DRN-4800195

The complaint

Mr P complains that Lloyds Bank PLC is wrongly holding him responsible for repayment of a Bounce Back Loan (BBL).

What happened

A partnership, which I'll call E, banked with Lloyds. In June 2020, Lloyds received an online application for a £32,000 BBL for E. On the same day, Mr P added his signature to a mandate variation form, with the intent of removing him from E's bank 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, subject to a maximum of £50,000.

When the bank received and processed the mandate variation form, there was a problem because one part of the form hadn't been completed. Lloyds contacted the other partner, who had submitted the form. He said he would call back, but he didn't, and the change to the account mandate wasn't made.

Later Mr P received requests for repayment of the loan and in 2023 he complained to Lloyds, saying he'd had nothing to do with the partnership for years and knew nothing about the loan.

Lloyds said that as the mandate hadn't been changed and the BBL was taken out on the partnership account, all partners would have liability.

Unhappy with Lloyds' response, Mr P referred his complaint to us.

I issued a provisional decision in which I said I was minded, for reasons that I summarise below, to require Lloyds to remove all responsibility from Mr P for the BBL debt and for any associated spending.

Lloyds didn't agree with my provisional decision, for reasons that I also summarise below. The bank believes this is a dispute between partners, and it would be for them to take external legal advice about the matter.

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.

In my provisional decision, I accepted that each of the signatories of the E account was able to authorise business with Lloyds on behalf of all the partners, and it followed that Lloyds could reasonably accept a loan application from one partner that might bind the other partners. I also accepted that the bank received the mandate variation form a few days after the BBL had been set up, so, even if the mandate variation form had been fully completed,

the loan would already have been established as the responsibility of the partners originally on the account, including Mr P.

In the absence of any other evidence to the contrary, I would have regarded this formal position regarding Mr P's responsibility for the loan as fair. But on looking at the bank's records I saw that something else had also happened, which led me to reach a different conclusion as regards what would be a fair outcome for this complaint.

According to Lloyds' records, the bank received a request for a mandate variation form on 22 May 2020. There's a second entry in the records, on 27 May 2020, when the form was dispatched by the bank. In both these entries, there's reference to removing Mr P from the E account. In the first, it says "*please send mandate variation to mailing address: Removing one sig: [Mr P] No further changes*" and in the second "*vary mandate sent to remove [Mr P*]".

Of course, neither of these entries in the bank's records constituted the removal of Mr P from the E account – they simply refer to a request for the paperwork to remove him. However, they do mean that the bank had knowledge of an intention to remove him.

The BBL application was made online by the other partner on 16 June 2020, which was less than a month after the bank recorded the request for and dispatch of the mandate variation form. When the bank considered the BBL application, it therefore had knowledge that Mr P was likely to be leaving the partnership account. In the circumstances, I think the bank should have queried the loan application, because the loan would create a liability for Mr P, who it knew was likely to be leaving. Specifically, I think Lloyds should have checked with Mr P before agreeing the application.

I'm not saying that the other partner wasn't formally entitled to apply for the loan on behalf of the partnership. Nor am I saying that there's any routine obligation on the bank to check that all partners in a partnership agree to a loan application. I'm saying that in the particular circumstances of this case, it wasn't fair for Lloyds to agree the loan, knowing what it did about Mr P's likely departure, without a further check on his involvement.

Had Lloyds checked with Mr P, I believe he wouldn't have agreed to accept responsibility for the lending. It's possible that the other partner could still have applied for the lending for himself on another basis, but that isn't the concern of this complaint. I believe that if the bank had queried the BBL application with Mr P, then no loan would have been set up with any responsibility on his part.

Lloyds hasn't suggested that Mr P has personally benefited from any of the proceeds of the loan.

In response to my provisional findings, Lloyds says that during the pandemic, lenders were under significant pressure to ensure that loans were made available within a very short timeframe following the application. The bank says it wouldn't have been feasible to investigate each case for notes relating to action that might be taken by a partner but had not yet been taken. I appreciate that the BBL scheme was designed to get finance more quickly to businesses that needed it, but I don't believe that such a policy intent can justify the bank ignoring what it already knew about a customer and thereby reaching an unfair outcome.

From what I've seen, Mr P had no intention of applying for the BBL and he didn't make the application. Had the bank acted on the knowledge it possessed – that Mr P was leaving the partnership account – then I believe the BBL wouldn't have been set up in the name of the partnership with him as a member, and he would never have had any liability for the loan.

In response to my provisional decision, the bank says it would always treat a partner as being on the mandate until it received a properly executed variation form, and the account would therefore continue to operate as normal – otherwise the bank would effectively be pre-empting the signing of the form which wouldn't be in line with the instructions from the client. But I'm not saying that the bank should have acted as if the form had already been signed. Rather, I'm saying that the bank was aware of information that should reasonably have caused it to check with Mr P before proceeding.

Lloyds also says that technically, the mandate is evidence only of who the bank is authorised to take instruction from, and it isn't evidence of who is a member of the partnership or who is legally liable for debts. So a request to be removed from the mandate isn't the same as someone advising the bank that they're no longer a member of the partnership. This may be true, but I'm not saying that the bank should have considered Mr P as no longer a member of the partnership. I'm saying that before agreeing the lending, the bank should have checked what was going on, given the knowledge it had about the likely exit of Mr P from the partnership account. I still believe that had the bank contacted Mr P about the BBL application, the loan ultimately wouldn't have been set up in the name of the partnership with him as a member.

For these reasons, in the particular circumstances of this complaint, I don't think it's fair to hold Mr P responsible for repayment of the BBL. To be clear, the unfairness doesn't in my view stem from the partners' formal obligations regarding the bank account, but rather from the bank's failure to act on the knowledge it possessed about Mr P and the partnership at the time it received the BBL application.

For all the above reasons, I haven't departed from my provisional decision.

My final decision

My final decision is that I require Lloyds Bank PLC to remove all responsibility from Mr P for the BBL debt and for any associated spending. The bank should also remove any associated adverse credit file information relevant to Mr P.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 13 June 2024.

Colin Brown
Ombudsman