

The complaint

Miss P is a sole trader. She complains that TSB Bank plc unfairly closed her business account and recalled her Bounce Back Loan.

What happened

Miss P opened a business account with TSB in October 2020 and applied to the bank for a Bounce Back Loan of £30,000. The loan was approved and drawn down in December.

In January 2021, TSB undertook a review of Miss P's Bounce Back Loan application and asked her for some information about her business to confirm her eligibility for the loan she'd received. With concerns as to Miss P's eligibility, TSB restricted her access to her account and the funds held within it from 3 February 2021 while looking into things.

Following its review, TSB concluded that Miss P hadn't met the eligibility criteria for the Bounce Back Loan – so it decided to close her business account and default the loan immediately. It used all of the funds held in Miss P's account to reduce the amount outstanding on the loan and issued a formal demand for the repayment of the remainder, around £15,600, within 14 days.

TSB also closed Miss P's personal accounts, which were the subject of a separate complaint.

Miss P says that the closure of her business account and loss of the funds therein, which were predominantly comprised of the loan, have devastated her business. She doesn't think there is any basis for the bank's actions.

TSB says it had legitimate concerns as to Miss P's eligibility for the loan and, based on these, closed her account and terminated the loan in accordance with the applicable terms and conditions.

One of our investigators reviewed Miss P's complaint but didn't recommend that it be upheld. In summary, he thought that TSB's decision to close Miss P's business account and default the Bounce Back Loan had been reasonable in light of the findings of its review.

So with no resolution, the complaint was passed to me to decide.

My first provisional decision

My initial view of this complaint differed from that of our investigator. So I issued a provisional decision setting out my findings, and invited both parties to let me have any further information or evidence they wanted me to take into account before I made a final decision. I said:

Under the rules of the Bounce Back Loan Scheme, an applicant could borrow up to 25% of their annual turnover (to a maximum amount of £50,000).

When Miss P applied for the Bounce Back Loan, she declared an annual turnover of £180,000. TSB approved her request for a loan of £30,000 on the basis of this declaration, in keeping with the self-certified nature of the Bounce Back Loan application process.

When TSB subsequently reviewed Miss P's application, it didn't think the turnover figure she declared was accurate. This is based on a review of Miss P's tax return, which shows that her business had no income during the tax year 2019/20 (although it does evidence that she was trading, but reported a loss). TSB says that as Miss P had no income during 2019, she was ineligible for a loan – because the rules of the Loan Scheme said that applicants could borrow up to 25% of their 2019 turnover.

TSB's explanation of the Loan Scheme rules isn't quite right – as different requirements applied to businesses established after 1 January 2019. While it is correct to say that businesses established before 1 January 2019 had to use their 2019 turnover, businesses established after this date were asked to provide an estimated annual turnover figure upon which to base their request.

Miss P's business was established after 1 January 2019. Although there is some dispute as to exactly when this was, I don't think it is in doubt that it was at some point during 2019. Miss P's tax return shows a start date of 20 December 2019. Miss P was, therefore, entitled – in fact, required – to use an estimated annual turnover on which to base her request for a loan. And this was set out in TSB's own application form, which said:

“What is your annual turnover, or if your business was established after 1 January 2019, what is your estimated annual turnover?”

There may be a legitimate question as to the accuracy of Miss P's estimate. But she has provided the calculations on which this was based along with other information about her plans and trading activity since. And it is important to note that there was no guidance as to how to calculate the estimate – including on what might (or might not) constitute a reasonable forecast. So it was left to Miss P to provide an estimate of her annual turnover and, from what I've seen, I don't think the figure she used was patently unreasonable.

TSB has also said that it required applicants to evidence that they had been trading their business through a personal account with TSB if their business account was opened after 11 May 2020. This applied to Miss P, as she opened her business account in October 2020. It raised a further concern that it couldn't see that some of Miss P's business transactions had been processed through her personal account. But, as the bank has acknowledged, there are valid reasons in that an alternative method of payment was used. Ultimately this requirement of the bank's was to check the applicant's trading status and therefore eligibility for the Bounce Back Loan, and Miss P provided it with a wealth of other information to satisfy this.

