DRN-4019863

The complaint

Mr D complains that Lloyds Bank PLC is unfairly holding him liable for repayment of a Bounce Back Loan (BBL).

What happened

Mr D holds a sole trader business account with Lloyds. Originally, it was for his own trading under a business name, which is the name of the account. I'll refer to the business as "L". Around 2013, Mr D ceased trading as L. Thereafter his wife, Mrs D, who was an authorised signatory on the account, used the account for her holiday lettings business. This was with Mr D's agreement, though the bank wasn't informed of the change of business.

Sadly, Mrs D died in October 2020. Mr D says he later discovered that a £25,000 BBL had been taken out in the name of L, based on the L business account activity.

In May 2020 there had been a successful application for a BBL and Lloyds had transferred the loan funds to L's business account.

BBLs were designed to help businesses get finance more quickly if they were adversely affected by the coronavirus outbreak. Under a government-backed scheme, lenders could provide a loan with a six-year term for up to 25% of the customer's turnover.

In 2021 Mr D complained to Lloyds, saying that Mrs D had applied for the loan without his knowledge and it was unfair for the bank to hold him liable for the debt.

Lloyds has said that if Mrs D applied for the BBL, she did so in her capacity as account delegate and signatory as authorised by Mr D, and that the sole trader is liable for any debt held on a sole trader account, in accordance with the terms and conditions of the account.

I issued a provisional decision in which I said I was minded to conclude that a fair and reasonable outcome would be for both sides to share the burden of the debt equally – in other words, for the bank to halve Mr D's debt. My reasons are included in my findings below.

In response, both parties said they disagreed with my provisional decision, but for different reasons, which I also summarise below.

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 that, I remain of the same view that I reached in my provisional decision, as I set out below.

This decision deals with events that are sad and distressing. Mrs D died during the period covered by the complaint, and her actions during the months before her death are central to

the arguments put by the parties. As the dispute is about financial liability, I must inevitably focus on the financial events, and with some detachment. What I write below may sound rather matter-of-fact and I hope Mr D will understand that I mean no disrespect or unkindness. I recognise that going over these events must be painful for Mr D.

The parties' main arguments

At its core, Mr D's argument is that he didn't apply for or authorise the BBL, or even know about it until after his wife's death, and therefore he shouldn't be held liable for the loan debt. Lloyds' main argument is that the loan was taken in connection with Mr D's own business bank account, the funds were paid into the account, and Mrs D was an authorised user of the account – so even if she did apply for the loan, the liability for repayment rests with Mr D as the account holder.

I believe there's some strength in both of these arguments. But having considered all the circumstances of the case, I find that neither argument can, on its own, lead to a fair and reasonable outcome of the complaint. I'll explain why and then go on to explain my decision on what a fair and reasonable outcome would be.

Did Mrs D apply for the loan without Mr D's knowledge?

Mr D says he didn't make the application for the BBL and, as far as I can see, there's no evidence that he did apply for it. As a signatory to the L business account, Mrs D had online access to the account and she would have been able to apply for the BBL without Mr D's involvement. There's been some confusion about whether there was a signature on the application, but I understand that there was no 'wet' signature. Having looked at the application details, I think it's significant that the phone number and email address provided at the time were different from the ones used normally on the account, and weren't Mr D's. The bank's emails about the loan would then have gone to an address under Mrs D's business domain name. This would be consistent with Mrs D submitting the loan application without Mr D's knowledge. Mr D has made it clear that in all other respects, Mrs D had for years been the only person who used the account and that she kept her business affairs to herself.

Lloyds points out that at one point Mrs D moved some of the loan funds into a personal account she held jointly with Mr D. The bank argues that Mr D would have seen the receipt of the funds in that account, and would therefore have been aware of the BBL. But even if Mr D had checked the joint account statement and seen the transfer, there was nothing on the statement to indicate that the funds had originated from the proceeds of a loan. Furthermore, most of the money was transferred on the same day to another of Mrs D's accounts. Here I agree with Mr D's solicitor, who says Mr D would have seen it as just another incident of Mrs D moving funds around for the business. I don't think the transfers to and from the joint account would have made Mr D aware of the BBL.

