

The complaint

Mr and Mrs D complain that Clydesdale Bank Plc (trading as Virgin Money) unfairly declined their mortgage porting application due to a temporary change in policy. They had no option but to redeem their mortgage and look elsewhere to fund their new property purchase. Mr and Mrs D complain that an early repayment charge was unfairly applied in the circumstances.

What happened

Mr and Mrs D held a five-year fixed rate deal with Clydesdale which expired on 30 April 2024. Around October 2020 they contacted Clydesdale to discuss porting their existing product to a new property along with applying to borrow further funds. They received an agreement in principle on 7 October 2020. A full mortgage application appointment was arranged for 24 October 2020.

The application was declined due affordability criteria not being met. The advisor explained that due to a change in lending criteria imposed during the Covid-19 pandemic, Clydesdale wasn't accepting overtime as guaranteed income. The application was submitted for underwriting along with supporting income evidence, but the decision remained unchanged.

As such, to proceed with their purchase Mr and Mrs D approached a different lender and successfully obtained a new mortgage. They redeemed their mortgage with Clydesdale. An early repayment charge ("ERC") was applied.

Mr and Mrs D complained to Clydesdale about the declined application. They're unhappy with the service provided for several reasons. But essentially, they're unhappy that Clydesdale didn't tell them sooner that its criteria had changed. They say Clydesdale didn't fairly consider what it knew about Mr D's consistent overtime payments and when the temporary policy ceased a couple of months later, it didn't contact them to let them know.

Clydesdale answered the complaint and upheld it in part. Whilst it did agree its customer service standards fell short, it didn't agree the application was unfairly declined or an ERC was wrongly applied in the circumstances. No compensation was offered. Unhappy with Clydesdale's response, Mr and Mrs D brought their complaint to our service.

Our investigator looked into things and thought Clydesdale should compensate Mr and Mrs D for the customer service issues identified in its final response letter. He didn't think the ERC should be refunded in the circumstances. Clydesdale agreed. Mr and Mrs D didn't and asked for the case to be considered by an ombudsman.

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.

Where the evidence is contradictory, as some of it is here, I reach my decision on the balance of probabilities – that is, what I consider is more likely to have happened, in light of

the evidence that is available and the wider surrounding circumstances.

Whilst a number of issues have been raised about how the mortgage application meeting went, the main issue here is the declined application and as Mr and Mrs D state, the lack of transparency from Clydesdale about its lending criteria during the process.

Mr and Mrs D's 2019 offer sets out the terms of their mortgage. Those terms state that their mortgage can be ported to another property. However, their application would need to meet Clydesdale's lending criteria and conditions at that time.

Those terms also state that if the mortgage is redeemed before the end of the fixed term, Mr and Mrs D would incur an ERC. They'd be charged 5% on the amount repaid until 30 April 2021, reducing by 1% each year thereafter until the end of the fixed term.

Mr and Mrs D's porting application involved borrowing more money. So, Clydesdale needed to consider the affordability of the new mortgage – as stated in the terms.

Lenders can use their commercial judgement about to whom to lend and on what basis if they act fairly and reasonably. Lending policies are something which each lender puts in place to ensure risks remain manageable, and they are allowed a broad discretion – provided they exercise it fairly and in line with the rules – in deciding whether or not to lend.

Clydesdale declined Mr and Mrs D's application because it didn't meet affordability criteria. Clydesdale said it would not consider Mr D's overtime pay as part of the affordability assessment, even though he said it was guaranteed income. This is a decision it's entitled to make.

Clydesdale revised its lending policy during the Covid-19 pandemic – as did many other mortgage lenders. I don't think this was unreasonable, given the unusual circumstances and uncertainty caused by the pandemic and related Government measures. I've seen the lending policy terms - one of these changes was not to include overtime income as part of the affordability assessment.

Mr and Mrs D say overtime income was accepted by Clydesdale during their previous applications. They provided the necessary evidence to prove the income was guaranteed and are disappointed that Clydesdale didn't take their individual circumstances into account as loyal and credit worthy customers. But just because Clydesdale once considered overtime income, doesn't mean it must in the future. And the mortgage offer set out that porting was subject to lending criteria *at the time of applying to port*.

Clydesdale wasn't prepared to lend in the circumstances which is a decision it's entitled to make as long as it's a reasonable one. By not accepting overtime income I can't say Clydesdale acted unfairly in the circumstances as lending criteria wasn't met, and the risk was one it wasn't reasonably willing to take on this occasion. I also wouldn't expect Clydesdale to treat Mr and Mrs D differently to other customers with similar characteristics as it needs to apply its lending policy fairly to all customers.

