DRN-2064112

The complaint

This complaint is about a buy-to-let ("BTL") mortgage Miss L had with Clydesdale Bank Plc. The main issues Miss L has raised are, in summary:

1. She was expected to meet the bank's lending criteria initially, and was later asked to increase her deposit prior to securing the mortgage.

2. Clydesdale paid a sum to the mortgage broker, which means the broker wasn't independent.

3. She realised she was paying interest on the £1,999 fee as it was added to the mortgage, so she would like the interest refunded on that.

4. She borrowed £109,249 in October 2013 and in May 2018 she was told she'd have to pay £100,202.65 to redeem her mortgage, so she says she'd only paid around £9,000 off in five years.

5. She only paid off around 10% of the balance in the first five years, so at the end of the 25-year term she would only have paid off around 50% of the mortgage, so it is unclear how 100% of the capital could ever be acquired after the 25-year period.

6. She believes she was charged excessive interest payments as a way of being penalised for being a first-time buyer purchasing a BTL as she didn't have anything to secure the loan against.

7. She believed it was an Offset mortgage with a linked savings account, but she later found out it wasn't.

8. She doesn't understand why she wasn't able to switch to an Offset mortgage that offered a better rate in 2015.

9. She doesn't understand why it was called an Offset mortgage if she had to wait five years before she could use the Offset facility.

What happened

Miss L took this mortgage out in October 2013, and the application was submitted by an independent mortgage broker. Miss L was a first-time buyer and bought this property as a BTL investment.

She borrowed £107,250 (plus £1,999 for fees was added to the loan) on a repayment basis over a 25-year term. She paid a £35,750 deposit as the purchase price was £143,000. The rate was fixed at 4.49% until 31 July 2018.

In November 2015 Miss L called Clydesdale about the amount of interest she was paying. She said she thought she'd be paying off about £7,000 a year with her £600 a month payment, that she wanted a repayment mortgage and thought she'd see a huge difference in the balance. She also said she was told it was an Offset mortgage.

The call was transferred to another call handler who, in error, said she could arrange to have a linked current account opened and backdated to the start of the mortgage. As the call handler was unable to do that herself she transferred the call to a third call handler.

The third call handler explained it wasn't an offset mortgage. That third call handler called Miss L back shortly after and reconfirmed the mortgage was on a fixed rate that didn't have an Offset facility, and that her mortgage would move to an Offset variable rate once the fixed rate came to an end on 31 July 2018. Miss L said she didn't want an interest only mortgage, that she'd been told she would have the option of paying capital and interest and that if she kept money the savings account it would reduce the interest each month. The call handler offered to get a mortgage adviser to call her to discuss things, but said she would need to speak to the original mortgage broker to find out why the mortgage was set up as it was.

Miss L repaid the mortgage on 16 July 2018, incurring a £1,934.02 early repayment charge (ERC) in doing so.

Miss L complained to Clydesdale in June 2019. It accepted that Miss L had been given incorrect information by the second call handler in November 2015, and it also accepted Miss L's testimony that she'd completed an Offset savings account application form when she applied for the mortgage despite not having any other evidence of that. It offered £100 compensation, which it sent by cheque.

Our investigator said they thought that was a fair outcome. As Miss L didn't agree the matter has come to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I trust Miss L won't take it as a discourtesy that I've condensed her complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint. Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

At the heart of this, I believe, is a fundamental misunderstanding about how mortgages work, which is completely understandable considering this is the first mortgage Miss L had ever held. Hopefully my explanations will be useful to her. For ease I'll break the complaint down into two sections.

<u>The original sale and the interest charged – complaint points 1 to 5</u>

The BTL mortgage was arranged by an independent mortgage broker – a third party company unconnected to Clydesdale. It seems Clydesdale neither met with nor spoke to Miss L, and it didn't give her any advice about the suitability of the mortgage.

Where a mortgage application is made through an independent mortgage broker, such as happened here, there's no obligation on the part of the lender to replicate the role of the broker. At the time this mortgage was sold, the responsibility for any advice that may have been given about suitability (for example, the interest rate) lay with the broker rather than with the lender.

None of the available evidence suggests the broker was an agent of Clydesdale at the time; the businesses in question just didn't have that relationship. The broker could have discussed and recommended mortgages from other providers; the fact it recommended a Clydesdale mortgage over any other lenders' mortgages didn't make them Clydesdale agent. Neither does the payment of a procuration fee on completion of the mortgage. That's entirely normal in the mortgage industry, and doesn't make Clydesdale responsible for any act or omission on the part of the broker.

