

complaint

Mr and Mrs W complain that Lloyds Bank PLC mis-sold a business loan to them. They ask that the loan is written off.

background

In 2005 Mr and Mrs W were in financial difficulties. They asked Lloyds for a business loan to repay personal and business debts and provide working capital for their business. A business loan was agreed, secured by a second charge on their house. The loan included an amount to pay the premium for business loan repayment insurance. Mr W became unable to work due to ill health and Mr and Mrs W could not continue with the business. Mr and Mrs W made the maximum claim under the business loan repayment insurance. Lloyds began legal proceedings to recover the loan, which it put on hold due to Mr W's ill health.

Mr and Mrs W say the loan was mis-sold and Lloyds failed in its duty of care to them. Mrs W said while the loan halved their monthly payments, it doubled their overall indebtedness. As they were in financial difficulties, Lloyds should have advised them to seek debt counselling.

The adjudicator did not recommend that the complaint should be upheld. He said:

- Lloyds had assessed the suitability and affordability of the loan – and had reviewed this after discovering that Mr and Mrs W's mortgage account was in arrears.
- Consolidating their debts with the loan reduced Mr and Mrs W's regular debt repayments. Together with the changes to the business outlined by Mr and Mrs W, Lloyds assessed the loan as affordable.
- There was no requirement for Lloyds to refer Mr and Mrs W to debt counselling.
- Mr and Mrs W could have sought independent advice if they were unsure whether to take out the loan – especially as they received the agreement three weeks before signing it.

Mr and Mrs W did not agree. Mrs W said the business manager offered the loan to meet his business targets. She said Lloyds should take responsibility for its actions.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

While I appreciate this is not the answer Mr and Mrs W hoped for, I am not persuaded Lloyds mis-sold the business loan to Mr and Mrs W. I say this for the following reasons:

- I am satisfied that Mr and Mrs W requested the business loan. While Mr and Mrs W say Lloyds offered the loan to meet its business targets, the evidence does not support this.

- Lloyds' notes record its discussions with Mr and Mrs W about the improvements they had made to their business. They wanted to reduce outgoings and restructuring their debts with the business loan was one way to achieve this.
- I am satisfied a substantial portion of the loan was used to repay existing debts, including debt secured by a second charge on Mr and Mrs W's house.
- Mr and Mrs W's monthly payments reduced substantially as a result of consolidating their debts with the loan.
- Lloyds assessed the suitability and affordability of the loan, taking into account changes in Mr and Mrs W's business.
- Mr and Mrs W had a reasonable opportunity to consider whether to take out the loan and take independent advice if they wanted to do so.
- I am not persuaded there was a requirement for Lloyds to advise Mr and Mrs W to seek debt counselling.

Mr W's health meant Mr and Mrs W's business did not develop as they had hoped. While I sympathise with the situation Mr and Mrs W now find themselves in, I am not persuaded Lloyds mis-sold the business loan to them. In the circumstances, I do not consider it would be fair and reasonable to ask Lloyds to write off the balance of the loan.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs W to accept or reject my decision before 9 December 2014.

Ruth Stevenson
ombudsman