

complaint

Mr and Mrs S have complained that Lloyds TSB Bank Plc failed to inform them that it was unable to obtain a charge over their business partners' property as security for lending to the partnership.

background

In 2006 Mr and Mrs S entered into a partnership with another married couple for the purposes of purchasing and developing a plot of land.

The partnership approached Lloyds TSB for funding for the purchase of the land and the building costs. Lloyds TSB agreed to lend money to finance the project, subject to certain conditions. The conditions included a requirement for Mr and Mrs S and their partners to give Lloyds TSB legal charges over their homes.

The charge over Mr and Mrs S's property was completed but the holders of a first charge over the partners' property would not consent to the registration of a second charge in favour of Lloyds TSB. The bank decided to continue to finance the project despite this, but did not inform Mr and Mrs S. They only found out about the absence of a charge over their partners' property some years later when the loan from Lloyds TSB was rearranged.

Mr and Mrs S say that Lloyds TSB failed to protect their financial interests as a result of which they suffered stress and financial loss.

our initial conclusions

Our adjudicator did not recommend that the complaint should be upheld as he did not think that Lloyds TSB owed Mr and Mrs S a duty of care to inform them about the difficulty in taking a charge over their partners' property or that the loan should not have been advanced.

Mr and Mrs S did not agree with our adjudicator's conclusions. In particular, they say that Lloyds TSB did not comply with the Lending Code.

my findings

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

I agree that, as a matter of courtesy, Lloyds TSB should have told Mr and Mrs S that it was unable to obtain a charge over their partners' property.

However, the charge was primarily for the benefit of Lloyds TSB and it was entitled to make a commercial decision whether to proceed with the loan in the absence of the charge. It seems to me that it would be stretching the point too far for me to decide that Lloyds TSB owed Mr and Mrs S a legal duty of care to obtain a charge over their partners' property.

The absence of a charge over the partners' property made Mr and Mrs S potentially more vulnerable to a claim by Lloyds TSB for repayment of the loan, but it is not correct that they were made 100% liable. Partners are jointly and severally liable for payment of partnership debts and Lloyds TSB held a first charge over the property being built. Lloyds TSB would

only have needed to enforce the charge over Mr and Mrs S's property in exceptional circumstances. I understand that the new property has now been sold and the loan from Lloyds TSB has been repaid in full. There has not, therefore, been any requirement for Lloyds TSB to enforce the charge over Mr and Mrs S's property.

It is apparent that the project did not proceed as smoothly as originally envisaged. There were delays in the sale of the property due to the downturn in the property market and disagreements between Mr and Mrs S and their partners. However, this was not the responsibility of Lloyds TSB. I can understand that Mr and Mrs S may now regret becoming involved in the project but I am not persuaded that they would have withdrawn from the partnership if they had been told that Lloyds TSB could not obtain a charge over their partners' property.

I am also not persuaded that Lloyds TSB failed to comply with the Lending Code. Lloyds TSB decided to waive its requirement for a charge over the partners' property. But that does not amount to a change in the terms and conditions of the loan.

I can understand why Mr and Mrs S feel that they were let down by Lloyds TSB but, in all the circumstances, I do not consider that I could reasonably decide that Mr and Mrs S have suffered financial loss for which they should receive compensation from Lloyds TSB.

my final decision

My final decision is that I do not uphold this complaint.

Charles Bacon
ombudsman