

complaint

This complaint is brought by two partners in a family business, and concerns the way Lloyds Bank Plc (previously Lloyds TSB Bank Plc) dealt with the partnership accounts and security. In particular, the partners say that Lloyds:

- withdrew overdraft facilities from their business and placed the business debt with its recoveries department;
- appointed receivers to handle the sale of some of the land held as security for the debt;
- did not provide adequate information about the debt and interest that was accruing; and
- did not provide a proper breakdown of solicitors, agents and other fees charged in relation to the debt.

background

The partners' family business had long-standing business accounts with Lloyds. Their business had become loss-making and Lloyds had allowed gradual increases in the overdraft facility to accommodate that.

By 2009, the overdraft facility was £304,000. The business account exceeded its overdraft limit on a number of occasions and, because of economic difficulties at the time, credits to the account were infrequent.

The overdraft facility was due to expire in November 2009 and Lloyds decided that it would not renew it. It issued a formal demand to the partners and the debt was transferred to its recovery department in April 2010.

In July 2011, Lloyds appointed a Law of Property Act receiver to deal with matters relating to the land and property that constituted Lloyds' security for the partners' debt. Arrangements were made for land held as security to be sold at auction but, in the event, the partners were able to raise sufficient funds to enable the land to be removed from auction and released by Lloyds.

The partners say that Lloyds did not keep them properly informed about the debt, ceasing to issue account statements and not responding to their enquiries. They also say that Lloyds could not properly explain the substantial difference between the amount they had paid to their solicitors and the amount that Lloyds said it received in payment of the debt.

An adjudicator investigated the complaint. In summary, she arrived at the following conclusions:

- Given the position on the business account at the time, and the evident downturn in the business, Lloyds had been entitled not to renew the overdraft facility.
- The terms of the security had permitted Lloyds to appoint the receiver.

- Because the account had been closed and the debt transferred to the recoveries department, Lloyds was not required to continue to issue bank statements. It did, however, provide statements for the account in June 2011.
- The difference in the amount paid by the partners and the amount received by Lloyds against their debt is accounted for by fees payable to agents such as solicitors, receivers and auctioneers.

Overall, the adjudicator did not consider that Lloyds had been at fault and so did not recommend that the partners' complaint should succeed.

The partners did not agree with the adjudicator's conclusions. They said, in summary:

- Whilst the adjudicator has now provided them with details of the payments made to each of the various parties appointed by Lloyds, they consider that these payments are excessive. For example, the auctioneer should only have charged a small amount for advertising, since the land did not actually go to auction.
- There is no explanation of why the solicitors' costs rose so much after November 2011.
- Three letters to Lloyds from their accountants, questioning how the interest was being applied, were not replied to. The manager of their new bank says it is required to send statements – why should Lloyds be different?
- They also had problems with Lloyds in the past; they employed interest recovery agents to get back overcharged interest.
- They paid for an overdraft that was not renewed.
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my findings

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

Looking at the position of the partners' accounts at the relevant time, I consider that Lloyds was entitled to exercise its commercial judgement not to renew the overdraft facilities.

I appreciate the partners' point that there were substantial funds held with solicitors.

However, that was not at that time money which the partners were free to use to repay the partnership debt; there were claims on the money by other family members. Whatever the rights or wrongs of those claims, there could be no guarantee about whether (and to what extent) those funds would eventually be made available to the partners.

I do not consider that Lloyds was obliged to continue to support the business until those family issues were resolved. I am satisfied that it was reasonably patient in its approach, and

did not rush into appointing receivers. Because of the complex circumstances surrounding the property and land that formed part of Lloyds' security, and the nature of the business, I consider that appointment of receivers was a reasonable measure to take.

Those same complexities meant that the respective roles of the solicitors, receivers and auctioneers were not straightforward. From the detailed information that has been provided by Lloyds, I do not consider that the fees charged in relation to those roles and deducted from the funds provided by the partners were excessive in the circumstances. To compare the charges in this case with the charges for standard services would not be comparing like with like.

Once an account has been closed and the debt transferred to a bank's recoveries department, issue of periodic bank account statements is normally discontinued. However, a customer is still entitled to have information about a debt they are responsible for. In this case, I am satisfied that Lloyds issued statements when those were asked for. I appreciate that the partners believe that three letters from their accountant went unanswered, but I cannot see that this made any material difference to their position.

Having considered the account statements for the relevant period, I cannot see that the partners were charged by Lloyds for an overdraft facility that they were not given. Lloyds decided not to renew the facility for the coming period, which it was entitled to do.

It appears that the position for the partners has been very difficult, both in terms of trying to keep their business viable in a difficult economic climate and in relation to the wider family business issues. However, I am not persuaded that Lloyds has acted wrongly.

my final decision

Given my findings, my final decision is that I do not uphold this complaint.

Jane Hingston
ombudsman