

## **complaint**

Mr and Mrs G complain that Lloyds Bank plc (previously Lloyds TSB Bank plc) wrongly retained the residual sale proceeds of their property in reduction of Mrs G's business debt.

## **background**

Mr and Mrs G signed a mortgage deed over a property that they owned, which gave Lloyds a second legal charge on the property. The mortgage was a security for Mrs G's debts. A few years later, Lloyds made demand on Mrs G in respect of her business loans.

Several years after that, the lender which held the first charge over the mortgaged property took possession of it and sold it, to repay the first mortgage. That lender sent the surplus sale proceeds – of around £20,000 – to Lloyds as second mortgagee.

Lloyds applied the money towards Mrs G's debts. Mr and Mrs G did not consider that Lloyds was entitled, under its mortgage deed, to keep the remaining sale proceeds. They believed that the mortgage had the limited effect that Lloyds was permitted to sell the property without Mr G's agreement but could not retain any of the proceeds from his beneficial interest in the property.

Lloyds did not agree, and said that the mortgage entitled it to use all the remaining sale proceeds against Mrs G's debt. Mr and Mrs G brought their complaint to this service, where an adjudicator investigated it.

The adjudicator considered the terms of the legal charge that Mr and Mrs G had signed, the circumstances in which they had signed it and the relevant law. He concluded that the effect of the mortgage was such that Lloyds was entitled to use the whole of the remaining sale proceeds in reduction of Mrs G's debts.

Mr and Mrs G did not agree and wrote with detailed further submissions, which I briefly summarise:

- In their view, the legal effect of the relevant mortgage clause was that Mr G's beneficial interest in the property was not caught by the mortgage.
- There are several examples of case law (details provided) that support their argument that Mr G was not liable to pay Lloyds anything from his share in the value of the property.

## **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 have very carefully considered the interpretation that Mr and Mrs G have given to the relevant clause of the mortgage deed. I appreciate that they believe the effect of that clause is that Lloyds may not look to any part of Mr G's beneficial interest in the property.

But, like the adjudicator, I do not agree that this is what the clause says. Rather, it says that the mortgage deed does not make Mr G *personally* liable for Mrs G's debt – but that does not change the fact that the mortgage secures Mrs G's debt against the whole of the proceeds of sale after the first mortgage is discharged.

So, as the remaining proceeds were not sufficient to discharge the whole of Mrs G's debts, Lloyds will only be able to pursue Mrs G (and not Mr G) for the shortfall debt. But I do not accept that Lloyds is obliged, under the terms of the mortgage, to return any of the money that it was sent by the first mortgagee.

Mr and Mrs G say their understanding of the effect of the relevant clause was gained from Mr G's own reading of it. There is no suggestion that Lloyds (or any other party) misrepresented the effect of the mortgage deed, and I do not consider that it is misleading.

Whilst I have considered the various legal cases that Mr and Mrs G have cited in support of their complaint, I am not persuaded that those cases assist them. I have not identified any legal basis on which Lloyds must return the money to **Mr G or Mrs G**.

I note that Mr and Mrs G also mention delay by Lloyds in clarifying what had been done with the sale proceeds. However, in all the circumstances, I am not persuaded that this merits an award of compensation.

#### **my final decision**

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

Jane Hingston  
**ombudsman**