

The complaint

A company, which I will refer to as C, complains that Lloyds Bank Plc wrongly terminated a contract and ceased to provide it with funding.

Mr G, one of C's directors, represents C in this complaint.

What happened

Mr G told us:

- In August 2022 C entered into a development loan agreement with Lloyds, which was sold by their Lloyds Relationship Manager at the time. I will refer to that person as RM1.
- RM1 was always clear that the development funding would be paid up front over four drawdowns. The first drawdown was on 19 August 2022 for just over £406,000.
- When RM1 left Lloyds he discovered that that was not the case, and development funding was to be drawn in arrears. That would not have been an issue if he and his fellow director had been informed prior to starting the development; they would simply have scheduled the works accordingly. But his late discovery that Lloyds would not fund the project in advance caused serious cash flow issues.
- In addition to funding for the first project, RM1 had repeatedly assured him that Lloyds would provide funding for a second project. RM1 said that funding was merely a formality, and C should use whatever reserves it had to push the project forwards. But in the end Lloyds did not provide any funding for the second project.
- Lloyds did not offer any help once he discovered RM1's lies. RM1's replacement, who I will refer to as RM2, did the best he could with the tools he had available – but it was clear that Lloyds' upper management left RM2 with no options to assist C. (RM2 did not immediately replace RM1 – there was an interim Relationship Manager for a short period – but I don't believe anything turns on that point).
- Lloyds did finally increase C's overdraft by £15,000 (at a cost), but that was not enough to allow C to continue with the project.
- He managed to secure alternative funding from a lender I will call Lender M. Lender M ultimately provided funding for both C's first and second projects, but that funding came at significant cost.
- As at October 2023 C's first project was over six months behind schedule as a direct result of Lloyds' decision to stop providing funding and its subsequent failure to rectify the fraudulent actions of RM1.
- As at February 2024, C's losses as a result of Lloyds' errors exceeded £57,000 – and

were still rising. Those losses included £27,400 in interest paid on the Lloyds' facility which should never have been granted in the first place, £16,000 for Lender M's arrangement fee, £4,200 in overdraft interest, and substantial amounts for surveys/survey reports and for C's directors' time. Lloyds' offer of £500 does not come near covering those losses.

Lloyds told us:

- C has banked with it since 2005.
- In February 2019, C provided it with an unlimited debenture, and C's directors provided it with an all monies guarantee for £60,000.
- In May 2020 C took out a bounce back loan for £50,000. It has also had a £35,000 overdraft facility since at least December 2021.
- In July 2022 C's directors provided it with an all monies guarantee for £80,000.
- In August 2022 C took out a secured development loan for £800,000, and provided the bank with a first legal charge over land and buildings associated with C's planned development. It provided C with both the first tranche of drawdown (approximately £130,000) and the second tranche (£276,000) on the same day, 19 August 2022.
- It believes that if C had received only £130,000 in August 2022, C would have spent all of that money by the end of that month. C would then have needed to request the second tranche of funds in September 2022 in any event, with the third tranche required in December 2022.
- In October 2022 C did in fact discuss a third drawdown for December 2022 with a surveyor, which I will call E.
- It also carried out its annual review of C's lending facilities in October 2022. During that review "it was noticed" that funding to C had been provided in advance rather than in arrears.
- In November 2022 it told C that it would no longer be able to forward fund the development, and that a monitoring survey would need to be carried out before any further funding was provided. That survey was carried out by E.
- In December 2022 it provided another tranche of funding to C, and C paid E's monitoring survey fee.
- In March 2023 it increased C's overdraft facility (to £50,000). During the same month, C took out borrowing with Lender M, and Lloyds agreed a deed of priority in relation to the existing debenture.
- In May 2023 C repaid its development loan in full.
- It accepts that "the initial handling of [C's] development loan was not done as we would usually support with borrowing for property development...[and] the deviation of our usual procedure was not in [C's] best interests". Its development loans are done on a "front-end process and not a back end one, whereby the bank does not provide forward funding, the development is instead funded in arrears [at] the completion of each stage". However, it did provide advance funding for the first and

second tranche of funding for C's project, which were drawn down in August 2022 as Mr G said.

