

The complaint

Mr P – a sole trader - has complained about a buy to let (“BTL”) business loan he took out with Lloyds Bank PLC. He said the solicitors involved didn’t transfer the property into his name. He said that although Lloyds wrote off the loan he is at a financial loss in the hundreds of thousands of pounds whilst Lloyds still made all the profit it would have made.

What happened

In 2016 Mr P, through an independent broker, applied for a business loan with Lloyds to purchase a new BTL property. He borrowed £250,000 (plus a £3,750 fee) over a 25-year term and the funds were sent to Mr P’s appointed firm of solicitors – who I will refer to as solicitor E - to complete the purchase in August 2016.

Mr P says he received rental income for the property for the first 12 months, but that stopped after he’d been questioning solicitor E for a number of months about why the property hadn’t been transferred into his name at the Land Registry and why Lloyds’ charge also wasn’t registered. He says solicitor E told him to seek legal advice elsewhere as it had become apparent the transaction had been fraudulent and Mr P didn’t own the property.

Mr P said he appointed a new firm of solicitors to act for him in respect of the fraud and they told him the property he thought he had purchased wasn’t owned by the person he thought he was buying it from. He instructed the new solicitors to look to recover his lost funds, but unfortunately in 2021 he ran out of money to continue to pursue matters. I understand there were also issues with this firm of solicitors and they ceased trading in 2022.

In mid-2021 Mr P, with Lloyds’ agreement, stopped paying money into the funding account and whilst the payments for the loan were still collected from that account an increasing overdraft was used.

Meanwhile Lloyds commenced action itself against the insurers of solicitor E in respect of a number of transactions the solicitor had been involved in with Lloyds customers, not just Mr P. That led to Lloyds being able to recover around £235,000 in 2023 in respect of this loan, which it paid to the loan account and overdraft (that had been used to fund the payments since mid-2021). The remaining debt of around £16,000 was written off by Lloyds and it notified Mr P of that by letter in July 2023.

Mr P complained to Lloyds upon receipt of that letter in July 2023. He said that whilst Lloyds had written off the remainder of the debt, it had failed to mention the payments he’d made for four years and wanted to know if Lloyds intended to reimburse him for those payments.

Lloyds responded in September 2023. It said its legal team only represented the bank, not the individual customers involved, and so it had only sought reimbursement for the bank. It said that if Mr P wanted to reclaim his own losses then he would need to do so himself through the legal process he had started.

Mr P referred the matter to the Financial Ombudsman Service and, as an additional point was mentioned in that referral, Lloyds issued a further complaint response letter in

November 2023. In that it said that despite the unfortunate circumstances regarding the fraud that occurred, Mr P remained contractually obliged to make the payments to the loan as he owed the money to the bank under the loan agreement. Lloyds said it understood Mr P had been attempting to recoup his losses with his own legal action, and it was never possible for Lloyds to pursue Mr P's losses on his behalf.

Our Investigator looked at the complaint and didn't uphold it. He said that we can only look at whether a financial business has acted fairly, and here Lloyds was a victim of the fraudulent transaction too. He said that whilst the solicitor was on Lloyds' panel the solicitor was acting for Mr P, and Lloyds would have had no way of knowing what would happen. He said it wasn't Lloyds' responsibility to claim for Mr P's losses (such as his mortgage payments and legal costs), and that would be something Mr P would have needed to pursue himself.

Mr P didn't agree with our Investigator's assessment of his complaint and so the case was passed to me to decide.

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.

Firstly, I'm very sorry to learn of the circumstances surrounding this complaint and can appreciate how difficult this matter must be for Mr P.

I've looked very carefully at Mr P's comments and all of the information provided in this complaint. Having done so, I've reached the same overall conclusion as the Investigator did, for much the same reasons.

Mr P has referred to his broker as "*an agent of Lloyds*" but that wasn't the case. The broker was an independent company that Mr P appointed to act on his behalf in making this application. The fact the application was made to Lloyds doesn't mean the broker was an agent of Lloyds or acting on its behalf.

Mr P has said that he was directed to solicitor E by Lloyds and the broker, but that wasn't the case. I can see from an email provided by Mr P, and also from his earlier submissions, that it was his broker that was involved in the instructing of solicitor E. The fact solicitor E was on Lloyds' panel doesn't make it responsible for the solicitor's actions, nor indicate any recommendation to use that solicitor. All it meant was that the solicitor met Lloyds' eligibility requirements to join its panel, as did many other solicitors across the country that were on Lloyds' panel. From looking at Lloyds' contact notes and the email Mr P has provided from his broker, it seems the introduction to the solicitor took place before any application was made to Lloyds for the loan.

As this complaint is about Lloyds, I need to consider its role here and whether I think it acted fairly or not. I can't consider the acts or omissions of either Mr P's broker or his solicitor.

Lloyds accepted this application in good faith and it had no reason to suspect this was a fraudulent transaction that would end with Mr P not owning the property and Lloyds not having a legal charge over it. There is no dispute Mr P intended to buy the property, and someone at solicitor E misappropriated the funds, didn't register Lloyds' charge and didn't transfer ownership of the property to Mr P. I can understand why Mr P is extremely distressed by this; he has suffered a significant financial loss, not of his own making but from the fraudulent action of a third party.

But even taking that into account his responsibility for the mortgage debt did not go away

just because of that fraudulent action. The contract he'd entered into with Lloyds was that he would borrow £250,000 (plus fees) and that he'd pay that back, plus interest, over the life of the loan by way of monthly instalments. Lloyds was reasonably entitled to hold Mr P liable for the debt plus interest, and so it didn't act inappropriately in still requiring Mr P to make his monthly payments.

I understand Mr P was unable to conclude his own legal action against solicitor E, and I don't know what stage he'd got to in the four years or so that was in progress. But that doesn't mean Lloyds is instead liable for Mr P's personal losses (such as the payments he made to the loan, his deposit and his legal fees). The action Lloyds took was to reclaim its losses, which is as I would expect. Lloyds wasn't responsible, or able, to reclaim Mr P's losses; that is something he needed to do himself.

Mr P has said that Lloyds settled for less than what he thinks it ought to have received, but that isn't something I can comment on as that is a matter between Lloyds and the party it claimed from. It was only claiming for its losses, not for Mr P's, and it settled for an amount it felt was right; whether that be because it was the most that was available, or whether it was a commercial decision to settle at that time to stop the legal costs increasing. In any event, even if Lloyds had settled for more that doesn't mean any funds would have been passed to Mr P (as this wasn't a claim for his losses). Instead, they would have been used first to cover the £16,000 shortfall in the balance owing at that time, and then for any other losses Lloyds had incurred (such as its own legal costs and any loss in the cost of funding this loan and it being repaid outside of the agreed schedule). Lloyds wrote off the shortfall balance and so Mr P hasn't been financially disadvantaged by Lloyds settling its claim for the amount it did.

It is unfortunate that Mr P wasn't able to complete his own action to reclaim his losses but, as I've said, that doesn't mean Lloyds is instead liable for his losses and needs to give up any of its successful claim to him.

Overall, and while I have a great deal of sympathy for Mr P's situation, I have to consider whether Lloyds acted unreasonably, and having looked at everything very carefully I'm not persuaded it did.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 June 2024.

Julia Meadows
Ombudsman