

The complaint

Mr M, a sole trader, complains that National Westminster Bank Plc is unfairly holding him personally liable for a bounce back loan ("BBL") that he applied for in the name of his limited company.

What happened

Mr M had held an active business current account with NatWest as a sole trader for many years.

Mr M was also the director of a limited company, which I'll call H. NatWest says that H briefly also held a bank account with them, but had closed it after less than a year in 2013.

In May 2020, Mr M applied for a BBL. He put H's name and registration number on the form. He also said that H had a current account with NatWest and supplied his sole trader account details.

NatWest sent Mr M an agreement in his sole name, which he signed. They then set up the loan in that name, transferring the proceeds into his sole trader current account.

H was compulsorily dissolved in August 2022.

Repayments were made to the BBL until November 2022, after which it fell into arrears. The bank wrote to Mr M several times about the arrears before in June 2023, they issued a formal demand, requiring immediate repayment of the whole balance. They then transferred the BBL to a third party debt collection agency.

Mr M complained that NatWest were holding him personally liable, when they should have written off the BBL when H was dissolved. NatWest didn't uphold his complaint. They said BBLs were only available to existing account holders, so they wouldn't have offered an account to H. Instead, as Mr M had provided his sole trader account details, they had agreed to open a BBL for the sole trader business.

Mr M asked the Financial Ombudsman to investigate. He said he would never have taken out a BBL that made him personally liable and it had only come to his attention now. Surely NatWest should have told him if they couldn't offer a BBL to his limited company?

One of our investigators looked into what had happened, but she didn't recommend upholding the complaint. She said Mr M had ticked the box that he was applying for a BBL from a lender with whom he had a current account and provided the sole trader account details. And he had signed the agreement, which didn't mention H at any point.

Mr M asked for an ombudsman to look at the matter again. He said that NatWest should have communicated to him about the error on the application form. And he felt they had a duty of care to inform him that the limited company was ineligible.

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 reached the same conclusion as our investigator. I realise this will be a disappointment to Mr M, who feels strongly that the bank should have drawn his attention to the fact that they couldn't offer the limited company a BBL.

I can see that Mr M completed the BBL application with H's name and registered number and signed the form as "Director". However, he also chose the box (from a choice of four) that indicated that H was "applying from a lender with whom you have a current account" and gave the account number for his sole trader account. H had had a bank account in the past. So I think it's fair to say that Mr M must have understood that different legal entities needed to keep their trading separate. But he chose to put his sole trader account on the application. This box played a central part in what followed.

I think NatWest is being somewhat disingenuous when they said that as Mr M had provided his sole trader account details, they had agreed to open a BBL for the sole trader business. I think the reality is that NatWest, in common with other banks, had set up an automated process for BBL applications. This process used the account number given by the applicant to drive the name in which the BBL agreement was set up. So I think it's more likely than not that the bank automatically put the application into Mr M's sole name, because the account number was a sole account.

I think this is why NatWest didn't communicate with Mr M that H wasn't eligible for a BBL as a non-customer. In practice, the bank had carried out an automated process, with no human intervention.

NatWest put this process in place for understandable reasons and I would like to point out that I'm not criticising them here. Banks were under pressure to deliver funds rapidly to the businesses that needed them in the pandemic. Nonetheless, I've thought about whether it resulted in an unfair outcome in Mr M's specific circumstances. I haven't been persuaded that this was the case.

I accept that ideally, the bank would have contacted Mr M to explain that H wasn't their customer and therefore couldn't have a BBL. However, the bank did send him a BBL agreement that, as our investigator pointed out, showed Mr M's name clearly at the top and didn't show H's name anywhere. It also said that the applicant should take legal advice before signing in large capital letters at the top.

In any event, I think it's important here that, although Mr M argues that he thought the loan was in H's name, there's no evidence that H had the benefit of the money. H didn't have a bank account, as far as I can see, although it had had one briefly some years earlier. I also can't see that the BBL was ever recorded in H's balance sheet as a liability.

In contrast, Mr M's sole trader account was fairly active and had been in use for many years. The BBL funds went into this account and were, as far as I can see, used by this business. H ceased to exist in August 2022, but the sole trader account remained open and showed some activity until the end of 2022, some months beyond the striking off of H.

I have looked at the correspondence from the bank about the arrears on the BBL. All the letters were addressed to Mr M “trading as” his sole trader name. And each letter began with a heading “Accounts in the name of Mr M trading as [his sole trader name]”. I think this was very clear. My finding is that this ought reasonably to have led to Mr M being aware that the loan was in his sole name and he should then have informed the bank.

I would also have expected that, if Mr M thought the BBL was in the name of H, he ought reasonably to have informed the bank when H was struck off. But I have seen no evidence that he did this. I can’t see that Mr M said anything to the bank about the limited company until his complaint in June 2023.

In summary, I’m afraid I haven’t been persuaded that NatWest breached a duty of care or acted unfairly in this case.

My final decision

For the reasons set out above, my final decision is that NatWest does not need to take any action to resolve this matter.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 23 May 2024.

Louise Bardell
Ombudsman