- It notes that Mr G has expressed dissatisfaction with being charged interest on the loan, and that Mr G considers that interest should be refunded because the funds were advanced when they shouldn't have been. However, whilst it accepts that Mr G's "point is valid", it will not refund any interest C has accrued on the loan facility because the funds have been utilised.
- It needed various reports and surveys as a standard measure to ensure that funds were being used for the intended purpose, it did not mean to imply that Mr G or C were doing anything improper, and it is sorry for any distress caused.
- Overall, it considers that its offer of £500 represents fair compensation.

Mr G did not agree that £500 was fair. He said Lloyds had failed to adhere to its contract with C, and misled C as to funding. He said Lloyds was not entitled to put a stop on C's funding, and that it should pay compensation for the consequences of its error.

The agreement

I have reviewed all the documents both parties have provided, but I think the agreement between Lloyds and C is one of the most important. I have therefore chosen to quote parts of the agreement in this provisional decision.

Lloyds wrote to C's directors on 5 August 2022 to say:

We LLOYDS BANK PLC (the "Bank") are pleased to offer you a loan facility (such loan facility being the "Facility") of up to £800,000 (the "Facility Amount") subject to the terms and conditions of this letter. The Facility is uncommitted and repayable on demand (so the Bank may cancel any undrawn amount of it and/or demand repayment of any drawings under it at any time).

C's directors accepted the terms in Lloyds' letter.

Clause 1 of the facility letter, "Purpose", said:

"The proceeds of the Facility are to be used in funding expenditure for the development (the "Development") of [address and title number] (the "Property") and shall be held on trust by you for the Bank until they are so used."

Clause 3 of the letter concerned "Availability". Clause 3.1 said:

"The Bank may (in its absolute discretion) decline to make available a drawing of the Facility or, by giving you notice, at any time cancel any undrawn amount of the Facility. Any amount of the Facility not drawn by 1 month prior to the Final Repayment Date [the date falling 24 months from initial drawdown] will be automatically cancelled without notice."

Mr G has referred extensively to clause 3.3 of C's agreement with Lloyds. That said:

"Before any drawing may be made, the Bank must be satisfied with the progress and status of the Development (and with the form and substance of any appraisal or report that the Bank requires in relation to it) and you must provide to the Bank, in respect of such drawing, confirmations in form and substance acceptable to the Bank

(and, where the Bank requires, certified by a party acceptable to the Bank) of all expenditure on the Development. One or more drawings, with the first drawing being on or before 9th December 2022 may be made (and must each be in a minimum amount of £5,000). You will not be entitled to borrow any amount that has not been borrowed by the agreed date. The aggregate total of such drawings must not (unless the Bank otherwise agrees) exceed 100% of the total expenditure detailed in the confirmations received by the Bank. You must ensure the Bank and any of its officers, employees, agents and professional advisors is provided with access to the Property at all reasonable times.”

My provisional decision

I issued a provisional decision on this complaint on 6 December 2024. I said:

“[M]y provisional conclusions are:

- Lloyds was entitled to make the decisions it did as to whether (and when) to transfer funds to C. Lloyds’ errors did not cause C to borrow elsewhere, or to increase its overdraft, and so I do not intend to order Lloyds to reimburse C for the costs of that additional borrowing.
- However, Lloyds misled Mr R as to the circumstances in which it would provide further funding and in doing so caused C to suffer inconvenience. The bank’s offer of £500 represents fair compensation for that inconvenience.
- Lloyds also advanced funds to C before that money was either needed or wanted, and it should refund the additional interest C paid as a result.

I give more detail about my findings below.

Did Lloyds act fairly in making its lending decisions?

In principle, I have no concerns about Lloyds’ decision to fund C’s project in arrears. Funding in arrears is not unusual, and indeed I note that Mr G says that funding in arrears was not itself a problem; the problem was that he was told funding would be in advance.

The terms of the facility letter said, in effect, that Lloyds could decline to make available a requested tranche of funding for any reason. They also said that Lloyds could cancel any undrawn funding by giving notice. But I would still expect the bank to act fairly.

