

The complaint

Ms E is a sole trader. She complains that Lloyds Bank PLC has made a number of errors in how it handled her attempts to remove previous business partners from her bank account and Bounce Back Loan.

Mr B has also joined the complaint, being a co-signatory to the bank account.

What happened

Ms E's business, which trades under a name that I'll anonymise as "L", was previously run as a partnership with one other partner, who I'll refer to as "Ms G".

While running as a partnership, L held a business account with Lloyds – with Ms E and Ms G being the signatories. The partnership successfully applied to Lloyds for a Bounce Back Loan of £15,000 in August 2020, which it later increased to £17,000 with a "top-up loan".

Ms E says that Ms G left the partnership, and that she's made numerous attempts over the last couple of years to update the accounts she holds with Lloyds to this effect – but it isn't helping her. In summary, she says:

- She attempted to remove Ms G from the account so that it was in her sole name, but Lloyds didn't action this request. Instead, the bank told her that the quickest way to remove Ms G would be to replace her with someone else.
- That led to her adding a second "partner", who I'll refer to as Mr B – even though he didn't have anything to do with the business. The addition of Mr B to the bank account also led to him being held jointly responsible for the Bounce Back Loan. This has caused further complications as she now needs to remove Mr B.
- She had completed a novation agreement to transfer the Bounce Back Loan into her own name as a sole trader. But Lloyds lost her initial set of completed forms – and by the time she came to reapply, the bank wasn't allowing novations to proceed.
- The difficulty in making these changes hampered her ability to access the "Pay As You Grow" (PAYG) payment support options, particularly a payment holiday, when she was unable to afford the loan repayments. This has led to the Bounce Back Loan falling into arrears, with those arrears then being recorded on her credit file.

Lloyds has accepted that it hasn't handled things as well as it should have. In its responses to Ms E's complaints, it has said:

- It received a request from Ms E to remove Ms G from the account in October 2020. It couldn't action that request, as it needed Ms E to open a sole trader account instead. It tried to speak to her about that, but couldn't reach her. So the request was closed down.

- After Mr B replaced Ms G on the account, it subsequently received Ms E’s request to convert the account to a sole trader account – but the request was “overlooked” due to an internal breakdown in communication.
- It had misplaced the novation paperwork initially, which was subsequently received and accepted – but around the same time, it had decided to suspend novations and so couldn’t proceed with Ms E’s request.
- There had been delays in responding to Ms E’s queries about the PAYG options, with matters becoming protracted unnecessarily. But a payment holiday had eventually been put in place from November 2021 to April 2022. A repayment plan had been set up for the arrears that had accrued beforehand – but Ms E hadn’t made the agreed monthly payments.

Lloyds has apologised for the difficulties that Ms E has encountered, and paid her a total of £350 by way of compensation for the upset and inconvenience this has caused.

Ms E doesn’t think the matter has been fairly resolved. She thinks the loan is in arrears due to errors on the bank’s part, and wants this position to be corrected – including her credit file. She also says that Mr B should be removed from the loan as he has nothing to do with the business. And she wants further compensation for the time she’s had to spend dealing with the matter, and the anxiety it has caused her.

One of our investigators reviewed the complaint, but thought the steps that Lloyds had already taken represented a fair resolution to the matter. As Ms E didn’t agree, the complaint was passed to me for review.

My provisional decision

I issued a provisional decision on the complaint last month, setting out why I thought Lloyds needed to do more to put things right and giving both parties the chance to respond with anything they wanted me to consider before I made a final decision. I said:

The bank account mandate and the drawdown of the Bounce Back Loan

It’s not entirely clear to me when Ms G left the partnership, such that Ms E was running the business as a sole trader. But Lloyds’ records show that Ms E first informed the bank of this during a conversation in April 2020. They also show that Ms E said she’d sent in a form to update the account mandate accordingly – which the bank said hadn’t been received, and in any event that it would need Ms E to open up her own sole trader account instead. Requests for lending were also declined around this time, on the basis that the issue of the trading entity would need to be resolved before any new facilities could be agreed.

It appears, then, that Lloyds correctly advised Ms E in April 2020 that she would need to open a new account for her sole trader business now that Ms G had left the partnership. This didn’t happen. And I can’t see that there was any attempt by Ms E to open the requisite account around this time.

