

The complaint

A company, which I'll refer to as "M", complains that TSB Bank plc unfairly closed its current account and terminated its Bounce Back Loan facility.

Ms A is M's director and brings the complaint on its behalf.

What happened

M opened a current account and savings account with TSB in March 2020.

M successfully applied to TSB for a loan of £25,000 under the government-backed Bounce Back Loan Scheme in May 2020.

Ms A approached TSB for a top-up loan under the Loan Scheme in April 2021. This prompted TSB to review M's eligibility for the original loan it had obtained. Under the Scheme rules, applicants had to be trading on 1 March 2020 and could borrow no more than 25% of their annual turnover. So TSB asked Ms A to provide evidence that M met these requirements.

Ms A provided some further information to TSB but the bank ultimately concluded that M hadn't been eligible for the Bounce Back Loan it had obtained. It also considered that the company had breached the terms of the agreement in using the loan proceeds for purposes other than M's business. So it terminated the agreement and demanded immediate repayment of the loan balance. It also closed M's accounts, and applied the funds held within them – of around £4,000 – to reduce the amount M owed on the Bounce Back Loan.

As TSB considered M's application to have been fraudulent and the loan facility to have been misused, it registered information to this effect on the database administered by Cifas (a fraud prevention agency).

Ms A doesn't think TSB has treated M fairly. In summary, she says:

- M met the Loan Scheme eligibility criteria, including having the requisite turnover to qualify for the loan it obtained. And she'd actually *understated* M's turnover in the original loan application – she'd declared a figure of £115,000, but it was £259,000.
- TSB initially approved the application, after Ms A had provided the bank with some financial information to demonstrate M's eligibility. And this decision came only after the bank had declined M's initial request for a loan of £50,000.
- TSB should've done more checks at the time if it was unwilling to lend – and if it had declined the initial application, M could've appealed and/or borrowed elsewhere.
- TSB froze M's accounts while it was conducting its review, during which time it rejected incoming and outgoing payments in breach of its own terms and conditions.

- The loan funds had been used to help M recover from the impact of the coronavirus pandemic, as intended under the Loan Scheme rules, by paying creditors and wages.
- TSB didn't have valid grounds for the Cifas filings it had recorded, as the application and supporting documents had been genuine and as the loan funds hadn't been misused.

My provisional decision

I sent a provisional decision to both parties last month, explaining why I didn't intend to uphold the complaint. I said:

Under the rules of the Bounce Back Loan Scheme, applicants could borrow no more than 25% of their annual turnover (which was to be based on turnover during the 2019 calendar year).

M obtained a Bounce Back Loan of £25,000, meaning it needed to have generated a turnover of at least £100,000 during 2019. In making M's application, Ms A declared that the company had the requisite level of turnover to qualify for this loan. But on review, TSB concluded that the company's turnover wasn't at the requisite level. I think the bank's position was reasonable, as:

- Statements for M's main account – held elsewhere – show a significantly lower amount of turnover through 2019 than the £100,000 needed to qualify for the loan amount (or the other, higher amounts declared by Ms A on separate occasions). Even accepting that all the payments received into the account represented turnover for M, this only totals in the region of £20,000.
- Ms A has suggested that M received £258,000 in cash during the financial year 2018/19. But there is little by way of evidence to substantiate this, other than the documents that Ms A has created herself. The level of cash payments – none of which appear to have been banked – and total absence of any card payments strike me as somewhat unusual, given the nature of the business.
- M's level of income is also substantially higher than the company declared in its previous year – which was just £86. And while such growth isn't impossible, it is hard to reconcile the two figures given the absence of evidence to verify the alleged activity during 2019.

I understand Ms A doesn't think TSB handled things fairly by approving the application initially, only to review it sometime later and conclude that M wasn't eligible. But I don't think it did anything wrong in this respect. TSB wasn't obliged to verify M's eligibility before providing it with the loan. 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. So the bank was entitled to rely on the information Ms A provided it when making the application. The application form that Ms A completed also made clear the importance of providing accurate information, and the consequences of not doing so.

I can see that TSB did carry out some checks on M's initial application, in that prior to approving the £25,000 loan it had declined Ms A's request for £50,000 and had asked for some evidence of the company's trading activity. But I can't say it was at

fault for proceeding to approve the £25,000 loan, given that it was still entitled to accept at face value what Ms A was saying at the time. The bank satisfied itself of M's eligibility at the time, and proceeded in good faith on that basis. It was only when it conducted a more thorough review in 2021 that the bank had cause to consider M ineligible, and I don't think it ought necessarily to have done so any sooner.

Under the terms and conditions of M's Bounce Back Loan agreement, TSB was entitled to terminate the loan and demand its immediate repayment in certain circumstances. This included where any representation or statement made by M to the bank proves to have been incorrect or inaccurate. Given all I've said above, I don't think it was unreasonable for TSB to terminate the agreement on that basis.

TSB also had 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 bank noted that Ms A transferred £23,000 from M's account to her own in September 2020. Sometime later, £20,000 was transferred from Ms A's account to a firm of solicitors in order to complete a property purchase in Ms A's name. TSB believes this to have been a misuse of the loan funds.