Taking all of the above into account, I don't think TSB acted reasonably in terminating and recalling Miss P's Bounce Back Loan. It had legitimate concerns in view of the apparent discrepancy between Miss P's declared turnover figure and the actual amounts running through her account. But it wasn't reasonable to conclude that this was a fraudulent application. No consideration seems to have been given to the fact that Miss P had to use a projected figure, so there was never going to be much in the way of actual account activity to demonstrate the £180,000 figure she'd declared.

TSB's review of the Bounce Back Loan also led it to close Miss P's bank account immediately. Given that I don't think it acted reasonably in respect of the loan, it follows that I think this was a further error on the bank's part.

As I don't think TSB treated Miss P fairly, I've gone on to consider how she was impacted by what the bank did wrong.

The immediate termination of the loan – and withdrawal of the remaining funds from Miss P – along with the immediate withdrawal of her banking facilities inevitably had a significant impact on Miss P's business. The contract had been entered into and Miss P had understandably acted in reliance on it, utilising half of the funds over the months that they'd been available to her. Miss P has explained and evidenced that she had already committed to a business plan for an event in 2021 that couldn't be fulfilled without the remainder of the loan funds. This meant that she derived no benefit from many of the expenses she'd already incurred, on which the loan funds had been spent.

This also meant that all the work she had put into arranging the 2021 event that couldn't go ahead had been wasted. This event was the sole purpose of the business, with no other operations or income streams. Miss P had already generated some ticket sales, which had to be refunded.

Miss P subsequently resumed trading and, having borrowed funds from elsewhere including her family, was able to host an event in 2022. As she has been able to cope without the remainder of the loan funds, and with matters having moved on, Miss P isn't seeking the return of this portion of the loan to which I think she was entitled. But she is currently faced with having to repay around £15,000, being the amount that she utilised, from which she has derived little benefit. I don't think that's fair.

So to put things right, I'm intending to require TSB to write off the outstanding loan balance. While I think Miss P would likely have received some benefit from some of the purchases made with the funds – I note that some equipment, for example, was bought and this could be used or sold if unnecessary – the majority was spent on arranging and promoting the event that didn't go ahead. And I am mindful that Miss P lost the opportunity to proceed with the event, that would've generated some income that she lost out on. While imperfect, I think this puts Miss P in the fairest position practicable – particularly given the time that has passed and the change to her circumstances.

As is evident from the above, I also think TSB's actions caused Miss P some significant distress and inconvenience. The immediate removal of the loan and her account would've prompted a range of emotions, from the concern at feeling that she had done something wrong to the upset at having to cancel the event for which she'd spent months working towards. She was then faced with having to repay the bank £15,000 immediately, which would doubtless have caused some significant anxiety. This all came off the back of what she would've hoped was a recovery to normal trading, having had to shelve plans in 2020 in light of the pandemic – further delaying the growth of her new business and severely impacting her income.

Miss P had to spend time and trouble cancelling the arrangements for the 2021 event, refunding ticket sales and cancelling bookings for events and artists. While hard to calculate, this is also likely to have impacted the reputation of her business. And she's had to make alternative arrangements with other banking service providers, as well as borrow money from family, to restart her business.

Taking all of this into account, I'm also intending to require TSB to pay Miss P compensation of £2,000.

Miss P accepted my first provisional decision. But TSB didn't. It replied to say, in summary, that:

- The bank had some concerns as to whether Miss P had actually been trading at all, given that the income received into her account consisted mainly of payments from an employer. It said that in response to queries about this, Miss P had provided some invoices but these hadn't been processed through the accounts she held with the bank.
- There was still some ambiguity over when Miss P started her business, but it accepted that this would've been after 1 January 2019 and Miss P was therefore entitled to provide an estimated turnover figure when applying for the loan.
- It didn't agree that there hadn't been any guidance as to how calculate the estimate, and pointed to an explanatory note that told applicants to apply the 25% limit to their estimated turnover from the date the business started. With the business having been running for a minimum of 10 months by the time of Miss P's application, it thought she should've been able to provide a "fairly accurate" annual turnover figure. It deemed the figure used to have been "overinflated", given the lack of any business-related credits running through Miss P's TSB accounts and as Miss P had subsequently told the bank that the figure was based on events she planned to run in 2021.
- The bank hadn't been required to verify Miss P's self-certified declaration – which included whether she had the requisite level of turnover to qualify for the loan – when deciding whether to approve her application.
- Miss P had told TSB that money put into events scheduled for 2020 had been lost (due to cancellations imposed by coronavirus restrictions) and that she had used some of the loan funds to reimburse herself for the costs she'd incurred. But she hadn't evidenced this, despite the bank's request. And this contradicted Miss P's subsequent claim that the loan funds had been used to fund expenses for the 2021 event.
- It wasn't reasonable to conclude that TSB's actions were the sole cause of the 2021 event having to be cancelled, as it believed that coronavirus restrictions would always have had an impact.
- Miss P had ultimately been unable to satisfy the bank's concerns in failing to provide clear evidence when requested. So it still thought that it had been right to recall the loan and close Miss P's account based on the information available to it at the time.

