

## **complaint**

Mr A and Mrs B complain about mis-sale of a business loan in January 2007. They say that Lloyds TSB Bank Plc should have advised them to go bankrupt or enter an Individual Voluntary Arrangement (IVA) at that time rather than sell them an unaffordable loan.

## **background**

In January 2007 Mr A and Mrs B took out a secured business loan with Lloyds TSB Bank Plc (referred to as 'Lloyds TSB') for £53,000, plus PPI of almost £8,000 (which has since been refunded). The purpose of the loan was to repay existing debt to the bank, fund the purchase of equipment and raise working capital. The loan was secured by an 'all monies' charge over Mr A and Mrs B's home.

Mr A and Mrs B fell into financial difficulty and within a year of taking out the loan they entered into an IVA with their creditors. They have complained that the advice to take out the loan was unsuitable and that Lloyds TSB breached its duty of care in this respect. They argue that the bank should have advised them to see an insolvency practitioner, rather than arrange a loan.

Mr A and Mrs B also say that they weren't advised about the nature of an 'all monies' charge on their property.

Our adjudicator didn't recommend the complaint should be upheld. He was satisfied that the bank had considered Mr A and Mrs B's circumstances before the loan was granted and that it had properly assessed its affordability. He also noted that Mr A and Mrs B had had advice from their own solicitor before the legal charge was signed.

Mr A and Mrs B have replied in detail, disputing the adjudicator's findings. In summary they say that the bank was fully aware of their financial position and that Mrs B had health problems. They also dispute that they were told of the nature of an all monies charge by either the bank or their own solicitors. Mr A and Mrs B maintain that Lloyds TSB should not have offered them a business loan, which was wholly inappropriate, given their circumstances.

## **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 confirm I've read everything provided by both parties, including Mr A and Mrs B's detailed response to the adjudicator's findings. But I'm not required to reply in similar detail – this simply reflects the informal nature of the ombudsman service.

Having considered the documents, it seems that at the time the bank granted the business loan Mr A and Mrs B were optimistic about the prospects for their businesses. Overall I'm satisfied that the bank's decision to lend was reasonable and the loan appeared to be affordable. I'm not persuaded the bank was aware of Mrs B's precarious state of health.

When considering a request for business finance, Lloyds TSB is entitled to assess the level of risk to which it is prepared to be exposed. In this case, the bank required security for the loan in the form of its standard 'all monies' charge.

Although Mr A and Mrs B say that neither the bank nor their solicitors explained the nature of the charge to them, I consider this unlikely. Indeed, initially Mr A and Mrs B initially raised this issue with their solicitor, but in return for him writing to the bank on their behalf in relation to the other matters they wanted to complain about, it seems to have been agreed that Mr A and Mrs B would not pursue any claim against the solicitor about advice given concerning the nature of the charge. In the solicitors' letter of complaint to the bank, no mention is made of any failure by the bank to explain the nature of an 'all monies' charge to Mr A and Mrs B.

Included in the IVA were three other debts to Lloyds TSB which could have been covered by the charge. I understand Lloyds TSB confirmed that it will only seek to recover the business loan under the charge.

The bank was under no duty to give advice to Mr A and Mrs B about insolvency. I'm satisfied the bank wouldn't have offered a loan if it had considered Mr A and Mrs B to be insolvent at that point. It's true their financial position deteriorated over the coming year, but this coincided with the overall financial crisis and the beginning of the recession, which affected many small businesses in the UK.

I do appreciate the events of the last few years have been stressful for Mr A and Mrs B, but I'm not persuaded that this can be attributed to Lloyds TSB. I'm sorry the financial difficulties Mr A and Mrs B encountered meant they had to enter into an IVA, but I think this is more likely to be as a result of the recession than any other factor.

#### **my final decision**

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

Jan O'Leary  
**ombudsman**