Rather, Ms E submitted what appears to be a second mandate variation request in August 2020 with a view to removing Ms G from the account. Lloyds received this, but – for the reasons given in April – couldn’t process it. The bank’s records show that it attempted to call Ms E to advise her again that she would need to open a new account as a sole trader, but it couldn’t reach her. The request, therefore, wasn’t actioned.

I should say here that I don't think Lloyds did anything wrong in declining these requests to vary the account by simply removing Ms G from the mandate. As the business was now being run as a different legal entity – as a sole trader, rather than a partnership – I think it was reasonable for Lloyds to ask that Ms E open a new account. I say this primarily because it would enable the bank to complete the various legal and regulatory checks expected of it.

Ms E says that having not heard from Lloyds, she'd assumed the change she'd requested had been processed. I'm not sure that it was reasonable to rely on silence as confirmation – the bank may not even have received the paperwork, and it would've been prudent to check in on things. All the more so, given that she'd been told just a few months earlier that the request she was now making wouldn't be possible, and that she'd need her own account.

The account, then, remained in the name of the partnership when Ms E came to apply for the Bounce Back Loan. I can't see that was down to an error on Lloyds' part. The documentation issued for the loan also named the borrowers as Ms G and Ms E, so I think it would've been clear to Ms E at this point that Ms G was still connected to the business as far as Lloyds was concerned. Ms E went ahead with the application on that basis.

The next record of any contact about the parties named on either facility is January 2021, when Ms E called Lloyds. The bank's notes show that it advised her that the variation request made in August 2020 was rejected, and that she would need to open a sole trader account. But Ms E submitted a further mandate variation request in or around July 2021. This asked that Ms G be removed from the account mandate, and be replaced by Mr B. This request was approved. I don't think Lloyds did anything wrong here, having carried out Ms E's instruction.

So taking all of this into account, I don't think Lloyds did anything wrong in how it administered the bank account or Ms E's various requests to make amendments or in how it set up the Bounce Back Loan initially.

The variation of the Bounce Back Loan and PAYG requests

Repayments were due to begin on the Bounce Back Loan on 14 September 2021, and – knowing that she would find it difficult to pay the required amount – Ms E wanted to discuss the PAYG support options. She was in touch with Lloyds on 11 August 2021 in this regard. Lloyds's notes reflect Ms E's recollection of being told that she couldn't access the PAYG options until the loan was novated into her sole name.

Lloyds therefore considered arrangements to move the Bounce Back Loan into Ms E's sole name. A new sole trader account was opened for her on or around 27 August 2021. A novation agreement was needed in order to transfer the loan. It isn't clear when the bank sent this to Ms E, but the evidence I have suggests that it was first sent on 1 September. Notes show that Ms E called the bank to chase things up on 22 September, having sent the completed document back on 7 September by recorded delivery. But as the bank couldn't find that, a replacement agreement was sent to her on 22 September and she returned the completed documents on 24 September. The bank received this – but then said it couldn't proceed, as it had "paused" novations while considering its approach to such requests.

With the novation outstanding, and Ms E having been told that she couldn't utilise the PAYG options, the payments that fell due in September and October 2021 were missed. I think this was avoidable. Lloyds later implemented a payment holiday under PAYG in November – when the novation was still outstanding. I understand Lloyds accepts that it misadvised Ms E in this regard and it is evident that she could've accessed the PAYG options when she first approached the bank. While it would've been preferable to agree the novation first, I don't think Ms E should've been left without access to the PAYG options when it was evident that this couldn't be completed in time.

Had things gone as they should've done, the six-month payment holiday would've been put in place in time for the September 2021 payment and run through to February 2022 (with the first repayment then becoming due in March). So Lloyds' mistakes meant that the loan fell into two months' arrears when it shouldn't have done.

However, the payment holiday was subsequently agreed – and once it expired, Ms E was still unable to make the monthly payments that fell due. Payments continued to be missed over the months that followed. So although Lloyds made a mistake that led to a delay in setting up the payment holiday, I don't think this has had a material impact on things. Unfortunately, it seems that the loan remained unaffordable for Ms E even after the payment holiday. And so regardless of when the payment holiday was implemented, the loan was always going to end up in the arrears position that it is in now.

