWest's belief here is incorrect, and I can only refer them back to my provisional decision letter above, within which I explain that in the absence of a recording of the telephone call which would confirm exactly what was or wasn't said, I've made a decision as to which version of what happened here – Mr R's or Nationwide's – I feel is most likely to have happened, given all the information that's available to me. In short, I'm not saying what did happen, but what I feel is most likely to have happened.

As also explained above, I feel that one of two things likely happened here. Either Mr R was told by a member of NatWest's staff that he had to take a BBL, or Mr R decided himself to take a BBL. And, upon consideration, I find the first of these scenarios – that Mr R was told by a member of NatWest staff that he had to take a BBL – to be more likely.

One reason for this is that Mr R made no reference of a BBL in any correspondence with either NatWest or his accountant until after he spoke with NatWest about P's business bank account, after which he sent his accountant an email stating that their previously discussed plans to dissolve P had to put on hold because NatWest were telling him he needed to take a BBL to clear P's overdraft balance before P could be dissolved.

If Nationwide's version of what happened here is correct – that Mr R wasn't told he needed to take a BBL and arrived at that decision suddenly himself – then it seems to me that this would mean Mr R must have sent the email to his accountant that he did as a planned and deliberate fabrication, presumably with an eye to any potential future dispute and with the intention of protecting P – a company that was due to be dissolved – from having to repay a relatively small £2,000 BBL amount. This seems unlikely to me.

Instead, of the two plausible scenarios, I simply feel it's more likely that one of Nationwide's staff did tell Mr R that he needed to apply for a BBL, but that this isn't recorded, for whatever reason, in Nationwide's files. And I also feel that Nationwide shouldn't have provided P with

a BBL, even in light of the relaxed assessment criteria of a BBL at that time, given that Mr R had told them on several occasions prior to P's application that P wasn't trading, had no income, and had no realistic chance of any future income.

All of which means that my position here remains as described in my provisional decision letter above, and it follows therefore that I will be upholding this complaint in P's favour on that basis.

Putting things right

NatWest must write off any BBL balance owed by P and allow P to be dissolved.

My final decision

My final decision is that I uphold this complaint against National Westminster Bank Plc on the basis explained above.

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

Paul Cooper
Ombudsman