My second provisional decision

Following further review of the complaint in light of the responses to my first provisional decision, I took a different view as to how TSB should put things right. I said:

I've noted TSB's points around Miss P's trading activity – although it hasn't explicitly stated that it doesn't think Miss P wasn't trading at the requisite time such that she was ineligible for a loan of any amount. The bank has gone on to accept that Miss P was entitled to use a projected turnover figure so I take this to mean that it accepts

Miss P was trading at the requisite time. I should add for completeness that the evidence I've seen leads me to think that Miss P was engaged in trading activity prior to 1 March 2020 and at the time she applied for the loan. I should also confirm that I agree TSB was under no obligation to verify Miss P's turnover figure when reviewing her application (and I didn't suggest otherwise in my previous provisional decision).

As it is accepted that Miss P was entitled to use a projected turnover figure when applying, the question remains whether she acted reasonably in using the figure that she did. I accept it was an overstatement to say that there was *no* guidance as to how this figure ought to have been calculated – although I don't think it was especially clear or exhaustive. It said only that applicants should “*apply the 25% limit to your estimated annual turnover from the date you started your business*”.

I can see why TSB thinks it was inappropriate for Miss P to have used forecasted income in 2021 when entering a figure. But I don't think it was unreasonable. Miss P evidently based her assessment on the 12 months from the date of her application, rather than the date her business started. She hadn't been able to trade in 2020 and, given the nature of her business, her turnover was seasonal and dependent on particular events going ahead. So to provide an estimate of her annual turnover, she thought about what she expected to earn when running as normal. Even if I accept that wasn't what TSB expected of her, I think it was provided in good faith – and don't find it so unreasonable as to warrant the immediate termination of the facility some months later.

The bank had a level of discretion over whether to terminate the loan, and given all I've said above I'm still not persuaded that it exercised that discretion fairly in all the circumstances – particularly in view of the foreseeable adverse impact it would have on Miss P and her business.

In my provisional decision, I said that I thought a fair way for TSB to compensate Miss P for the financial impact of its unreasonable decision to terminate the loan would be to write off the outstanding balance. I've reflected on this in light of the bank's further comments, in particular its suggestion that the bank's actions weren't the sole reason for the cancellation of the 2021 festival. Having done so, I no longer think that a write-off of the loan would be fair in the circumstances. I'll explain why.

As TSB has pointed out, there were still a number of coronavirus-related restrictions in place in June 2021 – when Miss P was intending to host the event overseas. And Miss P acknowledges that she posted on her business's social media page that the festival was cancelled as a result of coronavirus restrictions (with particular reference to the impact of the limits on international travel) – although she says this was something of a cover story, in order to limit the impact of damage to the business by disclosing that it didn't have the requisite funds to proceed.

Even accepting what Miss P says, I think the fact remains that international travel was still severely restricted, including from the UK and to the country in which her event was to take place. International travel from the UK had only been allowed to restart in May 2021, and that was subject to stringent measures under the 'traffic light' system. The location of Miss P's event was not added to the 'green list' – to which international travel was permitted – prior to the intended event date. The destination country also had its own restrictions and entry requirements in place around this time – which, as I understand it, included particularly stringent rules on passengers arriving from the UK, which was listed within its own 'red' category.

It therefore seems most likely to me that Miss P's event would, unfortunately, always have been unable to proceed – in much the same way as she'd been unable to host the event she'd had planned for 2020. That being the case, I can't say that the 2021 festival had to be aborted simply because of TSB's actions, as I don't think it would've gone ahead anyway. It follows that I no longer think any losses Miss P incurred as a result of the cancellation of the 2021 festival were down to the actions of TSB.

