

## **The complaint**

Miss C complains Lloyds Bank PLC made an error when giving her mortgage advice, leaving her approximately £100,000 short of the amount she needed to complete on her property sale and purchase. She says that resulted in additional costs, distress and inconvenience.

## **What happened**

Miss C says she's had a long positive relationship with Lloyds and has relied on one of its mortgage advisers several times in the past. She is partially deaf and visually impaired following cancer treatment, which is known to Lloyds.

In February 2020, Miss C visited the mortgage advisor in her local branch to discuss moving home. She says she told the mortgage adviser the selling price of her property and the purchase price of the one she wanted to buy. She shared the details of her savings and the adviser calculated how much she'd need to borrow to complete the purchase, saying Miss C would not have to touch her savings. That was important to Miss C as her savings offered some security to her, given her health concerns.

Miss C says she was given a provisional date for completion in June 2020 and tried to contact the adviser to update her. Due to the Covid pandemic, Lloyds branches were closed and Miss C was shielding, so she couldn't visit the branch. She tried the adviser's mobile number repeatedly and only received her standard voicemail response and nothing about the advisor not being at work. From 3 June 2020 Miss C sent emails to the adviser but didn't receive an 'out of office' message in response. On 25 June 2020 she made contact with a second mortgage adviser who proceeded to help her. He checked the application and confirmed everything was in place for completion. But she then received a call from the first adviser confirming all was okay, but she'd been off work due to illness.

On 29 June 2020 – with four days left to completion – Miss C met with her solicitor who asked for evidence of the additional £100,000 needed for completion. Miss C says that was the first time she was aware of the error. She contacted the second adviser there and then and he worked the next day on calculating whether Lloyds would lend Miss C the full amount needed. Miss C contacted the other six parties in the chain to tell them what was happening, causing them to be angry and upset, some threatening to pull out of the transaction.

Lloyds was able to increase the amount it would lend Miss C. But, to do so Miss C says she had to use £15,000 of her savings, lose the fixed rate she'd paid for and pay an additional fee for another one. She says there was also a cash incentive of £200 on her original deal that she lost as a result of the change. And Miss C's contractual monthly mortgage payment went up by £350 to £400.

Miss C says Lloyds was unable to email a copy of her new mortgage offer to her solicitor so she had to visit a branch to get one and deliver it. However, when she did, her solicitor told her the party at the top of the chain had pulled out. She managed to persuade her buyers to continue as well as the party she was buying from. But completion was delayed for approximately one month, the party she bought from had to find rented accommodation and Miss C had to unpack her house contents and pay two removals fees.

Miss C complained and Lloyds wrote to her with its final response on 16 July 2020 – before the eventual date of completion. It said a mortgage adviser's role is to recommend a mortgage product, term and repayment type. They should not advise customers on the amount they need to borrow. But it acknowledged Miss C asked for help with the calculation and the adviser made an error. Lloyds says Miss C's solicitor should have checked the amount required and that Miss C had access to the balance required. The solicitor had from 6 March 2020 to do this but didn't do so until 29 June 2020 with completion scheduled for 3 July 2020.

Lloyds said its adviser had to obtain additional income verification because of the additional borrowing required and the new mortgage amount was agreed on 1 July 2020. But the legal documentation required by solicitors is produced overnight and Lloyds has no 'workaround' so that could not be sent until 2 July 2020.

With regard to the additional costs outlined by Miss C, Lloyds said her contractual monthly payment is what it would have been had the borrowing amount been calculated correctly from the beginning. It said the product fee and the interest rate applicable are the same – only the end date of the fixed rate has changed. It said it was prepared to lend Miss C more based on her income so contributing £15,000 from her savings was her choice. But it did make a payment to her to cover one of the two removals fees she incurred and paid her £500 in acknowledgement of the distress and inconvenience caused by the calculation error.

Dissatisfied with Lloyds' response, Miss C asked us to consider her complaint. Our investigator thought that Lloyds should pay Miss C an amount in respect of the distress and inconvenience its error caused her, he thought the £500 already paid was fair. And he thought the solicitor's failure to check what Miss C required until the week of completion was partly the cause of the failure to complete as scheduled. He also thought it was reasonable that Lloyds pay for one of the removal fees Miss C incurred. As Lloyds has paid both those amounts to Miss C, he said it need take no further action.