Mr and Mrs D say the mortgage advisor inflated their outgoings and commented negatively on their car finance commitment. Clydesdale has told that when it entered the expenditure figures Mr and Mrs D provided, there was a substantial negative surplus. The advisor says she asked questions about their car finance payment to consider options for reducing this, if possible, to help with the application. It's also not uncommon for a lender to challenge expenditure where it appears low. But in any event, I'm not persuaded that was the reason for the refusal.

I can understand Mr and Mrs D's disappointment to learn that the lending criteria was revised again soon after their application was refused. In normal circumstances lenders aren't expected to contact historical applicants when there has been a change to lending policy post application. But in this case, the advisor says she did look at Mr and Mrs D's case again once the criteria changed in late December 2020. I don't consider this to be a misuse of data like Mr and Mrs D suggest. I say this as it appears Clydesdale used information it already held to see if Mr and Mrs D would pass affordability at that point.

The key thing to note here is that this wasn't a 'like for like' porting application, Mr and Mrs D wanted to borrow additional funds. The advisor ran another affordability check based on the new lending criteria and it didn't pass. Mr and Mrs D doubt what Clydesdale has said because no contact was made to reconfirm their circumstances. I think it would only reasonably be necessary for Clydesdale to contact Mr and Mrs D, if there was a chance the application would succeed. Which wasn't the case here.

Mr and Mrs D haven't provided any detailed information about any change in circumstances. I also think it's more likely that if their financial circumstances had significantly improved soon after their application, they be in touch with Clydesdale again themselves to see if they'd be any change to its lending decision as a result. So, I'm not persuaded, Clydesdale acting differently in the circumstances would have made any difference in the circumstances. And in any event lenders aren't generally required to follow up on any previously declined applications, so I can't hold Clydesdale responsible for any potential shortfalls here.

When considering everything, I've not seen enough to suggest Mr and Mrs D's application was wrongly declined. As per the mortgage offer, Clydesdale was entitled to apply an ERC. And I'm satisfied that the ERC was set out clearly and prominently in the mortgage offer, which Mr and Mrs D accepted when they took out the mortgage. So, I can't say that Clydesdale can't apply the ERC that they agreed to when they took out the mortgage. The ERC forms part of the contract Mr and Mrs D had with Clydesdale, so I can't say it's been unfair or unreasonable in applying it.

It's not disputed that Clydesdale did make some mistakes in handling this application. Because it has admitted its errors, it's clear that the service provided by Clydesdale fell below the standard Mr and Mrs D should have received. Whilst Clydesdale has acknowledged this, it didn't initially award any compensation to Mr and Mrs D.

It's important to explain that, as a service, our awards are designed to compensate consumers - not punish organisations. We look at the impact any mistakes have had on the consumer concerned and give careful consideration to a consumer's individual circumstances, in determining whether any award for distress and inconvenience is warranted.

Clydesdale accepts that it should have told Mr and Mrs D about the temporary change to its lending criteria sooner (at the time of AIP). It also acknowledges they waited too long for a full mortgage application appointment and their concerns about the service provided weren't addressed sooner when they responded to a request for feedback from Clydesdale. As these issues likely caused Mr and Mrs D an element of distress and inconvenience, it's therefore fair that Clydesdale compensate them in the circumstances.

Had Mr and Mrs D been told from the outset that overtime income would not be considered as part of the affordability assessment, their expectations would have been better managed and it would have been up to them whether to proceed with a full application. That didn't happen and they waited over two weeks for a follow up appointment to be told then, that their circumstances didn't meet criteria.

Mr and Mrs D accept that an AIP is not a guarantee of confirmed lending. This is the case and so I can't hold Clydesdale responsible for Mr and Mrs D proceeding with the next steps of their intended purchase before receiving a definite lending decision and a formal mortgage offer. I'm also not persuaded that within that time they were that far along the process that they were unable to pull out from the sale, as they've suggested they would have done. Mr and Mrs D proceeded with the purchase in the knowledge they would incur an ERC.

Mr and Mrs D also complain the initial concerns raised when Clydesdale weren't responded to, leading to them making a formal complaint. I've considered this but I think the impact was minimal as even if their concerns were investigated sooner, Clydesdale's outcome would likely be the same and as such it's likely Mr and Mrs D would have proceeded to bring their complaint to our service in any event.

When considering the impact on Mr and Mrs D, I'm satisfied £200 is fair in all the circumstances.

Putting things right

To resolve Mr and Mrs D's complaint Clydesdale Bank Plc (trading as Virgin Money) should pay Mr and Mrs D £200 compensation for the reasons set out above.

My final decision

My final decision is that this complaint should be upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 28 July 2022.

Arazu Eid
Ombudsman