I've given some thought to whether Miss P suffered any other losses by being deprived of the remainder of the loan funds, taking into account what she has told us about the impact of this on her business. But I've not seen that she did. I understand that she was able to go ahead with subsequent events, having received a loan from family and another lender and – based on what I've seen so far – I can't say that these subsequent events generated any less profit for Miss P than they would've done had TSB not recalled the Bounce Back Loan.

As I still think that TSB acted unfairly in terminating the Bounce Back Loan (and closing her account without notice off the back of that decision), I still think it should compensate Miss P for the distress and inconvenience this caused her. Much of the impact I described in my provisional decision remains attributable to what the bank did wrong, in that the immediate removal of the facilities would've caused Miss P some significant upset as well as the inconvenience of having to make alternative arrangements for both an account and funding for her business. However, given I now think that the event would always have been cancelled, I recognise that Miss P would always have needed to carry out the work related to this (such as refunding tickets and cancelling bookings) irrespective of TSB's actions. As a result, I now think a fairer compensation amount would be £1,250.

Miss P didn't accept my second provisional decision. She replied to say, in summary, that:

- TSB was unfairly portraying her business as fraudulent, despite her having evidenced that she was scheduling the 2021 event and was later able to put on an event in 2022. And it wasn't fair that the complaint was now focusing on whether the event would've gone ahead – instead of the unfairness of the bank's actions in closing her account and terminating the Bounce Back Loan.
- Coronavirus restrictions on travel had nothing to do with the cancellation of the event she'd planned for summer 2021, which was only due to the bank's withdrawal of her loan funds.
- Such restrictions wouldn't have affected her ability to proceed with the event. The host country didn't prohibit such events – and in fact, had specifically encouraged them in order to stimulate the economy. Travel from the UK was permitted subject to testing at the time, and by July 2021 entry was 'free' – so the event could've been postponed by a few weeks if absolutely necessary – but the majority of those who'd purchased tickets were already based in the host country anyway.
- It was unfair for her to repay over £13,000 that had been spent in good faith on the event and only cancelled as a result of TSB's actions.
- The termination of the loan hadn't just caused the cancellation of the event, but had a "ripple effect" on her business as other events in the pipeline were affected. She'd attempted to salvage this by taking out another loan with a different provider, and borrowing from her family.

In light of Miss P's response, I asked her for some more information about the loan she'd taken out with another provider. She explained and evidenced that she'd taken out a loan of £25,001 under the government-backed Recovery Loan Scheme with another lender, which was at a higher interest rate than the Bounce Back Loan she'd had with TSB.

As I thought Miss P had ended up having to borrow more through the Recovery Loan as a result of TSB removing the remainder of the Bounce Back Loan (around £14,400) from her unfairly, I wrote to both parties to advise that I was also intending to require TSB to compensate her for this by paying her an amount equal to the additional interest she'll incur on £14,400 of the Recovery Loan funds.

TSB responded to say that it still didn't agree with the basis of my provisional decisions, maintaining that Miss P had provided false information in order to obtain the Bounce Back Loan in the first place. Had she not done so, she would always have needed to seek lending elsewhere and this would inevitably have been at a higher rate. It also said that Miss P had made an "informed decision" to apply for the new lending without any guarantee of recompense from TSB, and so was responsible for assessing her ability to afford its repayment.

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 set out in my first two provisional decisions why I thought it had been unfair for TSB to terminate and recall the Bounce Back Loan in the circumstances here, and I've not been provided with any new information that would lead me to think any differently about that. I understand Miss P's strength of feeling over what happened, but as I've already found in her favour on the questions as to whether she was trading at the requisite time and the reasonableness of her turnover projection, I don't think there is any need for me to comment on these points any further. And while I note TSB doesn't agree with my position, it hasn't said or provided anything that I'd not already considered in reaching this view.

That leaves the question of how TSB should compensate Miss P for the consequences of what I consider to have been its errors.

Our general approach to compensation is to put the complainant in the position they would be, had the financial business not made an error. And so to that end, the question of whether the 2021 event would've gone ahead is most pertinent. If it would've done, then TSB's actions caused its cancellation – meaning the money Miss P spent on preparing for the event was wasted, and depriving her of the opportunity to generate profit. But if the event wouldn't have gone ahead anyway, then TSB's actions won't have impacted Miss P's position in this respect.