For these reasons, I find the evidence supports Mr D's claim that he didn't apply for the BBL and that he didn't know of it until after his wife's death.

I'm not saying here that Lloyds made any error in agreeing to the loan application. As far as I can tell, the bank's processes for the BBL application were in line with the arrangements established by the authorities for banks to issue such loans. In other words, this was standard industry practice as required for the BBL scheme. Mrs D was able to take advantage of the request for email and phone contact details on the application form, but again these were standard features of the form, and I'm not aware of any requirement for them to match the current account contact details.

In response to my provisional decision, Lloyds says the bank is uncertain what alternative action it could have taken. But although my conclusion is that a fair and reasonable resolution of the complaint would be for the bank to reduce Mr D's debt, I repeat that it's not because of any error Lloyds made in agreeing the lending. I explain the reasons for my conclusions elsewhere in this decision.

Mr D's solicitor has asked further questions about whether there is a signed loan agreement, but I don't think I need any further evidence about the arranging of the BBL in order to determine what's fair and reasonable in this complaint. In my view, as I've said above, it's likely that Mrs D arranged the BBL without Mr D's knowledge, and the bank, having followed the usual procedures for this kind of loan, paid the funds into Mr D's sole trader account.

How were the BBL funds used?

I've looked carefully at statements for L's business account and statements for the account into which the BBL funds were transferred shortly after drawdown (the bank has explained that this other account was L's savings account).

There were numerous transactions and it's difficult to see exactly how all the BBL funds were used. Mrs D's business routinely received money from, and sent money to, other bank accounts and PayPal accounts, and there were many card payments and transfers to a variety of retailers and other traders. But in my view, the entries on the statements do show the following:

- The bank initially paid the £25,000 BBL funds into the L business account in May 2020. In less than a week, all the money was then transferred into the savings account. Then there was a series of transfers from the savings account back into L's business account – by mid-July, over £25,000 had been transferred back. In other words, the BBL funds were moved initially to the savings account but were all later fed back into the main business account.

- Revenue from lettings fell away substantially during the first half of 2020. Lettings began to recover in July and saw substantial growth in August. By September, revenue was nearly covering outgoings. This would be in line with the timing of the coronavirus restrictions. In the spring and summer of 2020, outgoings on properties and staff seem to have exceeded revenue. It therefore appears that the BBL funds – those that were used in the business – enabled Mrs D's business to get through the lockdown period and to begin sustainable trading again.

- Before any of the events in this complaint, Mrs D appeared to make regular drawings from the L business account to her personal accounts. There were also some transfers in the other direction, from Mrs D's separate business account into the L business account.

- At the end of May 2020, there was a transfer of £10,000 from the L business account to Mr and Mrs D's joint personal account, most of which was immediately transferred to Mrs D's sole accounts. It's possible that some of this money returned to the L business account via transfers from Mrs D's business and PayPal accounts, but I can't be sure of that. It's also possible that most or all of the money stayed with Mrs D.

- I believe the statements also show that some spending from the L business account went directly to support Mr and Mrs D's household expenses. Mr D says that payments at supermarkets were largely for small items to stock the holiday flats, and

that payments to restaurants and cafes were for meetings with clients. But I note there were also payments to opticians, pet shops, music streaming and other media services, hotel accommodation, train companies and a range of other retailers. I doubt these were all needed for the holiday lettings business, so I conclude the account was also used for non-business payments which benefited the household. Again, in my view, it's not possible to tell exactly how much of the loan funds were used in this way, though it appears that the sums were much less than the amount used to support the business during the gap in revenue.

- When Mrs D died, there was less than £2,500 in the L business account, though during the following weeks some funds were transferred in (including from Mr D's personal account) as Mr D tried to put matters in order and to keep part of the lettings business running. Unfortunately, despite Mr D's efforts, it wasn't possible to continue with the business.

