

complaint

Mr S complains that Lloyds Bank PLC would not extend his business overdraft further even though he had a source of repayment and faced difficult personal circumstances.

background

Mr S had an overdraft for his business of £50,000 secured on his home. Lloyds told him it was concerned that the balance was not fluctuating and was not being supported by business activity. It had renewed the facility on a number of occasions but in August 2018 said that it would only do so for two months more while he looked to sell his commercial premises. And otherwise it would be looking to take recovery action. Mr S complained saying that he would be due money from an inheritance and that he'd told Lloyds his wife was seriously ill. He asked a legal representative to help him who said that the response from Lloyds to his complaint was inadequate and unfair.

Our investigator did not recommend that the complaint be upheld. He said that:

- It was clear Mr S had been trying to raise money to pay off the borrowing through either an asset sale or through getting planning permission to enhance the value of his premises – although that had been declined.
- There was said to be a significant inheritance due to him. But there were some issues with getting the co-operation of other executor involved and no certainty when this might be resolved.
- Lloyds had extended his overdraft but explained that it would not be responsible to continue this as it was not being supported by trading income – it was not enough to rely on the security. That was a matter within its commercial discretion.

Mr S, through his representative said he did not agree and his representative referred back to a letter sent in September 2018 setting out the concerns and it wanted those to be answered in full. It said that Mr S had not received any support given his wife's illness even though Lloyds said that this was something it would do. It did not think that the determination made by Lloyds could be made without responding to all the points raised and providing the information requested – otherwise this wasn't a fair process. And it said that it could not see how Lloyds was prejudiced by granting a 12 month reprieve for Mr S when it would still be getting interest on its borrowing. This service seemed to be saying it was acceptable for Lloyds to act in any way it chose.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We provide informal dispute resolution and decide on the key issues that will help determine a complaint and so how to investigate it. And once a business has responded to a complaint and it's been referred to us we wouldn't necessarily expect it to continue in dialogue with a complainant about it.

In this case after the representative's letter referred to above Lloyds did issue further responses to the complaint. It apologised for not providing some of the information requested but it said that if the full file was required then Mr S would need to make a subject access request. It made some further comments about why it wouldn't be extending the overdraft and that it had been making its concerns clear to Mr S at earlier renewals.

What Lloyds has also told this service is that it has not been applying the 'unauthorised' interest rate to the loan since November 2018. And that although it wrote with a formal demand in April 2019 it won't be taking recovery action while this complaint is being considered. I've also noted that in its letter of 14 October 2018 it said that it had made two separate offers to exchange its legal charge over Mr S' home for a charge over the commercial premises but that this has not been taken up.

I'm clear from Lloyds case notes that Mr S made it aware in April 2018 of his wife's illness. I know Mr S questions why he did not get more specific support along the lines publicised. But I'm going to explain why I don't think that is going to affect the outcome here taking into account all the circumstances and Lloyds' response.

I don't think Mr S disputes that he's had some business difficulties and as early as December 2016 there is reference in the case notes of Lloyds to the business struggling. He's also been looking to get planning permission to develop premises into residential flats but had been making applications that weren't accepted. When his representative became involved he stated that Mr S didn't want to have to sell the premises in an auction below true value but would still be considering sale. And I understand that for some time there had been an issue with resolving an inheritance for Mr S which it is said would have given him funds to repay the debt.

Lloyds can't in my view be criticised for looking at income and cash flow as well as any security for the borrowing. It said it was not responsible as a lender for it to rely solely on that security and it expected an overdraft to fluctuate and for the balance to be managed within the limit. I think Mr S has had notice of its concerns for a reasonable period. And that his facility has been extended already to give him breathing space. I've set out above that Lloyds also seemed to be reconsidering its existing security which was clearly a worry for Mr S and his family in the event of recovery action. And that's especially given the concerns about his wife's health.

As our investigator says Lloyds has the commercial discretion to decide here on whether or not to continue to offer an overdraft which is effectively an on demand facility. That's not the end of the matter and I wouldn't expect it to exercise that discretion in an unreasonable way. But here I'm satisfied it had considered what Mr S has told it and the factors I've outlined above. So I don't have a reasonable basis to interfere in that decision. I need also to say that making demand and moving the account to recoveries doesn't necessarily mean it's going to take any particular type of action and it's said to this service that this might give it more options to agree a repayment approach. I'd be expecting it to act fairly in the future.

I understand the decision by Lloyds was very difficult for Mr S and he wanted to challenge this with the help of his representative. I'm satisfied Lloyds' response when considered across its letters to him was adequate. And I've looked at the merits of his complaint independently. I'm afraid having done so I don't find Lloyds has acted unreasonably in dealing with his business borrowing and so I won't be requiring it to do anything further.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 March 2020.

Michael Crewe
ombudsman