

complaint

Mr A's complaint includes issues covering his own borrowing, personal guarantees that he gave as a director of a company (D) and the conduct of D's account. Specifically, Mr A complains that Lloyds TSB Bank Plc:

- was irresponsible to give him a personal loan at a time when it viewed his company, D, as being insolvent and so should now write off his loan;
- wrongly delayed the sale of D's assets, when those assets could have been sold without its needing to give consent;
- has not refunded business loan insurance premiums paid by D despite having promised to do so;
- has not clearly demonstrated his liability under the personal guarantees on which it relies;
- did not take proper account of all relevant financial considerations when assessing whether or not to provide further credit to D and did not give sufficient notice to him of its concerns about D's position before withdrawing support; and
- overcharged D in respect of a "drive by" property valuation.

background

Mr A was one of two directors of D. D took various borrowing and security was given at different times, including Government-backed security and personal guarantees from the directors. Eventually, Mr A bought out his co-director and ran D on his own. Ultimately, D did not prosper and, when Lloyds TSB was unwilling to provide the necessary increased business overdraft facility, D ceased trading.

Mr A was then in negotiations to sell D's goodwill and assets. Lloyds TSB said that before it could agree to the proposed sale it had to check the position with regard to the various forms of security that were in place. Mr A says that this delay by Lloyds TSB caused him to lose the sale and meant he had to dispose of D's assets for only a nominal amount.

The failure of D also meant that calls were made on personal guarantees that Mr A had given to Lloyds TSB as security for D's borrowings. Mr A considered that Lloyds TSB was relying on personal guarantees that had been superseded or cancelled.

An adjudicator investigated Mr A's complaint. She explained that, as D was now in liquidation, any complaint that D was entitled to bring would have to be brought by the Liquidator and any compensation due would be payable to the Liquidator, rather than to Mr A. The adjudicator suggested that Mr A should make the Liquidator aware of, in particular, the issue of the business loan insurance premiums paid by D that he said Lloyds TSB had agreed to refund. She also noted that the valuation fee appeared to have been an expense of D paid from its account, and so not a matter that Mr A was entitled to pursue.

However, the adjudicator confirmed that we could consider a complaint by Mr A in relation to his own personal borrowing and also to his personal guarantee liability.

The adjudicator did not consider that Lloyds TSB had been irresponsible in lending to Mr A, given that the loan was to enable him to buy out his co-director and the business case that Mr A put forward at the time.

The adjudicator was also satisfied that the documentation issued to Mr A at the time had made clear exactly which guarantees remained and were relied on. So she did not consider that Lloyds TSB had misled Mr A or was confused about which guarantees were in force. She also considered that, given the documentation and also the fact that Mr A had already made a substantial payment towards his guarantee liability, he could not now dispute his liability.

The adjudicator was not persuaded that Lloyds TSB had failed to take proper account of D's overall financial position when making commercial decisions about lending and was satisfied that the letter of concern issued to Mr A was appropriate in the circumstances.

Given the position at the time of the proposed sale of D's assets, the adjudicator considered it was reasonable for Lloyds TSB to check the position before confirming that it had no objection – and felt that the time taken to do that was not excessive.

Given her conclusions, the adjudicator did not consider that the complaint should succeed. Mr A did not agree with the adjudicator's conclusions and wrote with further representations, the main points of which I summarise:

- D was not yet in liquidation when the complaint was first made, so it is unfair if he is not able to bring the complaint on behalf of B. Any amounts that D was entitled to receive would be credited by Lloyds TSB against D's debt to it and thereby reduce his liability under his personal guarantee. There would be no need to involve the Liquidator.
- It was always understood by Lloyds TSB, from when D was first started many years ago, that this would be a long-term business project requiring long-term commitment.
- The letter of concern proves that Lloyds TSB considered D to be insolvent, at the time it gave him the personal loan. This was irresponsible, given the term of the loan and his age.
- Lloyds TSB was wrong to say that D's position had deteriorated. He had explained the reason for cash-flow problems, and action was being taken to cut costs. The trading accounts demonstrate this. Lloyds TSB was also muddled about what extra capital had been introduced. During the conversations leading up to Lloyds TSB withdrawing its support, he provided up to date figures.
- Only one of the personal guarantees is in force, and he has an email (provided) from the business manager confirming that there was no personal security in place. He only made the payment towards his guarantee liability because he had no choice – the money was from the sale of property that was under mortgage to Lloyds TSB. In any event, he accepts that he was liable in respect of the overdraft of up to £30,000.00.
- Lloyds TSB was never entitled to delay the sale of D's assets. He had felt obliged to cease trading, given that Lloyds TSB had told him that it would take time to confirm the position regarding the sale of assets and there was very poor communication.