The business account and the BBL

Lloyds has correctly pointed out that Mrs D was authorised by Mr D as a signatory to L's business account. She was therefore entitled to operate the account. As the account holder, Mr D is liable for any expenditure on the account.

The BBL, however, was a different financial product – a loan, governed by its own separate agreement. I don't think it would be fair or reasonable to regard Mrs D's status regarding the L business account as authorisation to agree a loan on behalf of Mr D. In making Mrs D a signatory on the L business account, I don't think either Mr D or Lloyds had intended or foresaw that it would allow her, acting alone, to commit Mr D to borrow a sum of the order of £25,000.

In practice, the BBL application arrangements relied on the existence of a business current account for its set-up, drawdown and repayment. But I don't think that means the loan was a feature of the business current account. I don't think applying for the BBL could reasonably be described as operating the L business account – it was an application for another product.

In response to my provisional decision, Lloyds has said that the mandate gave Mrs D sole authority for 'non-payment' transactions, which included new borrowing. The bank hasn't provided the original mandate form, or a copy of it, but it has sent an excerpt from the standard mandate variation form.

I've looked carefully at the excerpt. It refers to non-payment transactions as follows: *"Signing instructions for any non-payment transactions (i.e. change of address, overdrafts etc.)."* The bank says this shows Mr D granted Mrs D full and unfettered access to take whatever action she wished, including applying for new borrowing. I agree that the mandate established that setting up an overdraft facility was a non-payment transaction, but I can't see that it gave Mrs D authority to approve any new borrowing outside the sole trader account. The authority was for transactions on the sole trader account and the only reference to borrowing was to "*overdrafts*" – a facility within the sole trader account. The BBL wasn't an overdraft, and in my view it wasn't a facility within the sole trader account.

It's therefore my view that the excerpt submitted by the bank doesn't show that the mandate authorised Mrs D to apply for new borrowing for the business outside the sole trader account.

For these reasons, and given that I don't believe that Mr D knew about the application, I don't think it would be fair or reasonable to say that Mrs D was authorised by Mr D to apply for the BBL.

Mr D's actions

Mrs D was authorised to operate the L business account, but in practice she was the only user. Mr D had given up his own business and, with his agreement, Mrs D used the account exclusively for her holiday lettings business. Lloyds says it wasn't informed about the use of the account for Mrs D's business. Mr D says the account was originally opened for both businesses together, but I can see no evidence in the account records that suggests the bank was told at any point that it would be used for a lettings business. I believe that if the bank had been told, it probably wouldn't have agreed to this use of the account. With L no longer trading, it's likely that Lloyds would have closed the L business account, leaving Mrs D to obtain her own facilities.

As the account holder, Mr D was formally responsible for the spending on the L business account. Despite his ultimate liability for the expenditure, it seems clear that Mr D made no attempt to monitor what happened on the account. If he had done so, he would have seen that Lloyds had paid the £25,000 loan proceeds into the account in May 2020. He says Mrs D ran the business secretively and I have no reason to doubt that. Mrs D's substitution of the email address with her own business domain name is an example. But given his liabilities as the account holder, I would expect Mr D's distance from his wife's business to have been all the more reason for him to keep a watch on the account.

Irrespective of what I said earlier about the loan application and authorisation, I can't ignore the strong likelihood that if Mr D hadn't permitted Mrs D to use the L business account exclusively for her own business, or if he'd taken steps to monitor the activity on the account, then the BBL wouldn't have been taken out without his knowledge.

I should add that, considering all the evidence, I don't believe Mr D was running the lettings business jointly with his wife. Both Mr and Mrs D had debit cards for the account, and Mr D said he sometimes used his card, at his wife's request, to buy provisions for the holiday flats and to cater for meetings. To that extent he was assisting her business, but he says those were simply favours to her and he wasn't part of the main business.

