

The complaint

Mr and Mrs J, who are business partners, complain that Lloyds Bank PLC is unfairly pursuing them for legal costs incurred when recovering the outstanding balance of a loan.

What happened

Mr and Mrs J had a secured commercial loan from Lloyds.

There was a court judgment in 2019 regarding Mr and Mrs J's loan, ordering a payment of £76,851.40.

Since then, Mr and Mrs J have complained that the bank have also required them to pay legal costs, in addition to the sum ordered by the court.

I issued a provisional decision saying that I don't think it was unfair or unreasonable of Lloyds to require Mr and Mrs J to pay the solicitors' costs that arose in connection with the loan default, the court order and the recovery of the amounts due, for reasons I explain in summary below. But I thought it would be fair and reasonable for Mr and Mrs J to pay only half of the legal costs incurred during the pandemic moratorium period, which of course means the bank would meet the other half. I invited the parties to submit any further comments and evidence in response.

Lloyds accepted my provisional decision. Mr and Mrs J didn't agree with my findings and submitted a number of points, which I summarise below.

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.

Was the bank entitled to require Mr and Mrs J to pay the solicitors' fees?

I'm satisfied that the loan agreements made specific provision for the payment by the customer of legal fees incurred in connection with the recovery of amounts owed. Our investigator quoted the relevant clauses of the agreements in his communications with the parties, so I won't repeat them here.

A court possession order said the outstanding mortgage debt could be enforced from 22 May 2019. But Mr and Mrs J didn't start repaying until January 2020, with the final payment satisfying the outstanding debt in July 2021. Over this time, the bank's solicitors were seeking to obtain repayment as determined by the court. I think it was reasonable that costs would be incurred for this.

The £76,851.40 ordered by the court was, in the words of the court order, for the “outstanding mortgage debt”. It’s clear to me, therefore, that the solicitors’ fees weren’t included in the court order. I also note that a substantial proportion of the solicitors’ fees arose for work carried out after the April 2019 court order – so the costs weren’t known at the time of the order.

Mr J says that his legal adviser has recently said that the bank’s solicitors confirmed at the court hearing that the figure awarded by the court included legal costs. But this isn’t a written statement or agreement from the time – it’s a recollection, and it’s at odds with the records that I’ve seen. Mr J also calculates that the court order for the debt would have been for £60,000 and therefore the remaining sum making it up to £76,851.40 must have been for legal costs. I disagree, because the court order was quite clear that the £76,851.40 was for the outstanding mortgage debt. I also note that this figure corresponded closely with the debt outstanding as shown on the loan statements at the time – over £75,000.

Mr J also says that he emailed Lloyds in August 2019, saying that the bank’s solicitors had confirmed that the court figure would be full and final. I haven’t seen what the solicitors said at the time, but in any event I’m satisfied that the court order was for the outstanding mortgage debt and didn’t include legal fees, and that the bank was entitled to require Mr and Mrs J to meet the legal costs incurred.

I’m therefore satisfied that it wasn’t unfair or unreasonable of the bank to require Mr and Mrs J to pay the solicitors’ fees, and I’m also satisfied that those fees would be payable in addition to the £76,851.40 ordered by the court.

I haven’t seen any supporting evidence to back up Mr J’s claims that a bank representative agreed that repayment of the sum ordered by the court would end the matter, or that the bank would accept £8,000 in settlement of the outstanding costs. Mr J says the bank representative was a senior figure, and it was a very important intervention. But I’ve seen no contemporaneous evidence to support this, and in any event, the bank’s position regarding the legal fees was clearly expressed at the time by its solicitors.

There’s a disagreement between the bank and the partners over whether there was an offer of repayment by instalments early in 2020. Either way, I don’t believe that matter has any material bearing on the question of whether the bank was entitled to pass on the legal costs resulting from pursuing repayment of the outstanding debt.

The moratorium period

The bank has said that in Mr and Mrs J’s case, repossession action had already been suspended shortly before the general moratorium, and the solicitors’ costs resulted from pursuing repayment, rather than from any further enforcement action.

Nevertheless, I can’t ignore that the moratorium was a response, at least in part, to the difficulties that customers found themselves in as a result of the pandemic. Many small businesses found trading conditions exceptionally hard. While I accept that no new repossession action was taken in Mr and Mrs J’s case and that repayments weren’t made, I think it would be fair for the legal charges borne by the customers to

reflect the special circumstances of this period. In particular, there was recognition in the moratorium that the pandemic was likely to prevent customers from always meeting their obligations. In other words, the moratorium recognised that things were different during this period, and I think that should be reflected here in respect of the pursuit of repayment. In my view, it would be fair for the legal charges generated by Mr and Mrs J's difficulties in this period to be shared between the parties.

I think a fair outcome would be for Mr and Mrs J to pay only half of the legal costs incurred during the moratorium period, which means the bank would meet the other half. The period of adjustment should be from 20 March 2020, when Mr and Mrs J received confirmation of the bank's moratorium, to the date the bank ended its moratorium in April 2021.

In response to my provisional decision, Mr J said that as far as he was aware, a moratorium means that everything is frozen in time. Again, I disagree. The bank suspended enforcement action, but it still sought repayment of the outstanding debt, as it was entitled to do, thus requiring work by the bank's solicitors.

Mr J also argues that "you cannot have half a moratorium". But I don't believe that pursuit of repayments was subject to the moratorium agreed by the bank. In my view, the bank was entitled to pass on the costs to the customer – though, for reasons I've given above, I believe that in this case it would be fair and reasonable for the legal costs to be shared between the parties during the period of the moratorium.

Mr J says there was very little activity by the bank's solicitors during this period – he says he received only one email. It's not my role to scrutinise the solicitors' invoices, but I'm not persuaded by Mr J's account of events here. I've seen copies of email exchanges between Mr J and the solicitors about the debt in March, June, November and December 2020, and February and April 2021.

Putting things right

It's clear that under the loan agreements, the bank was entitled to require Mr and Mrs J to meet the legal costs incurred in connection with the recovery of amounts owed. But in the particular circumstances of this complaint, I think it would be fair for the costs to Mr and Mrs J to be halved for the period of the pandemic moratorium. Lloyds has offered to do this to settle the complaint.

My final decision

My final decision is that for the most part, it wasn't unfair or unreasonable of the bank to require Mr and Mrs J to pay the legal fees. But I require Lloyds Bank PLC to charge Mr and Mrs J only one half of the legal charges incurred in the period between 20 March 2020 and the date the bank ended its moratorium in April 2021.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs J to accept or reject my decision before 19 October 2023.

Colin Brown

Ombudsman