

## **The complaint**

Mr F complains about the handling by Lloyds Bank PLC of a request from his business to release a charge held against his residential property, which was given by him to support his business's borrowing.

## **What happened**

Mr F has a business I shall call C. In early 2020, Mr F gave Lloyds a charge over his personal residential property as security for C's overdraft.

In late August 2020, with the overdraft withdrawn, C asked Lloyds for the charge to be removed. Mr F was seeking to re-mortgage his residential property to release funds to invest in other properties.

This request took much longer to process than anticipated. Lloyds initially indicated it would take just over two weeks; and, in late September, when Mr F continued to chase, he was told it would be completed in 24 hours. Finally, in late October 2020, the charge was removed.

Mr F said that, due to the delay, he had been forced to sell some investments to release funds and, even then, he had only been able to purchase one property rather than the four he'd intended.

Lloyds apologised for the delay and paid C £350 – £250 for the delays in releasing the charge and a further £100 for delays in considering Mr F's losses. Lloyds said that, as Mr F hadn't exchanged contracts on the properties he was intending to buy when he had made the decision to sell his investments, there was no legal obligation on him to proceed. Lloyds also said that any gain or loss both on the investments and on the value of the properties was speculative. Lloyds said that it would not cover the losses claimed.

Mr F didn't think this fair and brought his complaint to us.

We identified that there were two complainants, and therefore two complaints.

- C's complaint against Lloyds related to the inconvenience caused to its business in pursuing Lloyds to remove the charge. We have considered this separately and our investigator found that Lloyds should pay C an additional £200 for the inconvenience caused. This was agreed by both parties and has been paid, so the complaint is resolved.
- Mr F's complaint against Lloyds related to the losses he suffered personally resulting from Lloyds' delays in removing the charge on his residential property.

It is this second complaint, relating to Mr F, which is the subject of this decision.

Mr F said that, as a result of the delays in the charge being removed:

- He had been forced to sell some investments to release funds, which had not been his intention. Had he retained these investments, they would now be worth a lot more.
- He had only been able to access funds to purchase one property, whereas he had intended to purchase four. He had therefore suffered:
  - A loss of capital gain relating to the three properties which were not bought, all of which increased in price subsequently
  - A need to pay the additional 3% second-home surcharge as a result of the properties now costing above £40,000 each
  - A loss of rent on the three properties for the period in which they would have been bought and rented
  - The loss of three deposits (at £250 each)

He said Lloyds should compensate him for all these losses.

Our investigator considered the complaint but said that, in her view, Lloyds could not be held responsible for the losses suffered by Mr F relating to the value of his investments as there was no obligation on Mr F to sell them. She also said that the losses relating to purchasing the properties later than planned would not have been suffered by Mr F but by the company he was using to purchase the properties. However, she did say that Lloyds should pay Mr F the cost of the deposits he had lost, ie £750.

Mr F did not agree and, as the matter could not be resolved, it was passed to me to decide.

I issued a provisional decision in January 2023 and invited further responses from both Lloyds and Mr F. Lloyds did not comment on my provisional findings. Mr F responded and I have reflected his comments below. However, having considered his submission carefully, I have not changed the outcome of my decision.

### **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.

It is not in dispute that Lloyds took longer to remove the charge on Mr F's property than it should. A process which Mr F had been led to believe would take about two weeks took about eight weeks.

Lloyds has apologised for this. It has settled the dispute with C through paying it in total £550 for the inconvenienced caused. In this decision, it is for me to determine what compensation is due to Mr F.

I have considered each area of loss as submitted by Mr F, as set out below.

#### *Loss of profit from increase in prices and foregone rents, and second-home surcharge*

Having placed his deposit on four properties at the end of August 2020, Mr F did purchase one of these properties, completing in October 2020. However, the purchase vehicle was another company owned by Mr F, which I shall call S. S also purchased another property in November 2020.

Mr F told Lloyds that in May 2020 he and his wife had set up S with the purpose of buying investment properties for their children.

On the basis of this evidence, it appears likely that, had Mr F proceeded as intended, all four properties would have been bought by S. But, as a result, any harm suffered from buying the properties later than planned (eg from an increase in prices or from foregone rents or from the second home surcharge) would have been suffered by S, not directly by Mr F.