It's relevant here that the business collapsed soon after Mrs D died. I note that from October 2020 onwards, Mr D and another family member operated the L business account, largely to deal with the residual lettings and to settle matters with property owners and others. They had hoped to keep part of the business running, but revenues tailed off within weeks. I don't think any of the account activity in this period indicates that Mr D previously had any significant role in the lettings business. Rather, these events indicate that the business had been entirely Mrs D's.

Was it Mr D's sole trader account or a joint account?

Mr D says that he and Mrs D originally set up the L business account jointly for both their businesses, but I haven't seen any evidence to support this. I have no reason to doubt Mr D when he says that he and his wife went to the bank together when the account was opened. But from what I've seen, the account documents are consistent with Lloyds' version of events – that the account was opened as a sole trader account for Mr D's sole trader business, L, and that Mrs D was then added as a signatory.

The mandate records show that Mr D's signature was recorded for the account in June 2010 and that Mrs D's signature was recorded for the account in May 2011. The "know your

customer" record for the account shows that it was a sole trader account for Mr D trading as L, and its business classification was "activities of tourist guides" – which matches Mr D's business. There's no mention of Mrs D's lettings activities. The name of the account was L, which was Mr D's trading name. Mrs D traded under different names.

Mr D has also suggested that if it was a sole trader account, then the bank was at fault for allowing him and Mrs D to believe that the account was a joint account. He maintains that the form of the account wasn't adequately explained to them at the time of opening. But again, I've seen no evidence to support this. From the start, the name of the account was his own sole trader business and the bank records show that it was a sole trader account. I don't think Lloyds has done anything wrong here.

In any event, even if I'm wrong about this and the account was set up as a joint account (which, to be clear, I don't believe it was), then my conclusions about the complaint wouldn't change. In other words, I don't think Mr D's argument about the status of the account is relevant to the outcome of the complaint. If Mr and Mrs D had operated a joint business account – which would have been a partnership account – then all of his liabilities for the account expenditure and debt would be the same as with the sole trader account. Moreover, I'm satisfied that Lloyds was originally told that the nature of the business was L's activity, and there's no mention of holiday lettings in the bank's records, so I'm satisfied Lloyds wasn't told of the nature of Mrs D's business activity in respect of this account.

Did Mr D benefit from the BBL?

As I said above, there's no evidence that Mr D applied for the BBL or that he knew about it. But in my view, there are three ways in which he received some benefit of the loan funds.

First, I believe that some of the non-business spending, as discussed above, would have been to Mr D's benefit, either directly or as a member of the household.

Secondly, and more importantly, I believe Mr D benefited from the BBL helping Mrs D's business. I have already said that the BBL funds seem in part to have done the job which they were intended to do – to support Mrs D's business when it was adversely affected by the coronavirus outbreak. Without the BBL, I believe Mrs D's business would have been in serious financial trouble during the summer of 2020, which would have affected the household finances negatively. By the end of the summer, revenues were picking up again and, had Mrs D survived, it's possible that the business could have returned to pre-covid trading levels. Mr D may not have had any involvement with the running of Mrs D's business, but I believe the family would have suffered financially if the BBL hadn't kept the business running. Some of the funds appear to have been used to meet business commitments which, without the BBL, would have had to come from elsewhere.

Thirdly, I also noted above that Mrs D made personal drawings from the business, which in mid-2020 wouldn't have been possible without the BBL. In particular, Mrs D transferred £10,000 to her personal accounts in May 2020. I think it's reasonable to conclude that the BBL benefited the family finances, and therefore in part benefited Mr D.

Mr D's solicitor says that because revenue came into Mrs D's business up to and beyond her death, it's impossible to separate the loan funds from other business income and therefore it's not feasible to suggest Mr D benefited from the BBL. But having looked at the statements for the L business account, I disagree. I've said above that in the spring and summer of 2020, outgoings on properties and staff seem to have exceeded revenue, and therefore the BBL funds helped Mrs D's business to get through the lockdown period. During that period, expenditure from the L business account was possible only because of the BBL funds. Later, even after the period when lettings began to revive, the L business account balance

dwindled to less than £2,500. Overall, without the BBL funds, I believe Mr and Mrs D's family finances would have suffered. I'm satisfied that Mr D received some benefit from the BBL funds.