As a result, I don't think there is any basis on which I could fairly require Lloyds to write off these missed payments as Ms E has suggested, or to remove record of them from her credit file.

There remains the question of the novation. This has remained outstanding, as Lloyds has said the process was "paused". But having seen complaints of a similar nature regarding the novation of Bounce Back Loans where a departing partner needs to be removed, I understand that the novation Ms E was seeking ought now to be possible.

It is, however, unclear to me exactly who Lloyds thinks is jointly responsible for the Bounce Back Loan alongside Ms E, and why. The loan has remained in the name of the business – "L". As I understand it, Lloyds considers L to be a separate legal entity, and Ms E and Mr B – as partners in L – are therefore jointly and severally liable for the debt. But a partnership isn't a separate legal entity. The loan was taken out in Ms E and Ms G's joint names, and I've not seen anything to suggest that Ms G's liability could be transferred to Mr B simply by the account mandate variation. I can't see how Mr B could fairly be held liable for a debt without explicitly agreeing to it – and I've not seen that he signed any documentation or was otherwise made aware of his responsibility in this respect.

It seems to me, therefore, that there is no basis on which Lloyds could seek to hold Mr B liable for the Bounce Back Loan – or to be corresponding with him in any way about it. Rather, it would appear that Ms G remains jointly liable for the loan with Ms E – having never been formally removed from it.

Either way, I think there are sufficient grounds to demonstrate that the loan should be novated to Ms E's sole name – whether it is Ms G or Mr B who might otherwise be held jointly responsible, it is accepted that neither has any involvement in the business. And I am not aware of any procedural reason why Lloyds is unable to

novate the loan to Ms E now – particularly with the bank having accepted in other complaints of a similar nature that it has the ability to do so.

So to put things right, I think Lloyds should arrange to novate the Bounce Back Loan to Ms E in her capacity as a sole trader. Lloyds should confirm within its response to my provisional decision whether it considers that it needs Ms G or Mr B to provide their consent to this novation.

I don't think the fact that another partner – whether Ms G or Mr B – has retained liability for the Bounce Back Loan has had a material impact on the position that Ms E has ultimately found herself in. In the same way as I've noted above, the loan has evidently proved unaffordable and so would always have fallen into arrears as it has done – regardless of whether it was in her sole name or not.

However, it did impair Ms E's ability to access the PAYG options at the time and created some additional correspondence – and resulted in further stress and worry – than might otherwise have been necessary. The bank's communication about these matters with Ms E has been particularly poor, with incorrect and confusing information. Ms E was already going through a difficult time, both personally and professionally – and errors on the bank's part exacerbated the stress and anxiety she was suffering at the time.

Lloyds has already recognised that its service fell below the standards Ms E was entitled to expect, for which it has apologised and paid her compensation of £350. I don't think this goes far enough, and feel £600 would better reflect the level of distress and inconvenience she was caused. So in addition to arranging to novate the Bounce Back Loan into her sole name, I'm also intending to require Lloyds to pay Ms E a further £250 by way of compensation.

It is unclear to me if Lloyds has recorded any information about the Bounce Back Loan on Mr B's credit file. But for the reasons noted above, I don't think it had any basis on which to do so. And so if it has, I think it should arrange for this to be removed.

Ms E initially responded to say that she thought my provisional decision seemed fair, but later added that she thought the level of compensation should be much higher in view of the amount of time she'd spent on the matter – that she estimated at two hours a week for four years – and the distress it had caused. She also wanted me to consider whether Mr B ought also to be removed from the bank account, which she said she'd tried to arrange with Lloyds on a number of occasions without any success. There was a debt owing on the overdraft facility attached to the account, for which Lloyds was also seeking repayment.

Lloyds responded to say that the account mandate variation form signed by Mr B notified him that he would be considered jointly and severally liable for all liabilities of the partnership. So it said Mr B had assumed liability from Ms G for the Bounce Back Loan when joining the partnership and becoming an account signatory, and on that basis didn't consider it appropriate to remove any references to the Bounce Back Loan from his credit file. But while it said its novation process was still paused, it indicated that it would still be willing to novate the loan to Ms E's sole trader account subject to receiving authorisation from Mr B.