Miss C didn't agree. She said our investigator didn't address the poor communication from Lloyds since the offer letter was sent in March 2020 or the devastating time she had after discovery of the shortfall. Or that the Lloyds advisers twice told her that everything was in place before discovery of the error. She said she didn't choose to delay meeting her solicitor – that was the first time she was available following the Covid pandemic lockdown. And her solicitor wanted to meet face to face with her to go through the paperwork together because of Miss C's disabilities. Miss C says, before that, Lloyds hadn't communicated with her in large print despite knowing of her disability.

Our investigator discussed the matter on the phone with Miss C and then thought again about whether he thought a higher payment was appropriate in relation to the distress and inconvenience caused. But he didn't decide Lloyd should increase its offer, so Miss C has asked for her complaint to be reviewed by an ombudsman for a final decision.

I wrote to both parties with my provisional decision on 6 May 2022 giving four weeks to respond. Lloyds responded accepting my decision. Miss C didn't accept my decision and asked for an extension to the deadline given. I extended the deadline to 20 June 2022, but have not received Miss C's full response to my provisional decision, having now waited an additional week.

In my provisional decision I said:

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

*To decide Miss C's complaint, I've thought about whether Lloyds was the cause of the failure of Miss C's chain to complete on time. And I've thought about the financial impact that had on her and the impact on her in terms of distress and inconvenience.*

*The mortgage offer letter provided by Lloyds to Miss C on 6 March 2020 clearly states that the mortgage outlined in it was recommended by Lloyds, having assessed Miss C's needs and circumstances. But, in its final response letter dated 16 July 2020 Lloyds said the mortgage adviser's role is to recommend a mortgage product, term and repayment type, not advise the customer how much they need to borrow. I don't agree with that. The Financial Conduct Authority (FCA) confirms what constitutes advice in 'PERG 4.6.3G' – that says:*

*For advice to fall within article 53A as set out in PERG 4.6.1 G it must:*

- 1. relate to a particular mortgage contract (that is, one that the borrower may enter into or, in the case of advice on a variation, one that he has already entered into);*
- 2. be given to a person in his capacity as a borrower or potential borrower;*
- 3. be advice (that is, not just information); and*
- 4. relate to the merits of the borrower entering into, or varying the terms of, the contract.*

*The amount of the mortgage is one of the things that makes it a "particular mortgage contract" as opposed to generic information, and is relevant to the merits of entering into it.*

*MCOB 4.7A.5R says:*

- 1. A regulated mortgage contract will not be suitable for a customer unless the regulated mortgage contract is appropriate to the needs and circumstances of the customer.*

*So, if the recommendation is for the incorrect amount – particularly in this case where the error doesn't appear to have happened as a result of a subsequent change of circumstances – it isn't appropriate for the customer's needs. That means I don't think Lloyds' advice to Miss C – as outlined in its mortgage offer dated 6 March 2020 – was suitable for Miss C.*

*Lloyds has also said it would have expected Miss C's solicitor to have reviewed the application between March and June 2020 to ensure Miss C had the funds required to make up any shortfall in the equity and mortgage amounts. So, it said, Miss C and her solicitor should also accept some liability for this issue.*

*I am minded to make allowances for the restrictions placed on all businesses – solicitors and lenders alike – by the Covid pandemic. Miss C says 29 June was the first opportunity – because of the restrictions of the pandemic – that her and her solicitor had an opportunity to go through the application together. And, she says, her solicitor thought it was important that they did that together because of Miss C's hearing and sight impairments. In the circumstances, I do accept that may have been*

*the first opportunity they had for a face to face meeting. But I don't think that would have prevented Miss C's solicitor assessing the details of the application some time in advance of that meeting. And, I think, had they done so, it may have been prudent to contact Miss C before their meeting to raise a concern, or ask questions about the shortfall and where it would come from.*

*So, I agree that there should have been opportunities to address the issue earlier than Miss C and her solicitor did. However, that doesn't change my opinion that the cause of the error was an unsuitable recommendation from Lloyds.*

*Miss C says, as a result of Lloyds' incorrect recommendation, her interest rate and application fee increased. She also says she missed out on £200 cashback incentive. To assess whether she has suffered those losses I've compared copies of her mortgage offer letters from March 2020 and July 2020. I've also considered Lloyds interest rates that were available at the time each offer was made.*