How should this complaint be resolved?

My role is to determine a fair and reasonable outcome of this complaint, taking into account all the circumstances. In Mr D's complaint, I believe the circumstances are unusually balanced. Having carefully considered both parties' responses to my provisional decision, I remain of this view.

There's no evidence that Mr D himself applied for the loan, or that he knew Mrs D applied for it, so I don't think it would be fair for Lloyds to require Mr D to repay the whole of the debt. But that's not the end of the matter. I think there are several reasons why it wouldn't be fair for me to require the bank to absorb the whole debt, as follows:

- all the BBL funds were spent from Mr D's own business account and he therefore has responsibility, as account holder, for that spending

- having allowed Mrs D to operate her business from the account, Mr D then didn't monitor the transactions on the account to control any risk

- the debt wouldn't have arisen if Mr D hadn't let Mrs D operate her own business from the account without the bank's knowledge

- Mr D received some benefit from the BBL funds

I therefore believe that the debt was, in part, a result of the Mr D's own actions and inactions, and that in addition he received some benefit from the loan funds.

Mr D's solicitor argues that there's no basis on which Mr D can be held liable for any of the borrowing – that as he didn't apply for the loan, Lloyds doesn't have a contractual relationship with Mr D for the purposes of the loan. The solicitor says this is a point of contractual law and, for that reason, it isn't fair or reasonable to hold Mr D to the loan – indeed, Lloyds would have difficulty enforcing the debt in the courts because of a lack of legal basis.

The rules of this service set out how I am to determine a complaint. DISP 3.6.1R states that the ombudsman will determine a complaint "*by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case*." DISP 3.6.3R requires me to take law and regulations into account in considering what is fair and reasonable in all the circumstances of the case.

Mr D's solicitor argues that because I believe Mr D didn't apply for the BBL, I should find that there was no loan contract and that Mr D therefore owes no debt to the bank. But in my view the circumstances of this case are wider than just the authorisation of the BBL, and therefore wider than consideration of the BBL contractual relationship. I've explained my reasoning above, but I should stress here that although Mr D didn't apply for the loan, he did receive the funds from the loan into his sole trader account and those funds were spent with his authority. In my view, the circumstances under which the proceeds of the loan were spent, with Mr D's authority, are also relevant to determining a fair and reasonable outcome of this complaint. In other words, in considering all the circumstances of the case, I don't think it would be fair or reasonable to ignore what happened to the proceeds of the loan. Nor do I

think would be fair or reasonable to ignore Mr D's actions regarding the risks of permitting Mrs D to use his account from which to run her own business.

The ombudsman service doesn't have the power to determine whether or not a debt is enforceable. That would be a matter for a court. My role is to determine what is in my opinion a fair and reasonable outcome of the complaint brought to us, taking into account all the circumstances.

I've discussed in detail the evidence concerning the L business account and the BBL, and the arguments put by the parties. It isn't possible to quantify any of these different and conflicting factors with any accuracy. Nor would it be fair, in my view, to regard any argument as overriding the others. I think there are strong arguments on both sides, and I see no reason to hold either side above the other.

My provisional decision was that a fair and reasonable outcome would be for both sides to share the burden of the debt equally – in other words, for Mr D to repay one half of the debt. Although the parties have stuck to their respective positions (Mr D saying that the debt should be extinguished and Lloyds saying that it should remain in full), neither has suggested an arithmetically different proportion in which the debt might be divided. I remain of the view that halving Mr D's debt would be a fair and reasonable outcome.

Putting things right

For the above reasons, I conclude that the bank should reduce Mr D's BBL debt by half.

My final decision

My final decision is that I require Lloyds Bank PLC to reduce Mr D's debt for repayment of the BBL by half.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 April 2023.

Colin Brown
Ombudsman