

complaint

This complaint is about a Deed of Postponement that Lloyds Bank PLC agreed to execute in respect of a charge over property Mr and Mrs J owned. The property was the security for a debt owed to the bank. They say Lloyds took too long, as a result of which a re-mortgage of the first charge debt on more favourable terms was delayed.

Mr and Mrs J are represented in their complaint by their solicitor, Mr C. Mr C is seeking compensation for three months' worth of extra interest (at just over £10,000 per month) Mr and Mrs J incurred because of the delay. Mr C's also looking for reimbursement of his costs in dealing with the matter

background

Mr and Mrs J own two properties, which I'll call B and C. Lloyds held a charge over B in respect of a debt of around £120,000. Mr and Mrs J were arranging short-term bridging finance to repay existing debts secured on B and C before subsequently re-financing them again to another lender I'll call H. The bridging finance lender has gone under more than one trading name from time to time. Here, I'll refer to it as T. The finance with T completed in July 2016, for just over £1m; exactly what happened next is disputed.

Lloyds says it received money to clear the debt owed to it, but Mr and Mrs J then said they wanted to keep the Lloyds debt. This was achieved by Lloyds agreeing, in effect, to re-lend the money. Lloyds says that because Mr J had already given T an undertaking that the Lloyds charge over B would be released, allowing T to register a first charge of its own, it would need fresh security.

Lloyds was willing to take a new second charge, but says T preferred that it execute a Deed of Postponement on the existing charge over B, allowing its security for the reinstated loan to rank behind T's newly-executed first charge. Lloyds agreed but said it also wanted a separate second charge over C as additional security. T agreed to this, but Lloyds says T initially drafted the Deed of Postponement to cover both B and C by mistake.

Lloyds goes on to say it did provide the Deed of Postponement over B, but the separate second charge over C never materialised. Subsequently, however, it says Mr and Mrs J completed the re-mortgage to H, repaying both T and the bank altogether. It accepts there may have been a few days' delay, on both sides, but doesn't accept liability for the higher interest T charged compared with H.

Mr C has described events differently. He doesn't agree that Lloyds' original debt was ever repaid. Rather, he says:

"[T] were expecting Lloyds (sic) charge to be repaid in full but having consulted Mr and Mrs [J], they expressed a wish that rather than repaying the monies due to Lloyds at that stage, the Lloyds charge could stay securing the property concerned. I made it clear that this would mean getting [T] to agree to this and they did require a Deed of Postponement to be executed, this Deed of Postponement being prepared by [T] and forwarded to us. There was therefore no relending of the loan as such."

Mr C also says:

“The re-mortgage with H which eventually took place could not have proceeded until the registration of the title of the property had taken place and the Land Registry would not complete registration without the Deed of Postponement.”*

*Mr C doesn't specify which property he's referring to here, but the wider context infers B. That's because Mr J subsequently says:

“It is the Deed of Postponement and Lloyds (sic) execution of this that was holding up the registration and splitting of the title which was necessary to enable a further re-mortgage to occur with H.”

Our adjudicator didn't think the complaint should be upheld. Mr C has asked for it to be reviewed by an ombudsman. In doing so, he says that in response to a separate complaint about its own shortcomings in handling the Deed of Postponement once received, T: *“have admitted their delay and proposed substantial compensation”*.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've read and considered the whole file, but I'll confine my comments to what I think is relevant. If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair “in the round”.

I think a useful starting point here is why the Deed of Postponement (in respect of B) and a new second charge (in respect of C) were even necessary. Mr C goes to great pains to say there was no error or mix-up over repayment of Lloyds' original debt, and no re-lending. But I've seen a copy of the new loan agreement that Lloyds drew up, specifically for that purpose.

There would have been no reason for Lloyds to draw up a new loan agreement if the existing loan hadn't been repaid. I don't need to speculate on whether that happened because Mr and Mrs J changed their minds or because Mr C misread their instructions. The wider point is that I'm satisfied Lloyd was, at this juncture, being asked to do Mr and Mrs J a substantial favour; in effect, to make a new loan on demand with minimal underwriting.

That being the case, it was entitled to place such conditions as it considered commercially necessary on doing so. Those conditions required that it have not just a postponement of what had originally been its first charge over B, but also a new second charge over C. That being the case, I don't agree with Mr J's assertion that the two are separate and only the Deed of Postponement held up the re-mortgage to H.

The two matters were irretrievably linked in that they were each a condition of Lloyds being remarkably accommodating in helping resolve a problem that wasn't of its making. That being the case, I don't think it's fair that Lloyds should now be accused of taking too long to play its part when, in the same time period, it seems the other parties didn't fully meet one of the bank's conditions for helping Mr and Mrs J out.

I make one final point, regarding Mr C's inclusion of reimbursement of his own costs in bringing the complaint to us as part of Mr and Mrs J's claim. In a final decision on a previous complaint where the same thing happened, a fellow ombudsman said:

“Because I’m not upholding the complaint, I don’t need to consider whether or not Mr C should recover his costs. But generally, in a straightforward complaint such as this, we wouldn’t consider it fair or reasonable to order a business to reimburse legal costs, even if the complaint is otherwise upheld.”

It was Mr C himself who, in response to the adjudicator, said the matter wasn’t complicated.

my final decision

For the reasons set out above, my final decision is that I don’t uphold this complaint. My final decision concludes this service’s consideration of this complaint, which means I’ll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs J to accept or reject my decision before 5 April 2018.

Jeff Parrington
ombudsman