complaint

Mr and Mrs A complain about the way Lloyds Bank plc has acted in enforcing its charge over their property for a business debt. They want the bank to stop charging interest on the outstanding debt and to agree an acceptable repayment plan with them, rather than force the property's sale.

background

Mr and Mrs A gave a charge over a property as security for their business's debt in 2007. The business failed in 2008, and the bank asked for Mr and Mrs A's repayment proposals. Over subsequent years there were various discussions, and Mr and Mrs A say that frequent changes in the Lloyds' staff dealing with them caused difficulties and inconsistencies in these discussions.

In January 2012 Mr and Mrs A say that they reached an agreement with Lloyds to repay £1,000 per month over seven years, and they wrote to the bank to confirm acceptance of this. Lloyds subsequently said that it did not receive that letter, and that this repayment plan offer was no longer available. Faced with a threat from the bank to start repossession proceedings, Mr and Mrs A placed their property on the market for sale.

In January 2013 the bank told Mr and Mrs A that, in the absence of a sale by them, it planned to appoint receivers to sell the property on its behalf. After further discussions, the bank agreed to postpone this action provided it received monthly payments of £1,000 for the next six months. Mr and Mrs A say that their understanding had been that the bank had agreed to this arrangement for 12 months rather than six, and they were upset when the bank again said that it would appoint receivers after the six months had passed. They want Lloyds to accept an affordable monthly repayment arrangement for the debt's repayment, rather than force the sale of the property.

Mr and Mrs A also say that the bank should not be continuing to charge interest on the outstanding debt, which is causing the amount owed to rise.

Our adjudicator did not recommend that the complaint should be upheld. She concluded, in summary, that the bank was acting reasonably in requiring the charged property to be sold to repay the debt – particularly given the time since the business had failed. She said that the bank's January 2012 letter had only indicated a repayment plan that the bank might have been prepared to agree to, and as Lloyds said it had not received a reply to that letter it was entitled to withdraw that tentative proposal. She was also satisfied that the bank's agreement given in January 2013 for monthly repayments was only for six months, rather than 12, and that the interest being charged by the bank was in accordance with the terms and conditions on which it provided the original debt to the business.

Mr and Mrs A have not accepted the adjudicator's conclusions, and continue to believe that the bank is not honouring its agreement to a repayment programme.

my findings

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

Lloyds is entitled to use its commercial judgement in deciding the basis upon which it is prepared to accept repayment of the outstanding debt by Mr and Mrs A. This service does not have the power to intervene in matters of a bank's commercial judgement unless there is evidence of error or maladministration in the exercise of that judgement.

Lloyds gave Mr and Mrs A a number of years to make repayment of the debt without the bank having to rely upon its security. Looking at the letter actually sent to Mr and Mrs A in January 2012, this did not commit the bank to accepting a £1,000 per month repayment plan over seven years. Instead it asked Mr and Mrs A to provide personal financial information to enable the bank to consider whether a lower monthly amount would be acceptable – a previous letter to the bank having said that £1,000 per month was unaffordable.
Mr and Mrs A say that they accepted the bank's offer of £1,000 per month in a subsequent letter, which the bank says it did not receive, but I consider that even if it had received that letter it was not under an obligation to accept £1,000 per month over seven years – because it had not formally offered such an arrangement.

Looking at the January 2013 correspondence, I am also satisfied that the bank said in its letter that the agreement to accept £1,000 per month was only for six months, rather than 12. Mr and Mrs A say that this is incorrect and that 12 months was agreed over the telephone, but neither the bank nor they have been able to provide a recording of that call to prove what was said. I therefore consider that the subsequent letter, which Mr and Mrs A did not challenge at the time, is on balance likely to be an accurate record of what was agreed.

It is my view that the bank has not broken any repayment agreements reached with Mr and Mrs A. There is no evidence of error or maladministration by the bank, and it is fair and reasonable for Lloyds to exercise its commercial judgement in deciding how to recover the outstanding debt. I cannot, therefore, order it not to use its power to appoint a receiver to sell the charged property on its behalf. I also cannot require it to agree an alternative repayment programme acceptable to Mr and Mrs A.

Turning to the issue of personnel changes at Lloyds, a bank is entitled to decide which staff deal with particular customers, and I find no evidence that this resulted in any inconsistencies or errors which affected Mr and Mrs A in a negative way.

Finally, I am satisfied that the bank is entitled to continue to charge interest on the outstanding debt until it is repaid. The charge given by Mr and Mrs A over the property allows the bank to recover that interest from the sale of the property.

my final decision

My decision is that I do not uphold this complaint.

Malcolm Rogers
ombudsman