The lender had a duty to lend responsibly which, generally speaking, it could at the time discharge by relying on the information supplied by the broker. If, in Clydesdale's commercial judgement, it was satisfied with the information provided by the broker about the customer's circumstances (such as the product she had agreed to) it was within its rights to do so. There was no regulatory requirement at that time for it to validate the information or check the suitability of the advice.

Having looked at the documents, I'm satisfied Clydesdale did enough to make Miss L aware of how much she was borrowing and at what interest rate. It also set out how much Miss L would pay each month if she moved to the variable rate once the fixed rate ended, and how much she would pay overall if she kept the mortgage for the full 25-year term.

It also set out in the mortgage offer that the £1,999 fee would be added to the mortgage advance. Nowhere does it say that it wouldn't be interest-bearing, so if Miss L was led to believe there wouldn't be interest charged on that sum then that's a matter between her and her broker. I'm satisfied that any mistaken assumption on Miss L's part that she wouldn't be charged interest on the £1,999 fee wasn't due to anything Clydesdale did, so there are no grounds for me to order that interest be refunded.

Miss L feels the interest rate is disproportionately high, but it was set out clearly in the mortgage agreement. Clydesdale didn't give Miss L any advice about whether this was best for her, it simply set out what she had applied for in the mortgage agreement, in a format that met the requirements of the time. Whilst I understand Miss L's concerns, there was nothing more that Clydesdale was required to do.

Having carefully considered everything I can't reasonably find that Clydesdale acted incorrectly when it set up this mortgage that Miss L applied for. Not can I safely find that the interest rate has been charged other than as was set out in the contract Miss L entered into.

Miss L has said that she was asked to increase her deposit prior to securing the mortgage. It's not clear what happened there as Clydesdale has no record of that happening. In fact the application form Miss L signed in April 2018 says she's buying the property for £143,000 and putting down a £35,750 deposit, meaning she needed a mortgage of £107,250 and that exactly matches the mortgage offer issued by Clydesdale, and the amount that was released on completion.

Miss L has said she borrowed £109,249 (which was £107,250 plus £1,999 fees) and by May 2018 she'd only paid off around £9,000 whereas, as she said on the phone in November 2015, she was expecting to pay off around £7,000 a year. But as Miss L was only paying £606.76 a month (so £7,281.12 a year) there's no way she could – at the start of this mortgage – pay £7,000 a year off the capital just by making those payments as she's not taken into account that she also has to pay the interest due each month. To have a mortgage that she'd only have to pay around £280 a year interest from the start, then Miss L would have needed an interest rate of 0.25%, not the 4.49% product that she took.

Miss L had a daily interest mortgage, so when she made a payment her interest was immediately recalculated; that's the daily interest element. To illustrate this I'll use an example of a customer with a mortgage of £50,000 and a starting contractual monthly payment of £500 (all figures are rounded and approximate, and just for illustrative purposes):

- Month one £220 goes to cover the interest, which leaves £280 to go to repay the debt. So the mortgage balance is now £49,720.

- Month two, the payment stays the same so she still pays £500. As the balance is lower, £219 goes to cover the interest, leaving £281 to reduce the debt. The balance is now £49,439.

- Month three, she still pays £500 but now only £218 is needed to cover the interest, which leaves £282 to go to reduce the debt. The balance is now £49,157.

To give a rough calculation for Miss L's mortgage her mortgage would have worked as follows (again figures are rounded and approximate for ease):

Year	Interest charged	Payments made	Balance remaining
1	£4,830	£7,280	£106,799
2	£4,720	£7,280	£104,239
3	£4,600	£7,280	£101,559
4	£4,470	£7,280	£98,749
5	£4,350	£7,470	£95,629
6	£5,020	£7,830	£92,819
7	£4,870	£7,830	£89,859
8	£4,710	£7,830	£86,739
9	£4,540	£7,830	£83,449
10	£4,360	£7,830	£79,979
11	£4,170	£7,830	£76,319
12	£3,970	£7,830	£72,459
13	£3,760	£7,830	£68,389
14	£3,540	£7,830	£64,099
15	£3,300	£7,830	£59,569
16	£3,060	£7,830	£54,799
17	£2,790	£7,830	£49,759
18	£2,520	£7,830	£44,449
19	£2,230	£7,830	£38,849
20	£1,920	£7,830	£32,939
21	£1,600	£7,830	£26,709
22	£1,260	£7,830	£20,139
23	£900	£7,830	£13,209
24	£520	£7,830	£5,899
25	£120	£7,830	-£1,811

The reason there is a negative balance left at the end of the 25th year is due to the rounding I mentioned, but if the exact figures were used then at the end of the 25th year then the balance would have been nil. If the payments in the third column are added up you get £193,190 which is broadly in line with the £193,990 Clydesdale quoted as the *"Total amount you must pay back, including the amount borrowed"* in its mortgage offer.