In response to my provisional findings, Mr F said that the property purchased by S in October 2020 had cost £7,000 more than it would have cost had Lloyds not delayed matters. He said that, as a shareholder in S, this had resulted in a personal cost to him.

I have considered whether Lloyds' actions resulted in a loss to S, which would have caused an indirect loss to Mr F as shareholder. It appears to me that, with regard to all of the cited harms suffered from buying the properties later than planned:

- At the time of the delay, Mr F had not exchanged contracts on any of the four properties he intended to purchase. Property prices go up and down and, while the bank may have been aware that Mr F wanted the charge released so he could access funds to invest in other properties, it was not foreseeable to the bank whether its delays would have resulted in a gain or loss to Mr F.
- While the estate agent has shown other properties which were available as alternatives to the ones which Mr F was unable to purchase due to Lloyds' delays, these properties were clearly not exactly the same. Many factors affect property prices, and the price of these properties may be higher for other reasons.
- Mr F decided not to make other purchases immediately that funds were available and held on to this cash. It might be that, by the time he invests this money, property prices will have fallen such that he is better off than he would have been had he purchased the properties as he says he had intended. This may or may not be the case but the point is that whether the bank's delays result ultimately in a gain or loss for Mr F is uncertain and speculative.
- Even if the charge had been released more quickly, it is not clear that Mr F or S would definitely have purchased the properties as stated. Mr F had only paid the deposit and contracts had not been exchanged, so there was no binding commitment to complete. There are many factors that can affect property purchases which might have caused Mr F or S not to buy these properties or, as market conditions evolved, Mr F might have decided to wait for other opportunities.
- It is not clear that the delay in Mr F gaining access to the mortgage funds meant that S was necessarily precluded from purchasing the other three properties. It is possible that it could have sourced the necessary funds in other ways, eg through bridging finance.

For these reasons, I do not believe I can hold Lloyds responsible for losses suffered by S arising from buying the properties later than planned (eg from an increase in prices or from foregone rents or from the second home surcharge). Given the uncertainty surrounding the investment opportunities Mr F had planned for S, and that property prices can rise and fall, I do not believe I can fairly say that this harm was foreseeable.

In response to my provisional findings, Mr F also said that he was left with a large mortgage which had been drawn down in the expectation of purchasing four properties, which hadn't happened. However, Mr F's use of these funds is a matter for him and, again, the resulting gain or loss is uncertain and not foreseeable. Therefore, I cannot say it has resulted in a harm for which Lloyds is fairly responsible.

### *Loss of deposits*

Although the properties are most likely to have been bought by S, it appears that Mr F paid the deposit for the properties.

Mr F paid £1,000 on 27 August, which he later told Lloyds equated to four deposits of £250 each.

However, in the completion statement of the one property which did complete, in October 2020, it records that £1,000 was credited as the deposit paid. Although the other three properties were not purchased, it appears that the full £1,000 paid by Mr F was credited to the property ultimately purchased.

On the basis of this evidence, it appears Mr F suffered no loss of the deposits paid.

### *Loss from unnecessary of sale of investments*

Faced with the situation of not being able to purchase the properties he had reserved, Mr F sold a couple of investments to release funds. Mr F said that, had he retained these investments, their net value would now be higher.

However, at the time of selling the investments, there was no binding obligation on Mr F or S to purchase the properties. So Mr F did not have to sell his investments. Moreover, at the point when they were sold, it was not clear whether their value would subsequently go up or down, so it was not reasonably foreseeable whether a gain or loss would be made.

For these reasons, I don't think it reasonable to require Lloyds to compensate Mr F for any loss he suffered from the sale of his investments.

### *Distress and inconvenience to Mr F*

I acknowledge that Mr F will be disappointed with my findings above given the opportunities he believes would have been available to him had Lloyds not delayed in removing the charge on his property. However, for the reasons set out, I do not believe that the delay caused Mr F any loss for which I can reasonably hold Lloyds responsible.

Nevertheless, I do believe that Mr F suffered some personal distress and inconvenience through Lloyds' mistakes. I note that Lloyds has already compensated C with £550. In addition, I believe Lloyds should pay Mr F £500. I believe this would be fair compensation for the distress and inconvenience caused to Mr F in the circumstances of this complaint.

### **My final decision**

I uphold this complaint in part and require Lloyds Bank PLC to pay Mr F £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 24 March 2023.

Andy Wright  
**Ombudsman**