I accept Lloyds’ evidence that the fact the first two tranches of C’s development loan had been paid in advance rather than in arrears was first noticed during C’s annual review. (RM1 – and hence Lloyds – must have known about the situation from the outset, but I accept that the annual review was the first time anybody at Lloyds became aware of any problems.)

The practical effect here is that Lloyds changed its mind about whether to fund in advance or in arrears in the middle of C’s project. Mr G says he would have made different cashflow arrangements if he’d known funding would be in arrears. Whilst I haven’t asked him for any evidence on that point, I accept what he says – I think it is self-evident that any prudent property developer would take into account whether funding was to be in advance or in arrears when planning their spending. But that doesn’t automatically mean that the change was a significant problem for C.

Lloyds has provided a copy of an email in which Mr G explained “ideally we would prefer to keep the project funded forward but I will fully understand if this is not the case, and will work to find a way forward over the next couple of months”. I do not know the date of this email, but from context it appears to have been sent in November or December 2022. I am of course aware that Mr G would have been very keen to preserve a good relationship with Lloyds at that point, but nevertheless it does imply that the in advance / in arrears question was not at that point a dealbreaker for C or Mr G (even if it became so later).

Mr G has suggested that Lloyds ceased to provide C with funding altogether, but I don't agree. Lloyds certainly ceased providing funding in the same way as before, but it didn't stop entirely – and indeed it provided further funds in December 2022, after its November 2022 announcement that it would no longer fund in advance. I have not seen any evidence to suggest that Lloyds outright refused to provide further funding in respect of the development loan. Instead, it appears that Lloyds said it would only provide further funding if certain conditions were met. I don't think that amounted to an outright refusal to provide more funding, because I haven't seen anything to suggest that C was unable to comply with those conditions. Mr G might not have wanted to comply with the conditions – and in particular he might not have wanted to incur the associated costs – but that is not the same thing.

In the overall circumstances, I consider that Lloyds did provide C with adequate notice that it no longer wished to provide funding in advance. The bank was not obliged to provide additional funding at all, and I don't think it made an error when it decided that any further funding would be in arrears – nor do I think it made an error when it decided not to increase C's overdraft in the way Mr G wanted.

Did Lloyds mislead Mr G?

Both parties accept that something happened here that should not have happened – but Lloyds has described the situation as simply a “deviation of our usual procedure”, whereas Mr G says the actions of RM1 amount to fraud.

I should stress that the Financial Ombudsman Service is not the appropriate body to investigate allegations of criminality. My role here is to determine an outcome to the dispute between C and Lloyds that is, in my opinion, fair and reasonable in all the circumstances. I cannot consider whether the actions of RM1 amounted to fraud, nor can I order or recommend any sanctions against RM1 as an individual. If Mr G wants an investigation into the actions of RM1, he should consider seeking legal advice or approaching the police.

Mr G says that RM1 told him that Lloyds would provide funding for C's project in advance, and that funding on the second project was a near certainty. I note:

- Despite Lloyds' statement that it does not usually provide advance funding in these circumstances, I am satisfied that it could have done so had it wanted to – and in fact it did provide advance funding for the first drawdown.
- Clause 1 of the facility letter suggested that C should hold the funds it received from Lloyds in trust for the bank until those funds were used to develop C's property. That also suggests that, as at August 2022, Lloyds and C mutually intended that funds would be drawn in advance rather than in arrears.
- Mr G does now appear to accept that C's second project does not (and did

not) meet Lloyds' lending criteria, and that anybody who told him that it did was wrong.

- Lloyds has either chosen not to provide me with comments from RM1 or has been unable to do so. In either case, I do not have any evidence from Lloyds to suggest that Mr G is mistaken in his recollection as to what RM1 told him.

Having considered the available evidence, I think it is likely that RM1 did mislead C – both about how funding would be provided to the first project, and about whether Lloyds would fund the second project at all.

I have not seen sufficient evidence to persuade me that C suffered a financial loss as a result of being misled – although I will of course consider any further evidence either party sends me in response to this provisional decision.

So far as the second project is concerned, I consider that C would always have had to borrow from somebody other than Lloyds. Even if Lender M's costs and fees were higher than Lloyds' costs and fees, it appears that Lloyds was never an option to fund the second project. So, C would always have had to incur costs from a third party in order to fund the second project.