Six working days elapsed before he was given an answer – the sale had been drawn up on the basis that D was still a going concern, so could not go ahead.

Mr A also raised a new complaint about payment protection insurance that had been sold in relation to his personal loan. The adjudicator explained that this new issue could not be considered as part of the existing complaint, but that he was able to complain about it separately.

my findings

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

As the adjudicator has explained, it would normally be for D – as an independent legal entity in its own right – to bring any complaint relating to its accounts. In the ordinary way of things, a complaint by a limited company could be brought on its behalf by its directors. However, if the company is in liquidation (as D is) then any complaint must be brought by the Liquidator. If a company goes into liquidation during the course of a complaint, then the complaint must be taken over by the Liquidator.

Where an ombudsman award is made in such circumstances, the bank is directed to pay the award to the Liquidator – and it is the Liquidator, rather than the bank, that will decide how the money must be applied. So, in this case, even if Mr A were entitled to bring a complaint on behalf of D (which I am satisfied he is not) there is no guarantee that any award made would be used by the Liquidator in reduction of his guarantee liability.

I appreciate that some of the issues to do with the management of D's borrowings overlap with Mr A's own complaint in respect of his personal borrowing and guarantee liabilities and, where that is the case, I have taken account of all those matters when assessing Mr A's own complaint. For clarity, I shall consider each aspect of this complaint under a separate heading.

the personal overdraft and loan

Looking at the additional personal borrowing given to Mr A, it seems to me that Mr A made a persuasive business case to Lloyds TSB to lend to him at the time. As he himself says, he had an excellent business track record with Lloyds TSB and believed that removal of his co-director would have considerable benefits for D. That, in turn, meant Mr A would benefit from sole control of, and increased income from, D. It represented a reasonable proposition in my view. Mr A was an experienced businessman with a history of deciding for himself what borrowing risk he would take. I am not persuaded by his claim that Lloyds TSB was irresponsible to agree to his request, and should now write off the loan.

sale of assets

It is not open to Mr A to bring a complaint of loss to D from Lloyds TSB's handling of this issue, for the reasons I have already explained. However, Mr A says that – had Lloyds TSB immediately agreed that it had no say in the matter – then he may have been able to go ahead with the sale on behalf of D and, by that, reduce the overdraft debt that he would eventually be held liable for under his personal guarantee.

Having considered the matter carefully, I find that Lloyds TSB's actions in checking the legal position before expressing any view on the matter was not unreasonable in the circumstances of this case. In saying that, I have regard to – amongst other things – the fact that there had been Government-backed security given in relation to D and the potential consequences of any breach of the conditions of that security.

In any event, given that Lloyds TSB had already made it clear that it was not prepared to extend additional credit to D to enable it to meet essential payments, it is difficult to see how Mr A could have warranted that D was a going concern.

business loan insurance premium and valuation fee refunds

I am satisfied that any complaint in relation to these issues would have to be brought by the Liquidator on behalf of D. It follows that I am not able to consider this matter as part of this complaint brought by Mr A.

the personal guarantees

I am satisfied, from the evidence, that the personal guarantees signed by Mr A made clear what (if any) additional personal security was being relied on. In particular, the letter sent in January 2010 spells out that the guarantee is to be taken in addition to, rather than as replacement for, the 2009 guarantee. I appreciate that Mr A has produced an email from D's business manager, which talks about discharge of guarantees, but this email predates the later taking of the personal guarantees which Mr A disputes and I am not persuaded that it affects the validity of the later security.

lending assessments and withdrawal of support

Although Mr A cannot complain on D's behalf about the lending decisions made by Lloyds TSB on its account, I appreciate that he believes that the later calls made on him personally were – to a large extent – the result of those lending decisions. We do not normally interfere in a bank's commercial decisions about lending, if we are satisfied that they were made on the basis of legitimate commercial judgement.

I accept that Mr A's view of D's potential future prospects, and his understanding of the commitment that Lloyds TSB made to him when he first started the company, cause him to believe that Lloyds TSB's decision – and the way it was communicated – was flawed.

However, looking at D's banking history, it seems to me that Lloyds TSB supported D with appropriate finance for many years, before problems began. I do not accept that it was bound to continue to support D indefinitely, in the circumstances. Like the adjudicator, I consider that the letter of concern was, essentially, formal notification of what had already been discussed between Lloyds TSB and Mr A. I realise Mr A did not agree with the position Lloyds TSB was taking, but I am satisfied that the decision represented legitimate commercial judgement.

my final decision

Given my findings, my decision is that I do not uphold Mr A's complaint.

Jane Hingston
ombudsman