

## **complaint**

Ms N and Mr R complain that Lloyds Bank plc delayed in processing their loan application, and that as a result their business ultimately failed.

## **background**

Ms N and Mr R owned a rural property, and decided to enter the holiday lettings business. They drew up a business plan and approached Lloyds for finance. They originally wanted to borrow to carry out improvements to one property and construct other cabins on their land. The loan was secured on their property as a second charge.

Ms N and Mr R say that it was agreed with Lloyds that the loan would be available to draw down within eight weeks. In fact, the money wasn't available for a further three or four months. Ms N and Mr R say that, as a result, they missed out on one season's lettings. They also lost their specialist construction contractor and delays in engaging replacement contractors led to the loss of a second season's lettings as well.

Ms N and Mr R borrowed more money, and also operated a substantial agreed overdraft. However, when there was no income coming in, Lloyds withdrew the overdraft facilities and called in the loans, ultimately initiating possession proceedings.

Ms N and Mr R complained to Lloyds, and there was a protracted correspondence over the next couple of years. In brief, Ms N and Mr R traced the failure of their lettings business back to the delay in making funds available under the first loan. They sought compensation for what they saw as consequential losses including bank fees, charges and interest but also lost potential earnings. They say that they had to borrow further money – incurring fees and interest – because of the income lost due to the delay in the first loan. They also say that, had the loan arrived on time, they would have completed the construction and attracted lettings – so they have lost income as a result.

Following the submission of the complaint to this service, their request for compensation had crystallised at approximately £160,000. They provided an accountant's report in support of their calculations.

Prior to this, Lloyds had made an offer to settle the complaint. Its offer was in respect of two matters:

- It offered £500 compensation for the delay in the drawdown and subsequent delays
- It considered that it shouldn't have allowed Ms N and Mr R's account to continue to operate after the overdraft facility was withdrawn, and so offered to refund £14,677.56 in interest and charges for unauthorised borrowing.

However, Lloyds did not accept responsibility for the consequential losses complained of by Ms N and Mr R. It accepted that there had been a delay in the draw down amounting to poor service, and that the delay was its responsibility. But it said that there had never been an agreement that the money would be available by a particular date and therefore it wasn't in breach of an agreement to do so.

Our adjudicator agreed that there hadn't been a commitment to release funds by a particular date. He also noted that, although there was a three month delay in releasing the money, there was an almost 18-month delay in starting construction work. He therefore didn't think

the delays in starting the business – and the lost lettings – were solely attributable to Lloyds. He thought that Lloyds' offer was fair and reasonable.

Ms N and Mr R, via their representative, didn't agree and want a final decision from me.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where there is a dispute about what happened, I have based my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in the light of the evidence.

I'm grateful to Ms N and Mr R's representative for the extensive and well-organised documentation provided in support of this complaint. I hope that Ms N and Mr R will understand that in this decision I will focus on what seem to me to be the points crucial to the fair resolution of this complaint. This means that I will not cover every point or document raised – but if I don't mention it, that doesn't mean I haven't considered it.

I agree with the adjudicator that there was clearly a delay in making the funds available for draw-down. It seems to me that Lloyds is responsible for the delay. Initially it said that the fault lay with Ms N and Mr R's primary mortgage lender in delaying giving consent to the registration of Lloyds' second charge. However, when Ms N and Mr R produced evidence from the first charge lender of its contact with Lloyds, Lloyds accepted that it was responsible for the delay. It is recorded in Lloyds' internal notes that the main causes were that the adviser in the local branch (with whom Ms N and Mr R were dealing) delayed in sending paperwork to the central team; and then the central team couldn't contact him because of an incorrect email address.

So I'm satisfied that there was a delay, and that the delay was Lloyds' fault. The real dispute in this case, it seems to me, is not the fact of the delay, but the redress that should be made.

It seems to me that the crucial questions I need to answer are these:

- In respect of the eight week draw down:
  - Was it a contractual term agreed between Ms N and Mr R and Lloyds, which Lloyds breached, or was it an indication of likely timescales which Lloyds failed to live up to? In short, was Lloyds in breach of contract, or merely providing poor customer service? Was it something on which Ms N and Mr R were entitled to rely?
- In respect of the consequential losses that Ms N and Mr R say flow from the delay:
  - Were they caused by the delay?
  - Were they foreseeable?