I set out in my second provisional decision why I thought it was most likely that the 2021 event wouldn't have gone ahead. It's obviously difficult for me reach a conclusion either way with any certainty. I've reflected on this point further in light of the further information that Miss P has provided, but I've not reached a different view. I say this because:

- There remains the fact that Miss P publicly stated that the event was cancelled due to coronavirus-related restrictions. While I can see why Miss P wouldn't have been keen to specify that this was due to the bank's removal of funding – which would likely affect the business's reputation – it is also hard to reconcile this with Miss P's adamant assertions that the event would *not* have been affected by such restrictions.

Not least as, if this was so obviously the case, then these statements would've been difficult for customers and/or business partners to accept.

- Although Miss P has demonstrated that public events weren't prohibited in the host country, the basis of my finding was that coronavirus-related *travel* restrictions would've affected the event. I think these would've led to guests and artists being unable to attend. Miss P hasn't provided anything that leads me to think any differently about that.
- Miss P says that the UK's travel restrictions wouldn't have had a significant impact, as most of the ticketholders were based in the host country. She's been unable to provide any evidence of that. While I can understand why that would be difficult, her public announcement on social media at the time of the cancellation contradicts this position – which said that “half of our attendees won't even be able to get to our festival”, as well as the artists that were scheduled to perform.

So based on the available evidence, it seems most likely to me that the event either was or would've been cancelled due to the impact of the coronavirus-related restrictions, independent of TSB's actions. Miss P would, therefore, always have been left needing to repay the loan funds that she'd utilised but been unable to profit from. And so – while I sympathise with the position that Miss P found herself in – it follows that I don't think TSB needs to write off the outstanding loan balance.

I said in my second provisional decision that I'd not seen Miss P had suffered any other financial losses as a result of TSB unfairly retracting the Bounce Back Loan. But she has evidenced that she subsequently took out a Recovery Loan with another provider. It's difficult to say with any certainty whether Miss P would've had a need for the Recovery Loan if TSB hadn't retracted her Bounce Back Loan. But I think it is fair to say that, in all likelihood, she wouldn't have needed to borrow as much as she did if the £14,400 Bounce Back Loan funds hadn't been taken from her. She has, in effect, replaced those funds with the Recovery Loan – which is charged at a higher interest rate (5.9%, compared to 2.5% under the Bounce Back Loan). So I think it would be fair for TSB to reimburse Miss P for this additional interest cost.

It should do this by calculating how much additional interest Miss P will pay on the amount it removed from her account (£14,338.60) under the terms of the Recovery Loan than she would've paid on this amount had the Bounce Back Loan remained in place, and on the assumption that each loan runs its full term. I recognise that is somewhat imperfect, as the interest rate on the Recovery Loan is variable – and as any number of things could arise over the loan term that would affect how much she has to pay. So the refund may end up benefitting Miss P slightly (should rates go down, for example) – or causing her to lose out a little, if rates go up. But I think it is the fairest and simplest way of resolving this aspect of the matter.

I've considered TSB's objections on this point. But I don't think the question of whether Miss P made an informed decision to take out this borrowing is relevant – it is more that she was left having to borrow more than she would've needed were it not for the bank's unfair withdrawal of her Bounce Back Loan. And while the bank has queried whether the loan had actually been drawn down – as it had only seen a copy of the agreement – Miss P has evidenced receipt of the loan funds, by way of a bank statement.

Lastly, neither party has said or provided me with anything that leads me to take a different view of the compensation award I proposed in respect of the distress and inconvenience that Miss P was caused by shortcomings on the bank's part. And so, in addition to the reimbursement of interest, I'm also requiring TSB to pay Miss P compensation of £1,250.

My final decision

For the reasons I've explained, I uphold this complaint and require TSB Bank plc to:

- Arrange for the removal of any adverse credit information recorded in Miss P's name in respect of the default of the Bounce Back Loan;
- Reimburse Miss P the additional amount of interest she'll have to pay on the Recovery Loan in the manner I've described above; and
- Pay Miss P compensation of £1,250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 13 April 2023.

Ben Jennings
Ombudsman