

The complaint

Mr R is a sole trader, trading as G. He complains that Lloyds Bank Plc has failed to provide him with a facility letter, with the result that he cannot refinance elsewhere.

What happened

G's representatives told us:

- G accepts that it owes money to Lloyds, and it is keen to repay that debt by refinancing elsewhere.
- They have only been able to find one lender willing to lend to G, but that lender requires sight of the original facility letter produced when the Lloyds loan was first agreed. The only thing that has stopped them from moving forwards with the new loan is the fact Lloyds cannot provide the facility letter.
- Lloyds' poor behaviour will have the effect of destroying a profitable business that is able to repay its loans. They are simply asking for a little more time to settle everything appropriately, and they have been completely traumatised by Lloyds' behaviour.

Lloyds told us:

- In March 2009, G took out a fixed rate loan with the bank, secured on a property G owned. This was a refinance of an existing loan secured on the same property, and did not materially change G's position.
- Later, G experienced financial difficulties and did not make payments towards the loan as they fell due. The bank issued a Formal Demand in respect of the lending in March 2018.
- In April 2018, G's debt was transferred to the bank's Recoveries Commercial Banking (RCB) department. The effect was that the fixed rate loan was "broken into [G's] current account". RCB has been in correspondence with G ever since, seeking proposals for debt repayment.
- In September 2022 G complained to the Financial Ombudsman Service about Lloyds' failure to allow more time to repay or refinance its borrowing. The bank placed recovery action on hold pending investigation of the complaint. One of my colleagues issued a final decision on that complaint, but he did not uphold it. He explained that Lloyds has commercial discretion to decide how to pursue recovery action, and that overall, Lloyds' actions had been reasonable.
- In November 2022 G requested copies of the March 2009 loan documentation, and subsequently raised a complaint about the bank's failure to provide that documentation. Again, the bank placed recovery action on hold pending investigation

of the complaint.

- After an extensive search, in March 2023 the bank sent G a copy of the loan documentation available to it. That documentation did not include a complete copy of the facility letter, but the bank's position is that it is not required to provide an exact copy. It has provided G with the relevant information that the facility letter would have contained, and it cannot do anything more.

One of our investigators looked at this complaint but did not uphold it. G's representatives did not accept our investigator's findings and asked for the matter to be reviewed by an ombudsman.

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.

I want to stress that I have only considered this complaint about Lloyds' failure to provide a copy of the facility letter. I have not considered the actions Lloyds has taken in its attempt to recover the debt G owes to it; those issues were covered by my colleague in the final decision he issued in respect of G's earlier complaint.

I am sorry to further disappoint G's representatives, but there is very little I can add to what our investigator has already said. My conclusions are:

- Lloyds has not made an error. It was not required to provide G with a copy of the facility letter.
- In any event, I am not persuaded that Lloyds' failure to provide a copy of the facility letter caused the losses G claims.

I explain my findings further below.

It appears that both parties originally held copies of the 2009 facility letter, but those copies have since been lost. G's representatives say that its copy was destroyed in a flood. The bank cannot say what happened to its copy, but it is no longer able to provide the document.

However, the bank has been able to provide G with the key information that would have been contained in the facility letter. I think that would have been sufficient even if the loan had still been in force, and I don't think it would be fair for me to require Lloyds to provide more information.

Given that I am not satisfied that Lloyds is required to provide G with the original facility letter, it follows that I will not order Lloyds to pay compensation for any losses G has suffered as a result of the fact both parties have lost their copies of that document. However, I would find it very surprising if the existence of a 2009 facility letter – for a loan that was broken in 2018 – was the determining factor as to whether an alternative lender was prepared to offer a new loan to G.

It is clear that G has had a very difficult few years. The circumstances that led to the loan being broken in 2018 were understandably distressing. People associated with G have suffered illness, G's premises flooded several times, G is in a sector which was severely affected by the pandemic, and I can see there have also been concerns over the length of the lease on G's premises. I therefore consider that there are other factors, beyond the

missing 2009 facility letter, which are likely to have had a significant impact on whether alternative lenders were willing to provide funding to G.

I acknowledge that G's representative says that there is one lender which would have provided funding to G if the facility letter had been available, but I don't think the available evidence supports that view. I can see that the potential lender's representative told G "credit are insistent on seeing the existing facility letter to continue further", but I don't think that implies the facility letter was the only thing that lender would have wanted to take into account. I also note that the potential lender's representative went on to say "it's an unusual asset, and not an arm's length transaction" – which suggests that the potential lender would have wanted to look at the situation in more detail. I don't think there was any guarantee that the potential lender would have agreed to lend even if the facility letter had been provided.

Overall, I am not persuaded that Lloyds' failure to provide a copy of the facility letter was a significant factor in other lenders' decisions not to lend to G.

My final decision

My final decision is that I do not uphold this complaint against Lloyds Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 19 March 2024.

Laura Colman
Ombudsman