If Lloyds was in breach of contract, the losses were caused by the breach and were reasonably foreseeable, it should be held responsible for the losses. If there was merely poor customer service, or the losses weren't reasonably foreseeable, it shouldn't. But I also bear in mind that my role is not limited to the strict status of the agreement; I have to consider what is fair and reasonable in all the circumstances.

I'm not persuaded that the eight week draw down was a contractual term that Lloyds agreed it would comply with. Considering all the evidence, I find that, on the balance of probabilities, there was no such contractual term.

I say this for a number of reasons. In the first place, there is no evidence that the term exists independent of Ms N and Mr R's recollection. Both Ms N and Mr R and Lloyds have provided me with extensive paperwork relating to the history of this case; there is no mention of the eight weeks in any paperwork from the time. There is a letter sent in February 2007 from Lloyds' business manager asking for further information and documentation, and confirming the existence of the loan agreement. It says the formal offer of facilities will be sent under separate cover; I haven't been provided with the formal offer letter. But nothing else refers to the eight weeks.

I'm also not persuaded that the eight weeks was as crucial to Ms N and Mr R at the time as it has come to appear in retrospect – and therefore that it was more likely to be an indication than an agreed contract term. There is correspondence from Ms N from before the loan was drawn down – but after the eight weeks had expired – enclosing requested documents. It makes no mention of urgency, or that the agreed timescale had expired.

Knowing that they needed the money by the end of March for their contractor to start soon afterwards so they could start taking bookings, Ms N and Mr R would have realised – before the draw down was taken in late June – that that timescale was no longer possible, and that they would miss the first season's lettings. They were not required to take the money at this point; they could have asked to postpone until the next year, or not drawn down at all. But they didn't; they still chose to go ahead. This suggests to me that the eight weeks wasn't a contractual term; or if it was, that Ms N and Mr R chose to proceed knowing it had been breached.

Lloyds says that the eight weeks would not have been a definite commitment. It says that, while it aims for that timescale, it can't guarantee it. This is because second charge lending often requires third party involvement over which Lloyds has no control. While in this case, the delay was attributable to Lloyds rather than the third party, I accept that Lloyds' general policy is to aim for – but not commit to – eight weeks. And, on the balance of probabilities, I'm satisfied that that is what happened in this case.

Therefore, I find that, on the balance of probabilities, Lloyds' failure to provide the money within eight weeks was poor customer service – because it delayed unnecessarily – but wasn't a breach of an agreed contract term.

I also don't think Lloyds can be held responsible for all the losses claimed by Ms N and Mr R in any event. They claim two years' lost lettings. The second year is claimed due to the loss of the specialist contractor they had arranged and the substantial delays in re-arranging. This is said to be due to the specialist nature of the contractor and the very rural location. However, I don't think that it is reasonably foreseeable that a delay of three months in draw down would lead to a delay of over a year in works starting.

I also think that Ms N and Mr R have a duty to mitigate their losses. As I have said, knowing that they had missed the arranged date for their contractor and were too late for the first season's lettings, they could have chosen not to proceed with the loan. It was the taking of the loan with no income to make repayments that was the root, if not the sole cause, of the cash flow problems that led to Lloyds calling in the borrowing three years later. That could have been avoided had they postponed or not taken the loan.

It also seems to me that Ms N and Mr R's business plan was very ambitious with no room for error. They applied for the loan in January and needed the money in March for the contractor to start work soon after and for bookings to be taken. There are many things that could have

gone wrong with that chain of events, and to my mind there is no guarantee that the tight deadlines would have been met even had the loan been made available within the eight weeks.

Overall, therefore, taking all of these factors into account, I'm not persuaded that Lloyds made a binding commitment to lend within eight weeks, or that it would be fair and reasonable to hold it responsible for the losses claimed by Ms N and Mr R because it didn't. But I do agree that there was poor customer service, and for that I'm satisfied that compensation of £500 is reasonable.

In respect of the overdraft, when Lloyds withdrew the facility it should have frozen the account, not let Ms N and Mr R continue to use it. It should therefore refund the interest and fees charged for the unauthorised lending it permitted after the withdrawal of the facility.

### **my final decision**

For the reasons I have given, my final decision is that I uphold this complaint and direct Lloyds Bank plc to:

- Pay Ms N and Mr R £500
- Refund £14,677.56 in fees and charges

Simon Pugh  
**ombudsman**