complaint

Mr V, a director of a limited company ("the company"), has complained that Lloyds Bank PLC's decision to appoint a Law of Property Act Receiver ("LPAR") in July 2017 was too hasty. As a result, Mr V says the company sustained losses, as well as having to pay the LPAR's costs. He is asking Lloyds to reduce the outstanding debt to the bank by £35,000. This is the amount Mr V says the LPAR's actions cost the company.

Mr V and the company are represented in the complaint by solicitors.

background

In August 2011 the company took out a consolidation loan for £540,000, rolling up historic debt. The loan was repayable after four years. The company intended to sell property piecemeal to repay the loan within that period. But In August 2015 the loan was refinanced onto a new 12-month facility for £414,000.

By August 2016 the loan had expired and Lloyds declined to offer a further facility. Instead it granted an overdraft of £354,000 to clear the loan balance and to give the company more time to complete sales and clear its borrowing. This was extended until 7 February 2017.

On 8 February 2017 formal demand was made for repayment, and the company's accounts were transferred to the bank's Recoveries Commercial Banking ("RCB"). A month later RCB wrote to the company and made formal demand on the two directors, who had given personal guarantees and a legal charge over a hotel they own as security for the debt.

In April 2017 RCB agreed a further extension to 14 June 2017 to allow the company to complete property sales and repay the debt. On 22 June 2017, with the debt unpaid, RCB wrote to the company confirming the bank's intention to appoint a LPAR. No response was received.

On 1 August 2017 RCB attempted to speak to Mr V, but he said he was busy and would call back. RCB was unable to speak to him, so it went ahead and appointed the LPAR. The LPAR sold five properties, and on 30 March 2018 paid £300,240 to Lloyds.

This left a shortfall of £70,000 owed to Lloyds. On 4 April 2018 RCB contacted the directors asking for repayment proposals pursuant to their personal guarantees. On 15 May 2018, the directors, through their solicitors, offered £35,000 in settlement, which Lloyds has declined.

Mr V complained to Lloyds about the appointment of the LPAR. He says that insufficient time was given for the company to repay the debt by voluntary sales of its properties.

Lloyds didn't uphold the complaint, so it was brought to us. An adjudicator looked at the complaint but didn't think Lloyds had done anything wrong.

The company's solicitors asked for an ombudsman to review the complaint. They say that, following the appointment of the LPAR, tenants were advised to stop paying rent and empty units were not offered for rental. As a result, the lost revenue and opportunity to the company is estimated at £35,000.

The solicitors also say that a sale of one property was aborted when the LPAR was appointed, because he failed to pursue the transaction. The solicitors say that Mr V hasn't

been treated fairly and there is no point in Lloyds blaming the LPAR, as it was the bank's choice to make the appointment.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm afraid I have disappointing news for Mr V – I'm not upholding the complaint.

It's not disputed that Lloyds was entitled to appoint the LPAR; the crux of the complaint is whether Lloyds was justified in doing so. Having considered the matter carefully, I'm satisfied it was.

The company had agreed to repay the loan in 2015. Lloyds showed sufficient forbearance by extending this for a year, and then granting further extensions for repayment of the overdraft (onto which the loan had been refinanced) until 14 June 2017.

I'm satisfied Lloyds sought the company's proposals for repayment before it considered appointing the LPAR. And in June 2017 the bank put the company on notice of its intention to appoint the LPAR. On 1 August 2017, after Mr V said he was too busy to speak to the bank, the LPAR appointment was made.

I think this was reasonable in all the circumstances. The facility had expired, it appeared there were no proposals for repayment (or, if there were, Lloyds' requests for information about these went unanswered by the company's agents). Lloyds wasn't obliged to allow the facility to continue, unpaid, where the company was failing to engage about how it would repay the debt.

Given this, I think the decision to appoint the LPAR was appropriate in all the circumstances. It follows that I am also satisfied that the company is liable for the costs of the LPAR, which have been added to the overall debt.

I acknowledge Mr V considers the LPAR has caused him a loss of £35,000. Consequently he considers it only fair that Lloyds reduces the outstanding debt by that amount. But, as the adjudicator explained, any action taken by the LPAR doesn't fall within our remit. Mr V will need to take up his grievances direct with the LPAR if he believes its actions have caused him to lose £35,000. But I'm unable to order Lloyds to reduce the outstanding debt by £35,000. That's because I'm satisfied it is a debt which is legitimately owed to the bank.

I understand Mr V will be disappointed by my decision, but in all the circumstances, I'm satisfied Lloyds' appointment of the LPAR was fair and reasonable.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V, on behalf of the company, to accept or reject my decision before 21 April 2019.

Jan O'Leary
ombudsman