

The complaint

Mr V, Ms V and Mr V operate a partnership which banks with Lloyds Bank PLC. The partnership sold some assets, which had been used as security for borrowing with Lloyds. The partnership complains that Lloyds retained £200,000 of the sale price.

What happened

Mr V, Ms V and Mr V operate a partnership which had a considerable amount of secured lending from Lloyds Bank PLC, in an industry where a large level of secured lending isn't unusual. The partnership wanted to move its banking elsewhere, and as part of that, sought to reduce its lending held outside of Lloyds. It sold an asset, which was part of the security that Lloyds held. The partnership said when this security had originally been given, the asset sold was only a very small percentage of the security. It had greatly increased in value.

The partnership said Lloyds retained £200,000 of the sale price. They didn't think that was fair, as the amount retained far exceeded the value of this part of the security, when the security was originally taken. And they said the money Lloyds retained was held in a separate account where it earned no interest, but the partnership was still being charged for lending, including on a large overdraft facility.

The partnership also said that it had found its business manager very difficult to deal with. They said he had been aggressive, and made their interactions stressful. They also felt that Lloyds had delayed the release of documentation which their new bank needed to see, to complete the switch.

Lloyds said, as a condition of releasing part of its security for the partnership's borrowing, it would insist on retaining a cash deposit of £200,000. Lloyds said it appreciated that the value of the securities it held would have increased since those were first valued, but it said it was entitled to retain the security it had been given in support of a borrower's borrowing with it until that borrowing is fully repaid. Lloyds said it had little appetite to take any risk, so it would continue to rely on the valuations it had.

When our service asked Lloyds about this complaint, it said the security in question had been valued at £200,000. (This is considerably more than the value the partnership has suggested.) It said it had decided to support the partnership's move to a different bank, so it would allow the sale of the security, and the release of some of the money that generated. But it said it would hold £200,000 (the value it held as security) in a side account whilst the switch to the other bank went through. As soon as this move was completed, and all Lloyds' lending had been repaid, the £200,000 would be returned to the partnership.

Lloyds said this was a commercial decision that it was entitled to make. It said it holds an "*all monies*" security, so it isn't restricted to taking the amount of money that was the original valuation of the security, as the partnership had argued. It didn't think it had been unfair.

Our investigator didn't think this complaint should be upheld. He said the partnership holds a number of loans with Lloyds, and he said Lloyds held a charge as security over the loans. He said when security over a debt is sold, a lender will usually release the charge once the

debt has been fully repaid. So Lloyds could have asked for all the sale proceeds. Instead, it held £200,000, that allowed it to support the partnership's move to another bank but also protect its security. He didn't think Lloyds had been unfair.

Our investigator also said there was a lack of evidence on the calls between the partnership and its business manager, so he said it was difficult to make a finding without evidence. Our investigator didn't think Lloyds had to do any more.

The partnership said that when the security was given, the property was valued at much less than Lloyds had retained, and they thought the retention shouldn't be more than the original valuation. But our investigator said Lloyds' charge remained over the property regardless of whether the value increased or decreased over time.

The partnership wrote again, to say that the property sold was only 2% of the value of the secured assets, according to the original valuation, but Lloyds had held back enough to clear a very significantly greater percentage of the partnership's debt. That meant the partnership didn't have enough to cover things like the tax on this gain. And the partnership said that the money retained was not used to reduce the partnership's debts, so they still paid interest on all of their pre-existing borrowing while Lloyds kept this retention.

The partnership also said it didn't think it was a coincidence that their business manager hadn't recorded his calls.

The partnership wanted an ombudsman to consider their complaint, so the case was passed to me for a decision. I then reached my first provisional decision on this case.

My first provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

I know the partnership thinks that Lloyds shouldn't have kept back so much money when it agreed to the sale of the property. But I don't think that the security the partnership gave to Lloyds restricts it to only the original value (or part of the valuation) which was given several years ago, when the mortgage was first signed. I do think Lloyds could have asked for all the money from the sale of the property. So I think it was a reasonable compromise for Lloyds to say it would retain £200,000 of those sale proceeds, until the partnership moved to a new bank.

But now I want to think about how this money was held, while the partnership was trying to set up new banking arrangements. The partnership said the money was in a separate account, which it couldn't access, and which wasn't paying any interest. Meanwhile, Lloyds continued to charge interest on all the partnership's lending, which far exceeded this amount.

Lloyds said that holding money in this way is just a short term solution, which it thinks is suitable when someone's looking to change bank. I make no comment on the wider policy here, as, in line with the role of our service, I'm only looking at the particular circumstances of this case. And I think it's relevant to this case that Lloyds was aware in mid-2021, when it set up this arrangement, that the partnership had been trying to negotiate and complete a move to another bank since 2018. So this may not have been a short term arrangement.

I understand that this move was actually completed in mid-2022. So, during the months that the partnership sought to complete its change in business banking, it was still paying interest, including on a large overdraft.

