

complaint

Mr T complains that Lloyds TSB Bank Plc acted incorrectly in pursuit of a guarantee liability. He says the bank did not follow the correct procedure before applying for a possession order and has mis-calculated the sum owed.

background

Mr T was a guarantor of a business loan. After the loan fell into arrears and a final demand was issued, Lloyds called on the guarantee. In 2009 the debt was still outstanding and the bank obtained a possession order for Mr T's property. An agreement was reached for the order to be suspended and for Mr T to repay the debt by monthly instalments.

Mr T says that in 2009 the bank did not comply fully with the pre-action protocol for possession claims. He also believes the outcome of the proceedings would have been different if the court had been aware that Lloyds had mis-sold a business loan repayment insurance policy.

Mr T also says that Lloyds has wrongly calculated the amount of his debt. He has provided his own calculations of what he believes he owes.

Our adjudicator did not recommend that the complaint should be upheld. Briefly, he said:

- It would not be appropriate to comment on issues already considered by the court, so he was unable to assess the merits of the court case or whether the judgment would have been different if the court had been aware of the mis-sale of business loan repayment insurance.
- The complaint about the pre-action protocol would be better suited to be assessed by a court.
- Having reviewed the loan statements, he was unable to conclude that the outstanding balance of the loan is incorrect. Mr T omitted some interest payments and there were other discrepancies in his calculations. Lloyds was under no obligation to suspend interest on the account.

Mr T disagreed with the adjudicator's conclusions. In summary, he said:

- Lloyds has not accurately taken account of all the compensation for the mis-sold business loan repayment insurance, which should have been deducted from what he owes.
- An unexplained sum has been added to the debt.
- He has recalculated the debt again, adding interest this time, and although the final figure is closer to the bank's, he still thinks the bank's figure is wrong.
- He is of the view that the adjudicator was wrong to apply a blanket embargo on examining the bank's conduct in relation to issues which were no relevant to, or did not (or could not) form part of the judge's ruling.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusions as the adjudicator and for much the same reasons.

The adjudicator did not apply a blanket embargo on examining the bank's conduct. He recommended something more specific – that Mr T's complaint about the pre-action protocol would be better dealt with by a court. This case concerned a guarantee provided for a business loan, not a residential mortgage or secured loan regulated under the Consumer Credit Act, so I do not believe there was a pre-action protocol to follow, other than the general requirements of civil procedure. I agree that a complaint about compliance with civil procedure would be better addressed by a court.

Mr T says that the outcome of the proceedings would have been different if the court had known that the repayment insurance policy had been mis-sold. But it is not for me to second-guess what the court would have decided in different circumstances. The court awarded the possession order in respect of Mr T's guarantee for the debt and I cannot interfere with that. I note that Lloyds later reduced the debt by an amount equivalent to the premiums and interest paid on the policy.

Mr T queries three main points regarding the balance of the debt: the additional sum, the refund of the repayment insurance and the calculations of the interest and repayments. I will deal with these in turn:

- The bank says the sum added to the debt represents the bank's legal costs since 2009, which it says it is entitled to recover from Mr T under the terms of the guarantee and legal charge.
- Mr T says that the bank's figure for the debt balance at the end of 2012 did not take account of all the refund of the loan repayment insurance. But I see that the final part of the refund was not agreed until January 2013, after the complaint came to this service, so it could not have been included in the 2012 figures.
- In other respects Mr T's new calculations of the balance produce a very similar figure to the bank – in fact his figure is a little higher.

For these reasons I do not consider that Lloyds has mis-calculated the balance of Mr T's debt.

my final decision

My final decision is that I do not uphold this complaint.

Colin Brown
ombudsman