

## **complaint**

The G family complain about Lloyds Bank PLC's handling of banking facilities provided to them for a former business.

## **background**

For some years, Mr G junior ran a small business, "Y". His parents say they assisted their son from time to time such as they were able, both financially and with their own personal time. In 2008, following an approach by Lloyds Bank, Mr G and his father decided to transfer borrowing facilities to the bank. Unfortunately Y, like many businesses, later suffered in the economic downturn and has ceased trading. Lloyds Bank has sought the G's proposals for repayment of business borrowing. It says it holds security for the debt, being Mr and Mrs G's residential property.

Mr and Mrs G are concerned about the possibility they may lose their home. They say they hold no other assets. In bringing their complaint, they've highlighted a number of points they consider indicative of wrongdoing on Lloyds Bank's part. They say, in summary:

- Many of the difficulties Y experienced could be traced to the bank's administration of the account in the early days after it was opened. They'd been unable to monitor the account operation effectively due to a lack of online access. And their existing arrangements with suppliers and their card payment processor were adversely affected by the change of bank;
- Mrs G was never a partner in Y. Her participation in the business was limited and generally centred on helping her husband, whose medical condition required her support. Despite this, the bank had forced Mrs G into agreeing to allow her home to be given as security, without suggesting she take independent legal advice;
- Lloyds Bank had called in the £25,000 overdraft facility within months of agreeing to provide it, ostensibly because it was in constant use. However, as the Gs weren't in a position to repay the balance, the bank had threatened to take them to court and take possession of their house. As an alternative Lloyds Bank had proposed the Gs take out a loan, secured on the property. But it had insisted the loan should be for £55,000 – more than double the outstanding overdraft;
- Mr G's medical condition affected his cognitive ability. He was particularly susceptible to suggestion and easily persuaded. Lloyds Bank had taken advantage of this;
- Lloyds Bank had also required the Gs to take out Business Loan Repayment Insurance (BLRI), though neither Mr G senior nor his wife was eligible. The bank had cancelled the BRLI without authority, and provided only a partial refund;
- When Y's turnover began to fall, the Gs had asked Lloyds Bank for assistance in managing the loan repayments. It had only been willing to provide a short-term concession, with payments much more than they could afford. Following inevitable further difficulty, the bank appointed solicitors. A much reduced repayment arrangement was made, but this didn't enable Y to continue trading. After that, the bank – and its solicitors – gave Mr and Mrs G six months in which to sell their house and repay the debt. Although the Gs asked for interest to be suspended in line with concessions granted by other creditors, Lloyds Bank refused.

Our adjudicator noted Lloyds Bank had acknowledged some initial shortcomings and paid the Gs £150 in recognition of the problems this had caused them. He thought it should also refund some of its charges due to the way it had handled the setting-up of the account. The bank agreed to offer a further £210 in this respect. But the adjudicator didn't think Lloyds Bank had done much wrong in terms of the lending it had provided. The initial overdraft of £25,000 effectively replaced a similar facility with Y's existing bank. And the loan that replaced the overdraft seemed to have been made at the G's request, to assist with cashflow. The additional borrowing was needed to pay suppliers and other creditors, including HMRC.

The adjudicator found that the overdraft facility – and subsequent loan – had been granted to all of the Gs. They hadn't raised any concern at the time over Mrs G's status as a partner, although this was stated on the overdraft documents. Lloyds Bank seemed to have understood all of the Gs were partners. That explained why it had asked both Mr G senior and his wife to give their property as security. And the adjudicator thought Lloyds Bank was entitled to continue to add interest to the outstanding balance. He considered that was usual practice for a secured debt subject to recovery proceedings.

The adjudicator didn't comment on Mr and Mrs G's concerns over the BRLI policy. That issue is the subject of a separate complaint to our service.

The Gs didn't accept the adjudicator's findings. They reiterated their earlier points, focusing on Mr G's medical condition and the fact that Mrs G wasn't a partner in Y. All of the correspondence they'd received had simply been addressed to 'The Partners', so they'd had no reason to query the arrangements. The Gs also questioned Lloyds Bank's inability to provide a copy of the loan agreement, which they'd requested via their legal representative.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where there's a dispute about what happened – as here – I've based my decision on the balance of probabilities. Put simply, that's what I consider most likely to have happened in the light of the evidence.

There's no suggestion here that the G family attribute their current financial position solely to Lloyds Bank's actions. They've been quite clear about the way Y was affected by the general economic downturn, and the impact of some of their own business decisions. And I can't help but have sympathy for the situation they've found themselves in, or for Mr and Mrs G's ongoing health concerns. That said, I'm not persuaded that Lloyds Bank has acted wrongly here, either in setting up the lending facilities or in the way it subsequently handled the accounts. Let me explain why.