That overdraft does appear to me to have been secured by the mortgaged property. The mortgage document I have seen says the security is held against all liabilities of the mortgagor – so the security isn't just held against the business' loans. The mortgage document expressly references money owing on any current account.

For the above reasons, I think in the circumstances of this case, it was not reasonable for Lloyds to place a retention of £200,000 in a holding account which paid no interest, whilst continuing to charge interest on a current account overdraft far exceeding this sum. I think Lloyds should repay to the partnership all the interest it charged on £200,000 of the partnership's overdraft lending whilst this retention was held.

To achieve this, Lloyds must recalculate interest on the partnership's overdraft as if it had been reduced by £200,000 throughout the time that the retention was held, and refund any overpayment. It must return any overpaid interest to the partnership, plus 8% simple interest from the date that the overpaid interest was charged.

The partnership said it felt Lloyds' business manager was rude and aggressive on the phone. But the calls he made weren't recorded, so we have no independent evidence on this point. The partnership thought it wasn't a coincidence that these calls weren't recorded, but I think it is likely to be because this job may be more mobile than other banking roles. And I can't see that the partnership had complained about this individual before, so it's not clear to me that Lloyds ought to have considered it prudent to keep evidence of calls to the partnership.

On balance, considering the limited evidence we do have, I'm not able to uphold the partnership's complaint on this particular point.

The partnership said it also thought Lloyds had delayed in sharing documents that the partnership needed to show its new bank, in order to move its banking away from Lloyds. I have seen that Lloyds wanted to be sure it had the relevant undertakings in place, to make sure the documents were returned. And it also appears that these documents may have been needed by solicitors acting in the sale of the security, before they could be shared with the new bank. But I haven't been able to see that Lloyds caused a delay here, so I'm also not able to uphold the partnership's complaint on this particular point.

My provisional view is that Lloyds needs to rework the partnership's overdraft in the way set out above, in order to provide a fair and reasonable outcome to this complaint.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied. And those replies made me change my mind, so I then issued a second provisional decision.

My second provisional decision

I issued a second provisional decision on this complaint, in which I set out the replies I'd received to the first provisional decision, and explained why, having considered those replies, I had changed my mind. I still proposed to uphold this complaint, but now thought the award needed to be different. This is what I said then:

Mr V replied on behalf of the partnership, to say they were happy to accept my decision.

Lloyds replied, to disagree. It set out the background to the partnership's recent relationship with it, including that it had declined further lending in 2019, and that the partnership had then complained about the break costs of a number of fixed rate loans. The partnership had been clear that if this complaint was upheld, it intended to move banks. The complaint was upheld, and the notes make clear Lloyds considered it was in its interest for the partnership to change banks. If this wasn't completed, then Lloyds had told the partnership it intended to reduce the partnership's overdraft lending.

Lloyds then set out its response in some detail. It wanted to make clear that the partnership had agreed to money being held in a separate account as security. Lloyds said it was always part of the agreement for it to release its charge on land the partnership wanted to sell, that this money would be placed in an account that wasn't interest bearing.

I accept that the conditions Lloyds was applying to any agreement to release its charge on part of the land held by the partnership were clear from the outset. But it's not clear to me that the partnership actually had any choice in the matter. It doesn't appear to have had a good working relationship with Lloyds, after the refusal of further lending and a complaint upheld against Lloyds. And the partnership had to sell this land, in order to be able to move bank. The only way for the partnership to achieve that appears to have been to accept the conditions that Lloyds set on releasing the charge. So I don't think Lloyds' point, that the partnership had agreed to this from the outset, changes my view of this case.

Lloyds also said it thought it was fair and reasonable to treat the cash released by the sale in the same way as a security over land. It said that security over land doesn't earn interest either. And Lloyds said it wasn't unusual for a rebank this complicated to take some time. All securities on the account were closed on 28 February 2022, and Lloyds wrote to confirm this on 1 March 2022.

Lloyds didn't think any redress was appropriate in this case, because it didn't think there had been a mistake. But it said that if I still thought redress was necessary, then it didn't think what I had proposed was fair.

Lloyds said that because this money was being held as security, it couldn't be used to reduce lending. That's the same as land, which also can't be used to reduce lending unless it's sold. Lloyds said it would be not be appropriate to alter the partnership's position in relation to a separate product and issue, the overdraft. So Lloyds said that if it did have to pay something, then it should only pay the interest this money could have earned in its instant access savings account. It said interest applied to holdings with the bank is different to fees applied to a debt. And it said that paying interest in this way would keep the overdraft and the security arrangement separate, and deal with my concerns that it wasn't reasonable to hold funds which paid no interest.

But Lloyds said its core position remained that it hadn't made a mistake. Lloyds said that it had fully informed the partnership of how this arrangement would work, and security arrangements aren't interest bearing. It said that *"ultimately, like any land-linked security, a customer cannot accrue interest or use the value of a liquid security arrangement to reduce its liabilities for different products."*

Like Lloyds, I do think it's possible to make a comparison between land held as security and money held as security. But I do not make the same comparison.

