

## **complaint**

The three partners of a small, family business complain about the amount of money Lloyds TSB Bank Plc is seeking to recover from them.

## **background**

I issued my provisional decision in May 2013, a copy of which is attached and forms part of my final decision. My provisional decision set out why I was minded to uphold this complaint in part.

In response to my provisional decision, Lloyds TSB said it did not agree as a general principle that it should refrain from charging interest on 100% of a customer's debt. However, in this particular case it agreed to comply with the redress I had proposed.

The partners accepted my provisional findings.

## **my findings**

As neither party has submitted any further evidence or arguments for me to consider, I see no reason to deviate from the conclusions set out in my provisional decision.

## **my final decision**

My final decision is that I uphold this complaint in part and instruct Lloyds TSB Bank Plc to rework the SFLG loan debt, as set out in my provisional decision.

Ruth Lewis  
**ombudsman**

**EXTRACT FROM PROVISIONAL DECISION**

<b>PROVISIONAL DECISION</b>	
<b>complaint about:</b>	Lloyds TSB Bank Plc

**complaint**

The three partners of a small, family business complain about the amount of money the bank is seeking to recover from them.

The complaint is brought on the partners' behalf by a relative who has, at times, been empowered – by an Enduring Power of Attorney – to act on *one* of the partners' behalf.

**background**

In June 2006 the bank agreed to lend money to the partners so that they could buy, and undertake renovation on, a property from which their new business would be run.

The amount of money needed was more than the property purchase price and the business was not willing to secure the debt solely on the property. Accordingly it agreed to grant a standard business loan of £76,125, with the remaining amount being taken under the Small Firms Loan Guarantee (SFLG) scheme. This scheme provided, as standard, a guarantee for 75% of the loan granted.

A mortgage deed was completed for the property, which was signed by two of the partners and their relative (who had permission to do so for the other partner under an Enduring Power of Attorney).

By late-2009 the partners were having difficulty meeting the repayments due under their two loans and their business current account was also overdrawn. As a result, two of the partners and their relative (on behalf of the other partner) signed an agreement to consolidate their accounts.

The partners were subsequently unable to comply with the repayment plan. So Lloyds TSB made a claim under the SFLG and commenced legal action to obtain possession of the mortgaged property. However, it was agreed that recovery action would be suspended after the complaint was referred to this service.

The partners complain that:

- The bank says the Enduring Power of Attorney (EPA) does not allow their relative to negotiate a repayment plan on behalf of one (or all) of the partners. However, they are all happy for him to do so.
- The bank has received £45,677.25 from the Department for Business Innovation and Skills after a claim was made under guarantee attached to the SFLG loan. However, the bank refuses to use this money to reduce the amount owed and/or the interest accruing on the business borrowing.

Lloyds TSB says that:

- The EPA gives permission for the partners' relative to act on one of the partners' behalf in relation to acquiring the mortgaged property. It does not give him permission to act on her behalf in relation to managing the debt, agreeing repayment plans or pursuing complaints in relation to the debt. However, all partners have now agreed that the relative can represent them in bringing this complaint.
- The SFLG Lender's Manual confirms that the borrower remains liable for 100% of the outstanding debt even if a successful claim has been made under the guarantee. Accordingly, it is allowed to continue charging interest after making a successful claim under the guarantee.

### **my provisional findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

#### *the power conferred by the Enduring Power of Attorney*

The partners' representative does not appear to have disputed the opinion the adjudicator expressed with regards to the EPA. So I shall note only that I agree with his findings – the EPA is restrictive and I do not consider the bank acted inappropriately by writing direct to the three partners and initially refusing to correspond with their relative.

#### *the SFLG loan*

The SLFG Lender's Manual says that:

*"Following demand on the borrower, the lender's normal practice in terms of interest charging should continue. For example, if it is the lender's normal practice to charge default interest following demand on the borrower then it should continue to do so."*

The bank considers this guidance allows it to continue charging interest on the full amount of the debt even after it made a successful claim for 75% of the debt under the guarantee. But I do not agree.

The guidance refers to interest being charged after formal demand for repayment has been made *"if it is the lender's normal practice"* to do so. So I have looked carefully at the SFLG loan documents in order to determine what the bank's *"normal practice"* actually is. Having done so, I cannot see that the bank has reserved the right to continue charging interest on the full debt after a partial payment has been received.

I accept that if the bank eventually recovers some, or all, of the debt from the partners it will have to return some or all of the £45,677.25 paid to it under the guarantee. But until that happens I consider the bank should only charge default interest on the portion of the debt that remained – £15,217.40 according to the statements the bank has provided.

The SFLG statements indicate the account was defaulted on 20 October 2009 and the money was received under the guarantee claim on 19 January 2010. Therefore, I currently consider that from 19 January 2010, default interest should have been charged only on the remaining £15,217.40 debt.

### **my provisional decision**

My provisional decision is that I am minded to uphold this complaint in part and instruct Lloyds TSB Bank Plc to rework the SFLG loan debt as set out above.

Ruth Lewis  
**ombudsman**