

complaint

J complains that Lloyds Bank plc (previously Lloyds TSB Bank plc) did not administer its business accounts properly and misled it about the consequences of appointing an insolvency practitioner. J is in insolvency and the insolvency practitioner has given authority for Mr and Mrs F to complain on J's behalf.

background

J had accounts with Lloyds. In 2005 Mr and Mrs F gave personal guarantees to Lloyds for J's debts, secured by a second charge on their house. J became insolvent and in 2013 Lloyds asked for payment under the guarantees. J says:

- Lloyds advised it to appoint an insolvency practitioner. Lloyds said once this was done, it would move J's account to recoveries and Mr and Mrs F could negotiate what they could afford to repay under the guarantees. It was nine months before Lloyds moved the account to recoveries. During this time £2,000 was added in interest and charges.
- Lloyds told Mr and Mrs F the debt under their personal guarantees could be added to their house mortgage (which is with Lloyds). Later, it said this was not possible as it did not meet its lending criteria.
- Mr and Mrs F say they have been told they did not need to provide a second charge over their house.
- Lloyds' staff were incompetent and behaved unprofessionally. The relationship manager took days to return calls.

The adjudicator recommended that the complaint should be upheld. Lloyds accepted there was a delay in moving the account to recoveries and refunded fees and charges of £287.43. The adjudicator said there were two more charges that Lloyds should refund, totalling £36.30, which Lloyds agreed to do. Lloyds offered £350 compensation to Mr and Mrs F for inconvenience and the adjudicator said this was fair and reasonable.

The adjudicator did not recommend that Lloyds refunds interest applied during the delay as interest would have been applied if the accounts had been moved to recoveries.

The adjudicator did not consider Lloyds should offer Mr and Mrs F a mortgage, saying this was a commercial decision for Lloyds. She said Lloyds notes did not support Mr and Mrs F's claim that it offered to add the guarantee debt to their mortgage.

J did not agree. On its behalf, Mr and Mrs F said they put J into insolvency on Lloyds' advice and on the understanding that Lloyds would add the debt to their mortgage. Mr F said Lloyds should take responsibility for the advice its employee gave. They say they could have taken independent advice if they had known Lloyds would not add the debt to the mortgage and consider that Lloyds made a misrepresentation.

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 the evidence is incomplete,

inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

There is no dispute that J borrowed from Lloyds or that Mr and Mrs F provided personal guarantees for the debt. Although Mr and Mrs F now say the second charge on their house was unnecessary, they do not dispute they agreed to provide the second charge.

I am satisfied there was a delay in Lloyds moving the account to recoveries after Mr and Mrs F appointed an insolvency practitioner. I consider it fair for Lloyds to refund the charges applied to the account during the delay. Lloyds continues to apply interest to accounts after transfer to recoveries, so I do not consider it would be fair and reasonable for me to require Lloyds to refund interest applied during the delay.

While Mr and Mrs F say they were told that the debt owed under the guarantees would be added to their mortgage, the evidence does not support this. Lloyds is entitled to make a commercial decision whether to lend to a customer and the terms on which it lends. So, while I appreciate that Mr and Mrs F may face difficulties in paying the debt, I am not persuaded it would be reasonable for me to require Lloyds to add it to their mortgage.

I consider Lloyds' offer of £350 compensation for the inconvenience caused by the delay in transferring the account to recoveries and its poor service to be fair and reasonable.

my final decision

My decision is that Lloyds Bank plc should:

- refund charges of £36.30, if it has not already done so; and
- pay compensation of £350 to Mr and Mrs F.

Ruth Stevenson
ombudsman