The position with respect to the first project is more complicated. Mr G has asked me to order Lloyds to refund various fees and charges, but I am not satisfied that C incurred any of those fees or charges as a result of being misled. Even if RM1 had told Mr G from the outset that future funding tranches would be paid in arrears, I have not seen evidence to persuade me that C would have avoided those costs. To be clear, I am not saying that C did not incur those costs – what I am saying is that I am not currently satisfied that the costs were incurred as a result of being misled, rather than because Lloyds made the decision not to provide advance funding.

For example, Lloyds was always entitled to request reports from E (or from another surveyor) before deciding whether to advance further funds, and the bank was always entitled to ask C to pay for those reports. C appears to have continued to pay for reports from E even after Mr G knew that Lloyds was no longer prepared to provide funding in advance, so I cannot say that C would not have paid for those reports if it had known Lloyds' true position from the outset.

However, even if C did not suffer financial loss, it could still have suffered inconvenience. We publish information on our approach to non-financial loss on our website at <https://www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience> . Taking that guidance into account, I see no basis on which I could order Lloyds to pay more than the £500 it has already offered in respect of the inconvenience it has caused.

Did Lloyds advance funds to C before C needed or wanted the money?

Lloyds has accepted that the first and second tranche of funds, which were received together on 19 August 2022, were more than C wanted to borrow at that time. But it says it is not willing to refund any interest on money that C has utilised.

In my view, it is entirely fair that C should pay interest when it borrowed money that its directors wanted to borrow. But I can understand why Mr G is unhappy about the fact C paid interest on money that he didn't yet want to borrow.

Lloyds says it can show that C would have requested the second tranche of funds by September 2022 in any event, and that all of the money from the first and second tranche (actually received on 19 August 2022) was spent by the end of November 2022. I understand Mr G accepts that aspect of the bank's evidence, but that means C received some of the funds almost three months before it needed them. The amounts of money involved mean that the interest paid on that 'early' drawdown was not trivial.

Mr G did want C to receive the first tranche in August 2022, so I don't think it would be fair for me to order Lloyds to refund any interest at all on that tranche of money. But he has been clear throughout that he didn't want the second tranche until later.

Given Lloyds' evidence that C actually spent the whole of the first tranche of funds during August 2022, I think it is reasonable for me to conclude that Mr G wanted at least some of the funding from the second tranche in place in early September 2022 (rather than mid-August). But given that C does not appear to have spent the whole of the second tranche of funding until late November 2022, I don't know whether Mr G would have asked Lloyds to provide all or just some of the £276,000 second tranche in early September.

Given the limited evidence currently available to me, I think it would be fair for me to assume that C wanted Lloyds to provide £130,000 (the whole of the first tranche) on 19 August 2022, £138,000 (half of the second tranche) on 1 September 2022, and then £138,000 (the remaining half of the second tranche) on 15 October 2022 (halfway between 1 September 2022 and the date the funds actually provided on 19 August 2022 were actually spent). That means I think it would be fair for Lloyds to refund:

- All of the interest it charged to C on the second tranche of the funding between 19 August 2022 and 31 August 2022.
- Half of the interest it charged to C on the second tranche of the funding between 1 September 2022 and 14 October 2022.

I consider that it is fair for Lloyds to retain all the interest it charged from 15 October 2022 onwards."

Lloyds did not provide any further evidence or arguments in response to my provisional decision. Mr G did. Briefly, he said:

- He would like confirmation that Lloyds has provided the Financial Ombudsman Service with copies of all relevant emails with its credit control department. He considers these emails are crucial to show why Lloyds was so reluctant to provide assistance to C. He is also concerned that without full disclosure of those emails, he cannot see what Lloyds has sent to us and how the bank has filtered the information to suit its own agenda.
- He accepts that Lloyds has the ability to make changes and withdraw funding from the contract, but the contract does not state whether funds were to be provided in advance or in arrears. RM1 told him that he was allowed to make discretionary advances of funds, but his current Lloyds Relationship Manager has told him that was not true.
- Although technically Lloyds did not withdraw funding from C's project, in practice it

did. Switching from forward funding to funding in arrears halfway through a project is not possible.