Ms A says that the £23,000 transfer to her own account was a director's loan and that, in any event, it didn't utilise the loan funds. She says it was from income generated by the company in the preceding months. It is difficult for me to be sure what Ms A's intentions were, and the various transfers of funds also make it hard to determine the exact origin of funds used for any particular transaction. Ultimately though, I think there is a clear enough connection between the transactions that justify the bank's position. I say this because:

- The Bounce Back Loan funds were immediately transferred out of M's current account on receipt, to the company's savings account. They remained there, untouched, until £23,000 was transferred to Ms A's personal account on 25 September 2020.
- M's account balance at the time of this transfer was around £4,000 – meaning that most, if not all, of the £23,000 that was transferred originated from the loan.
- Once these funds were in Ms A's personal account, she transferred them to her personal savings account. They remained there until Ms A transferred a larger amount from her savings to the solicitors in April 2021.
- With the Bounce Back Loan funds having been hived off as soon as they were received, I don't think it can be said that they were ever utilised for the business purposes that Ms A describes. While they sat in the company's savings account (and later, Ms A's personal account), the business met its commitments through the remainder of funds held in the account and subsequent credits.

So it also seems that the loan wasn't used for the requisite purpose, ultimately being utilised in a personal property purchase by Ms A. This also entitled TSB to terminate the agreement, being a breach of the terms and conditions.

Under the terms and conditions of M's account and the loan agreement, TSB also had the "right of set off" – in short, it was entitled to use any credit balance held by M in any other account with TSB towards the repayment of any amounts the company

owed to the bank. So I don't think TSB did anything wrong in removing the funds from M's accounts and applying these to reduce the amount it was owed under the Bounce Back Loan agreement.

The actions TSB took when restricting and later closing M's accounts – including its rejection of payment instructions while it was reviewing the Bounce Back Loan – were in line with the applicable terms and conditions. And, given all I've said about the validity of the bank's concerns over M's entitlement to (and use of) the loan, were reasonable steps for it to take.

Ms A is also unhappy that TSB recorded information about the application and use of the funds with Cifas. But those filings were in her personal name and as such, wouldn't be something that I could consider as part of this complaint brought by M. And while I've also noted that Ms A is unhappy with TSB's attempts to recover the outstanding debt, those weren't matters raised within this complaint originally and so I'm unable to comment on them in this decision. Ms A would need to raise those concerns with TSB in the first instance, so that it has the opportunity to investigate and provide its response.

Ms A didn't accept my provisional decision. She replied to say, in summary, that:

- The income received into M's bank account might legitimately differ from its overall level of turnover, which here was down to the company's cash transactions. And the receipt of payments in cash and use of those to pay suppliers wasn't unusual.
- Businesses were able to borrow up to 25% of their annual turnover under the Bounce Back Loan Scheme rules, with no criteria as to how this income was received (i.e. in cash or otherwise).
- I'd not evidenced that M didn't have the requisite turnover to have qualified for the Bounce Back Loan, nor why the evidence she'd provided of M's cash receipts wasn't credible. There were also records to evidence M's customer and supplier relationships.
- Although TSB hadn't been required to conduct any checks before approving the Bounce Back Loan application, it had nevertheless chosen to do so and had reviewed a number of M's supporting documents in the process. It hadn't evidenced which documents it had deemed to be false that led to it filing an entry with Cifas. She didn't agree that this wasn't a point I couldn't consider, seeing as it related to the Bounce Back Loan and therefore fell within this complaint.
- A complaint had been lodged with TSB about its recovery action in light of the default, and to which it had already issued a final response.

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 not seen reason to depart from my provisional decision. I'll explain why the further points that Ms A has raised haven't led me to a different conclusion.

I explained in my provisional decision why I thought TSB had reasonably concluded that M didn't have the requisite turnover to qualify for the Bounce Back Loan it obtained. Ms A says

I've not evidenced that position, but it is not for me to provide evidence to her. I set out the reasons for my conclusions and have provided Ms A with the opportunity to provide evidence to support her position.

I accept Ms A's point that the amount of turnover a business generates may not necessarily be visible through its account activity, or otherwise. People deal in cash, and revenue generated in this way may not be banked, and might instead be used to pay suppliers or other costs. I also agree that there was no particular criteria in this regard within the Bounce Back Loan Scheme rules – with the eligibility requirements being based solely around an applicant's turnover, and no restrictions applicable to cash or other means of payment. I didn't suggest otherwise in my provisional decision.

However, although I agree that dealing in cash isn't necessarily unusual in and of itself, I still think it is unusual to deal *exclusively* in cash, with all customers and all suppliers. Especially generating a sum as large as £258,000, and to have banked none (or very little) of it. And, as I said in my provisional decision, the turnover that M declared in the previous year was just £86 – rendering it even more unusual.

The only evidence I have been given to substantiate the turnover figure that M declared are documents created by Ms A herself, which – in light of all I've said above – I do not consider sufficient. Despite saying that some other documentary evidence is available, in respect of her customer and supplier relationships, Ms A has declined to provide it.

Even if I were to accept that M generated the requisite turnover, I also explained in my provisional decision that the way in which the loan funds had been used would also have been legitimate grounds for TSB to have terminated the agreement. Ms A didn't comment any further on those points in her response, so I've not reached a different view on that either.

On the issue of the Cifas filings, I explained in my provisional decision that this wasn't a matter I could consider within the complaint brought by M and that remains the case. Under our rules, the eligible complainant here is M – whereas the Cifas filing is in Ms A's own name. I appreciate that puts Ms A in a frustrating and disappointing position, but I have no discretion to operate outside of these rules.

Lastly, I note that Ms A has already complained (on M's behalf) to TSB about the bank's recovery action and received a final response. It is still, however, not something we can consider in the context of this complaint. We may be able to do so by way of a separate complaint, so Ms A should let us know if she would like us to look into that matter further.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 30 March 2023.

Ben Jennings
Ombudsman