The land which Lloyds held as security wasn't simply sitting there providing that security for lending. It was put to work by the partnership, as part of its business, and the partnership derived an obvious benefit from that land, separate to its function as a security. The land was, to put it simply, working for the business. But once some of this land was sold, that position ceased, because Lloyds required the liquid asset to be used solely as security. This removed the partnership's ability to use its asset.

At the same time, Lloyds had been clear that it wanted to reduce the partnership's overdraft, and that it would require this if the partnership wasn't able to rebank. So it's still not clear to me (other than that Lloyds' process doesn't work like this) why Lloyds could not, as an alternative, have required the partnership to apply these funds against its overdraft, and made a reduction of the borrowing available there a condition of the sale. Its exposure to risk would have remained the same, but the partnership's position would have been much improved, as it would have been paying less to service a debt.

So I haven't currently changed my mind on this part of the partnership's complaint.

But Lloyds also sent through further evidence. And this evidence called into question my conclusions on the partnership's final complaint point.

The partnership's complaint included the allegation that *"Lloyds have also held up our move to another bank by not allowing our solicitor to see our deeds of unregistered land which needs to be used as security for the new bank."*

In my first provisional decision, I didn't uphold this complaint point, as I hadn't seen anything to suggest that Lloyds caused any delay. However, the further evidence that Lloyds sent included an agreement to extend the lending because the rebank hadn't yet been completed. And the reasons for agreeing the extension included this *"Potential delay due to LBG securities delay in locating unregistered land documents which have been requested by Natwest solicitors. I am advised these are now en route."*

So I wrote to Lloyds again to ask about this. It has replied, denying any responsibility for delays, and providing extensive evidence of the correspondence between itself and the partnership's solicitors. I think there is some evidence of confusion around the initial request, and emails not being sent to the right contact in Lloyds, which caused some delays. I don't think that it's fair and reasonable to hold Lloyds responsible for those.

But the timeline that Lloyds has sent to our service suggests that it was aware of the request for unregistered deeds on 16 November 2021. It searched for additional documents, and supplied these to the partnership's new solicitors on 1 December 2021. I think that is a reasonable amount of time for Lloyds to take, to locate those deeds. So I think the deeds should have been supplied then.

Unfortunately, what Lloyds sent on 1 December 2021 appears to have been previous correspondence about the security. It was not the deeds themselves. So these were requested again, and they weren't located and issued to the partnership's solicitors until around 19 January.

I think that, because Lloyds didn't send these deeds to the partnership's solicitors on 1 December, but only sent them on 19 January, it caused a delay of seven weeks in the partnership's rebank away from Lloyds. Although I understand that Lloyds firmly denies this, it does still appear to me to have accepted this, when it extended the partnership's overdraft in early 2022.

I asked the partnership about the financial impact this had on them, and they said that they were actually paying slightly more in interest with their new bank, so I don't think that Lloyds has to refund any interest it charged during this time.

But I also note that the documents Lloyds apparently misplaced appear to have been unregistered property deeds belonging to the partnership. Those are, themselves, the proof of title for property. They are not easily replaced. If they cannot be located then it may be many years before the owner of the land is able to prove good title again, and regain the full value of the land.

For some time, the partnership feared these were lost. I think that is likely to have added greatly to the stress of an already difficult time, and an already strained relationship between the partnership and the bank. And for that reason, I now think that Lloyds should pay £200 in compensation, in addition to the interest I have already suggested it should pay.

Once again, I invited the parties to make any final points, if they wanted, before issuing my final decision. And again, both sides replied.

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.

Lloyds said it still didn't agree with what I'd said. But it said it had made all of its representations and didn't have any further information to provide. So it said it would be happy to make a commercial offer to settle, in line with the redress I'd suggested, and it said it could work out how much that would be for us, and for the partnership, if we would like.

The partnership simply replied to say it accepted my decision.

I note Lloyds' suggestion that it would make an offer to settle this complaint, but I continue to think that an award is the appropriate way to resolve this matter. Neither side has offered any further evidence or argument, and I haven't changed my mind about the makeup of that award. So I'll now make the decision I originally proposed.

My final decision

My final decision is that Lloyds Bank PLC must recalculate interest on the overdraft held by Mr V, Ms V and Mr V, as if it had been reduced by £200,000 throughout the time that the retention was held, and refund any overpayment. Lloyds Bank PLC must return any overpaid interest to Mr V, Ms V and Mr V, plus 8% simple interest from the date that the overpaid interest was charged.

(HM Revenue and Customs requires Lloyds Bank PLC to take off tax from this interest. Lloyds Bank PLC must give Mr V, Ms V and Mr V, a certificate showing how much tax it's taken off if they ask for one.)

My final decision is also that Lloyds Bank PLC must pay Mr V, Ms V and Mr V £200 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask I to accept or reject my decision before 30 November 2022.

Esther Absalom-Gough
Ombudsman