- He was overly pleasant to Lloyds in his correspondence, because he had to keep the bank on side.
- Lloyds has failed to provide the Financial Ombudsman Service with relevant information about C's financial standing. For example, C had previous development funding with Lloyds in 2019 which was paid back in full with no issues. Lloyds also had ample security in the form of a debenture over C, and was aware that C's assets greatly exceeded £1m. Lloyds also failed to provide a copy of the monitoring report that it commissioned, which proved that Lloyds could easily have offered some sort of financial assistance to transition from one form of funding to another but did not do so.
- Lloyds never gave a reason for ceasing the agreement, and taking into account comments from E he is still at a loss as to why Lloyds chose to cease funding.
- C's losses greatly exceed the award I proposed in my provisional decision. He is uncertain what evidence we need to show financial loss, but he has provided C's bank statements to us. He considers that those statements clearly show how Lloyds' decision not to continue with the forward funding arrangement has greatly impacted C. In addition, the final monitoring report inspection was carried out on 14 November 2022 but funds were not drawn down until three weeks later on 2 December 2022. It would simply have been impractical to continue C's project on that basis.

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 am sorry to further disappoint Mr G, but having done so I have reached the same overall conclusions as I did in my provisional decision, for broadly the same reasons. I explain further below.

I know Mr G would like me to consider everything that Lloyds' credit control department said about this issue, but I have not requested that information. I am satisfied that both parties have seen (and had the opportunity to comment on) all the evidence that I have relied on in reaching my decision, and that it is not necessary for me to request anything further from either of them.

Lloyds says that its usual policy is to provide funding in arrears, and I accept its evidence. Policies of that kind are commercial decisions that Lloyds is entitled to make, and it would not be appropriate for me as an ombudsman (and not a regulator) to investigate why Lloyds made the decision it did.

I accept of course that a general policy of providing funding in arrears rather than advance does not automatically mean that Lloyds was unable to make an exception to that policy. Indeed it is clear that Lloyds did in fact make an exception; C's project was initially funded in advance. But Lloyds then changed its mind. As I said in my provisional decision, I am satisfied that Lloyds was entitled to change its mind in order to revert to its usual policy, and that it gave C adequate notice of its decision.

Mr G is unhappy that Lloyds has not given a reason for, as he puts it, "ceasing the agreement". As I've said, I don't think Lloyds ceased the agreement at all; instead it decided

to provide future funding in arrears rather than in advance. I consider that it did give a reason – which was that it wanted to apply its usual policy to its lending to C. I acknowledge that Mr G would like a more detailed reason, but I'm satisfied that Lloyds is not required to provide one.

Mr G has noted that Lloyds could have done more to support C in transitioning from funding in advance to in arrears. I accept that Lloyds *could* have done that. Regardless of the position in respect of debentures or other security, and regardless of E's opinion on the progress of C's project, it was open to the bank to provide additional funding, or to funding in a different way, had it wanted to do so. But that is not to say that the bank *should* have done more. Lloyds was not required to provide additional funding, and I don't think it made an error when it decided not to do so.

I have carefully considered C's evidence, including the bank statements, but I have not seen sufficient evidence to persuade me that C suffered a financial loss as a result of being misled about how funding would be provided to C's first project (or as a result of being misled about whether Lloyds would fund the second project at all). I know that Mr G strongly disagrees with me, but I don't think it would be fair for me to order Lloyds to pay compensation for that aspect of C's complaint.

I remain of the view that Lloyds advanced some funds to C before those funds were needed or wanted. For the reasons given in my provisional decision, I consider that Lloyds should therefore refund some of the interest it charged.

Putting things right

I have carefully considered Mr G's responses to my provisional decision, but I have not changed my mind about compensation. I remain satisfied that Lloyds should pay C:

- A refund of the interest it charged to C on the second tranche of the funding between 19 August 2022 and 31 August 2022.
- A refund of half of the interest it charged to C on the second tranche of the funding between 1 September 2022 and 14 October 2022.
- £500 in respect of inconvenience.

My final decision

My final decision is that I order Lloyds Bank Plc to pay compensation to C as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 8 January 2025.

Laura Colman
Ombudsman