

complaint

Mr F complains that Lloyds TSB Bank Plc:

- Threatened to withdraw his business overdraft facilities unless he agreed that it could take a charge over his residential property, without giving him time to seek legal advice.
- Only took a charge over his property and not that of his business partner.
- Has not offered him assistance during a period of financial difficulty and in particular would not agree that he could sell the property and transfer the charge it held to a new property – Lloyds TSB Bank Plc led him to believe that this would be possible when he gave his property as security.
- Has only pursued him for the debt and not his business partner.

background

Mr F had given a personal guarantee for the debts of a limited company. Lloyds TSB then told Mr F that it needed to take a charge over his residential property as security for the company's debts – otherwise it might withdraw its lending facilities. Mr F says he was pressurised into agreeing to this and was not given time to obtain legal advice. He also says that Lloyds TSB failed to take a charge over his business partner's property, as it had led him to believe it would.

The limited company was subsequently dissolved. Mr F considers that Lloyds TSB has not fairly considered his proposal to buy a cheaper property which he says would improve his financial situation. He also says that Lloyds TSB has only pursued him for the company's debts.

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

Mr F responded to say, in summary:

- His business partner did not give Lloyds TSB any security and he would not have agreed that it could take a charge over its residential property if he knew this.
- The solicitors were acting on behalf of Lloyds TSB, not him.
- Lloyds TSB used 'bullying tactics' to make him agree to the charge.

my findings

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

I should note that I can't consider any complaint about the limited company's accounts. I am only looking at a complaint from Mr F in his personal capacity arising from the personal guarantee and security he gave Lloyds TSB in respect of the company's debts.

Lloyds TSB was entitled to ask Mr F to give his residential property as security for the company's debts. It was not unreasonable for it to say that it may withdraw the company's lending facilities if he did not agree to this. This was a legitimate decision by Lloyds TSB.

I understand why Mr F felt pressured in to agreeing to the charge. Ultimately, however, it was his decision whether to agree to Lloyds TSB's proposal or not. It appears there was sufficient time from the point Lloyds TSB making its request to the charge actually being put in place for Mr F to seek legal advice if he wished – and the guarantee and indemnity he signed at the same time stated he should consult a solicitor before signing. Further the solicitor appointed by Lloyds TSB confirmed that it explained the nature, implications and risks of signing the mortgage of property to secure the company's liabilities.

I can't say whether Lloyds TSB took a charge over Mr F's business partner's property to secure the business debt or not or whether Lloyds TSB has sought to recover the debt from them – this is a personal matter between the other party and the bank. But in any case, Mr F remains jointly and severally liable for the company's debt. It is for Lloyds TSB to decide whether to pursue one or both of the guarantors for the full amount of the outstanding debt.

I'm not persuaded Lloyds TSB would have told Mr F that it would always agree to postpone its charge or allow him to transfer it to another property. I accept that it might have said it would consider an application from him to do so. But I don't think that creates an obligation for it to agree to any such application.

If Mr F is experiencing financial difficulty Lloyds TSB should treat him positively and sympathetically. This would not be limited, however, to agreeing to postpone its charge or to take a charge on another property. I can see Lloyds TSB has agreed to concessionary payment arrangements and is prepared to discuss this matter further. I think this is fair.

While I sympathise with the difficulties that Mr F has faced, I don't think that Lloyds TSB has treated him unfairly.

my final decision

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

Ken Rose
ombudsman