*Miss C borrowed £315,000 to complete the purchase of her new property, but her mortgage offer from March 2020 was based on £230,000. The mortgage rate deals that Lloyds offered don't appear to have changed between the dates of the respective mortgage offers, aside from the end dates of the fixed rate periods. But the amount Miss C actually needed to borrow took her over Lloyds' 60% loan to value threshold, meaning she didn't qualify for the rate deal illustrated in the March 2020 mortgage offer. So, both the interest rate she qualified for and the fee she had to pay increased. Both offers say she qualified for £200 cashback.*

*I've thought about whether the increases in cost to Miss C were the result of Lloyds' error. The mortgage offer provided by Lloyds in March 2020 was incorrect. The mortgage rate deal that applied in March 2020, given the amount Miss C actually needed to borrow, was the same as the one outlined in the offer of July 2020. So, the interest rate and the fee she actually paid would have been applicable in March 2020, had Lloyds not made the error. That means I don't think Miss C has suffered a loss in that regard.*

*Miss C has also complained that her contractual monthly payment has increased by approximately £400. I appreciate that is something that, under the circumstances, she wasn't able to budget for. But, again, that is the correct monthly payment based on her requirements to purchase the property she did. Miss C did know about the increased costs before she actually completed and chose to proceed. That said, I do think she has suffered a loss of expectation with regard to her monthly costs because of Lloyds' unsuitable recommendation. So that is something I'll factor into my consideration around the amount I think Lloyds should pay to compensate her for the distress and inconvenience caused.*

*Miss C also says that Lloyds' error caused her to use £15,000 of her savings that she wouldn't otherwise have used. But, in its final response letter dated 16 July 2020, Lloyds said the maximum mortgage available to Miss C was £345,000, meaning Miss C wouldn't have to use her savings. I don't know if that was communicated to Miss C before the July mortgage offer was provided, but the final response letter is dated before completion. So, I think Miss C proceeded in the knowledge that she didn't necessarily have to use £15,000 of her savings. And, because the amount required to purchase the property remained constant – only Lloyds' calculation of the amount required on the mortgage changed – I don't think Lloyds' error caused Miss C to use her savings.*

I then went on to outline how I think Lloyds should put things right. I've reiterated that in the 'putting things right' section below.

### **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.

Lloyds accepted my provisional decision, but Miss C still hasn't fully responded. I know she wanted to respond and that she doesn't agree with the outcome. But I have given her time in addition to the extended deadline we agreed and I think it is now time to bring the complaint to a close. So, I've considered my decision again as well as all of Miss C's previous submissions. Having done so I'm satisfied that it's unlikely there is anything new Miss C can say at this stage that will significantly change the outcome of her complaint or the way I think Lloyds should put matters right. That means my final decision is the same as my provisional decision outlined above, for the same reasons given.

### **Putting things right**

As I've said above, while I think Miss C's solicitor had the opportunity to address the £100,000 shortfall before it did, I think Lloyds' unsuitable recommendation was the cause of the issue.

Miss C says she had the stress of packing and unpacking the contents of her home, arranging an extension with each of her utility providers, rebooking removals at the last minute and the resentment of each person in her chain to deal with. She also had the burden of knowing she was having a negative impact on each of their lives and, from what she's told us, I think that weighed heavily on her. She also says she tried to contact her adviser earlier in June for reassurance that all was okay and received no reply. Eventually she received reassurance from a second adviser when, in fact, all was not okay.

Miss C, by most definitions, is a vulnerable consumer and Lloyds knew that. I think the distress and inconvenience she suffered was greater because of her vulnerability. And I think that could have been avoided, had Lloyds taken more care when she initially asked it for help and had it communicated the absence of its adviser to her.

Lloyds has paid Miss C £1,500 to cover one removals fee. And it's paid her £500 for the distress and inconvenience caused. In addition to that, I think it should pay her:

- £250 in respect of the distress and inconvenience caused;
- £200 in respect of the cashback confirmed in her mortgage offer letter (if it hasn't done so already). If it hasn't already paid that to her, it should add 8% simple interest\* from the date it would ordinarily have been due.

\* Interest is at the rate of 8% a year simple. If Lloyds Bank PLC considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Miss C how much it's taken off. It should also give Miss C a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

My final decision is I uphold Miss C's complaint about Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept

or reject my decision before 27 July 2022.

Gavin Cook  
**Ombudsman**