I'm conscious of Mr G's medical history. I don't doubt this had an impact on his ability to deal with business arrangements. I'm also fairly certain Mrs G's mind would have been focused on her husband's health, rather than on the day-to-day concerns of Y. Indeed, the performance summary Y produced for January to June 2008 indicates this. But it also shows that Y's cashflow was becoming critical. Against that background, it's clear why the Gs were interested in the financial support Lloyds Bank might have been willing to offer.

Indeed, in January 2008, when submitting Y's business plan to Lloyds Bank, Mr G senior specified a requirement for a £25,000 overdraft to assist with cashflow and aid expansion. His letter went on to say *"I appreciate that this is the maximum amount you will lend*

*unsecured and so we would also be interested in discussing a secured loan with you."*

Lloyds Bank's notes from around this time indicate that they discussed the possibility of additional borrowing, and that the bank said it may be willing to agree to this subject to a charge over the G's house.

Y's stated plan for 2008 indicates that the proposed bank financing, along with increased turnover, would enable the Gs to repay money they'd borrowed on personal credit cards to pay suppliers. So approaching Lloyds Bank for further lending later in the year seems to me to have been a logical step for them to take, given the plans they seem to have had for the business.

Taking all of this into account, it doesn't seem to me the primary factor in the G's borrowing of additional funds in September 2008 was an insistence on Lloyds Bank's part that they do so. The bank may have had concerns about the ongoing overdrawn position, of course. But given the G's stated plans for Y's development, and the more immediate cashflow pressure they were under from suppliers and creditors, I think it more likely this was a decision they were making for themselves, rather than because of any undue pressure from Lloyds Bank.

Was Lloyds Bank's decision to lend more money irresponsible? I don't believe the available evidence enables me to draw such a conclusion. From what I can see, the bank took into account the sort of factors I'd expect it to when considering a business lending proposition. It had trading history and a business plan. Mr G had explained in some detail the reasons for Y's use of its overdraft. The purpose of the lending was in part to buy stock to increase turnover and enable Y to trade its way out of trouble. And presumably, the Gs themselves felt their business plan was sufficiently strong. They were putting their own money into the venture for some time both before and after Lloyds Bank provided the loan.

One of the key points the Gs have made concerns Mrs G's status in Y. The Gs don't appear to have drawn up any formal partnership agreement, though they all signed the account operation mandate with the respective description 'partner'. While Mr G senior describes himself as a partner and was taking a key role in many of the discussions with Lloyds Bank, I've nothing that clearly establishes his position with Y either.

But for the purposes of this decision, I don't need to establish who were the partners in Y. The bank is holding all of the Gs liable not as partners in Y, but as the parties who borrowed the money. The initial overdraft facility letter, dated 29 February 2008 reads:

*"Dear Sirs and Madam*

**OVERDRAFT FACILITY**

*We, Lloyds TSB Bank plc (the "Bank"), are pleased to offer you Mr G, Mrs G and Mrs G, an overdraft facility..."*

As the Gs have observed, Lloyds Bank hasn't yet been able to supply a copy of the loan agreement. They haven't disputed entering into such an agreement, though. Indeed, one of the key points of complaint is that they did, but under pressure from the bank. So I think on balance, it's reasonable to conclude, even without sight of the loan agreement, that the loan agreement is in the same names as the overdraft facility.

The bank is entitled to expect Mr and Mrs G to understand the nature of giving a second charge over their residential property in support of a loan on which they were primary

borrowers. Mrs G has said she was concerned from the outset about giving her property as security. That suggests to me she *did* understand the implications of that charge. But I'm not persuaded her decision to do so was down to inappropriate action by Lloyds Bank, so much as a wish to support the family business. Both she and her husband had done so before, and continued to do so until Y ceased trading.

It's not my intention to criticise the Gs for their actions. I can of course see why they wanted to do what they could to maintain the business. Unfortunately, due to a combination of factors – not least, the financial climate, difficulties with suppliers and Mr G's illness – they were unable to do so. However, I don't find Lloyds Bank's lending decisions were the cause of what happened.

I'm aware that the bank has provided some forbearance to the Gs despite its charge over their property. It also arranged reduced payments for 12 months in an attempt to assist them. But a lender's not compelled to waive interest automatically. And I can't expect the bank to allow the debt to continue to accrue arrears indefinitely. Overall, I don't believe it's for me to prevent Lloyds Bank from seeking to recover the money it says it's owed.

#### **my final decision**

My decision is that in full and final settlement of this complaint, Lloyds Bank PLC should pay the G family £210, in addition to the £150 it has already paid.

Niall Taylor  
**ombudsman**