As Miss L can see from the table, in the early years of a mortgage much more goes towards the interest due. That's because the balance is much higher then, but in later years most of the monthly payment goes towards reducing the balance. That's completely normal and how all daily interest repayment mortgages work. So Clydesdale did nothing wrong in how it calculated this.

Miss L paid more when she repaid her mortgage on 16 July 2018 because she also paid a £1,934.02 ERC for ending the mortgage within the fixed rate period. If Miss L had waited until 1 August 2018 then she wouldn't have paid the ERC, so the redemption figure would have been around £97,000 instead (including the £195 deeds release fee that always would have been due upon repayment of the mortgage). And if Miss L had kept the mortgage for the full 25-year term and made all the payments in full and on time, then she would have fully repaid the debt as intended.

<u>Offset – complaint points 6 to 9</u>

The short answer to this part of Miss L's complaint is that there wasn't – and never could be – an Offset facility with the mortgage product Miss L applied for (until after the fixed rate ended).

When Miss L applied for this mortgage Clydesdale offered two options for BTL mortgages; either a fixed rate with no Offset facility (within the fixed rate period) or a variable rate where Offsetting was available. The variable rate that was on offer was the same variable rate that Miss L's mortgage would have moved to after her fixed rate came to an end on 31 July 2018.

At the time Miss L applied for her mortgage, the rates were 4.49% for the five-year fixed rate (which is what she applied for) or 5.35% for the variable Offset rate. So if Miss L wanted to Offset from the start of her mortgage she would have needed to have applied for the 5.35% (variable) rate rather than the lower 4.49% fixed rate she took.

The rates were the same irrespective of whether the applicant was a first-time buyer or not, and the security for the mortgage would be the same either way; the mortgage would be secured against the property being bought. So Miss L wasn't penalised or discriminated against due to her first-time buyer status.

Miss L has said *"I am unclear why I was not able to change to an Offset mortgage that offered a better rate as highlighted in the conversations above"* (referring to the November 2015 conversations). But in November 2015 the variable rate was still at 5.35%, so if Miss L was to switch to an Offset mortgage at that point she would have been moving her mortgage from her 4.49% rate to that 5.35% rate. By any definition that can't be said to be a better rate. In addition, as Miss L was still in her fixed rate period, she would have been charged an ERC to do so as she would have been ending one mortgage product early, and starting a new one.

Miss L has also said *"I am unsure as to why this mortgage was called an offset mortgage, as I had to wait 5 years before I could access the offset mechanism".* But Clydesdale didn't call this an Offset mortgage. I can't comment on anything the broker said or did, for the reasons I've already explained. All I can consider is what Clydesdale said or did.

Clydesdale set out the contract in the mortgage offer, and nowhere does that describe the mortgage as being an Offset mortgage. The only mention of Offset that I can see is that the offer says that once the fixed rate ends on 31 July 2018 *"… the rate will revert to Clydesdale Bank's Offset Variable Investment Housing Loan rate, currently 5.35%."* And that was a correct statement of fact.

It isn't the role of the Financial Ombudsman Service to provide an auditing service or carry out a forensic analysis of mortgage records. But I've looked at the transaction history and there's nothing on there that appears unusual or incorrect.

Mortgage accounts are complicated, and involve complex calculations (hence why I've only included rough calculations using rounded figures). Of course, it's open to Miss L to instruct an independent suitably-qualified professional to audit her account, but that would have to be at her expense; though if errors were found to her financial detriment she could complain about them and her reasonable costs in discovering them could be taken into account in putting matters right. But as things stand, I'm not persuaded that Clydesdale has mis-managed her account or that the balance was wrong.

My final decision

I don't uphold this complaint in the sense I consider Clydesdale Bank Plc made a fair offer of compensation in its response to the complaint. I leave it to Miss L to decide if now – on reflection – she wants to contact Clydesdale directly to accept that sum (if she hasn't done so already).

My final decision concludes this service's consideration of the complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 7 January 2021.
Julia Meadows
Ombudsman