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 particular regard for the further comments received from both parties, I've not reached a different conclusion to that of my provisional decision. I'll explain why the parties' further points haven't led me to a different view of the complaint.

Lloyds says that Mr B assumed liability for the Bounce Back Loan by becoming a partner in L and becoming an account signatory, highlighting that the mandate variation document he signed included an acceptance of "joint and several liability for all liabilities of whatever nature of the Partnership". This still strikes me as insufficient to arrange the transfer of liability for an unspecified amount of debt to someone who is only agreeing to become an account signatory. And I still have reservations over whether it was appropriate, given that the partnership wasn't a separate legal entity and the Bounce Back Loan explicitly named Ms E and Ms G as the borrowers. On top of that, being a signatory and becoming a partner are two very different things - and there's very little evidence to suggest that Mr B ever had any real involvement in the business other than being added to its bank account – itself a step Ms E has described as a means simply of expediting the removal of Ms G. It's notable that Mr B isn't described as a partner in the variation form. So I still don't think it is fair, in all the circumstances here, to hold Mr B liable for the Bounce Back Loan based solely on his agreement to becoming an account signatory.

In any event, Lloyds hasn't objected to the novation of the Bounce Back Loan to Ms E, save to say that the process is currently paused, and says it can arrange the transfer as long as it receives Mr B's signed instruction. That will remove Mr B from any ongoing liability for the Bounce Back Loan, which I think is appropriate in the circumstances. Lloyds hasn't explained what the "pause" to its novation process means in practical terms, or when this might be resumed. So I've not seen any justification for this to hold up the novation in any way, and expect this to be arranged within the usual timeframe for arranging the settlement of a complaint if Ms E and Mr B accept my decision.

That does leave the issue, though, of any information that Lloyds has reported to credit reference agencies about Mr B's liability for the Bounce Back Loan. It has declined to say whether it has actually registered any such information, but – if it has – doesn't think it would be fair to remove this given its view that Mr B accepted liability by signing the mandate variation form. But I still don't think it would be fair for any information about the loan to remain on Mr B's credit file, given all I've said above – in particular, that Mr B didn't take out the loan or benefit from it in anyway, and as I don't think he has had any practical involvement with the business that did.

Although Ms E was broadly accepting of my provisional decision, she didn't think that the compensation I'd proposed for the distress and inconvenience she'd been caused by these matters went far enough. I've taken into account what she's said, and I appreciate that she's spent a lot of time dealing with everything and that it's taken its toll on her. But as I set out in my provisional decision, I don't think that all of the issues are down to errors on Lloyds' part. It is only the impact of mistakes by the bank that I can award compensation, and I still think that my initial proposal of an additional £250 – making a total of £600 – is fair in all the circumstances.

Ms E also said that she'd attempted to remove Mr B from the bank account without success, and asked for my view on that. But Ms E's original complaint related to the Bounce Back Loan – with no mention of any attempt to remove Mr B from the account or absolve him of liability for the overdraft debt connected to it. None of Lloyds' final response letters to Ms E's various complaint points noted any such concerns either. So this would need to be addressed by way of a separate complaint to the bank in the first instance, which could subsequently be referred to us if Ms E and Mr B remain unhappy.

Ms E has also said that she would like Lloyds to write off the debts in view of her circumstances, noting that she has suffered from ill health and her business has ceased trading, of which I was sorry to read. I don't think it would be fair to either party for me to address this point at this stage in our process, given again that it was not part of the original complaint and as Lloyds hasn't had an opportunity to consider it. It would be more appropriate for Ms E to put this request to the bank, so that it can review her circumstances and consider what assistance it can offer. I hope that a mutually acceptable way forward can be agreed. But should Ms E remain unhappy, that matter too could be escalated – ultimately to us if necessary – by way of a separate complaint.

My final decision

I uphold this complaint and require Lloyds Bank PLC to:

- Arrange for the Bounce Back Loan to be novated into Ms E's sole name,
- Pay Ms E a further £250 compensation, and
- Instruct the removal of any information registered against Mr B's credit file about the Bounce Back Loan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E and Mr B to accept or reject my decision before 26 May 2023.

Ben Jennings
Ombudsman