DRN-3579468

The complaint

Mr A and Mrs A's complaint is about a mortgage they hold with Clydesdale Bank Plc. They are unhappy that Clydesdale wouldn't do anything to help them when they got into financial difficulties from the end of 2019.

What happened

Mr A and Mrs A took their mortgage with Clydesdale in 2013. They borrowed just under £376,000, over a term of 20 years and on a repayment basis. A two-year interest rate product was attached to the mortgage and replaced with another in 2015, 2017 and 2019.

The last of the interest rate products expired on 31 October 2021. At that time Clydesdale wrote to Mr A and Mrs A to highlight the expiry and what that meant for the mortgage – that it had reverted to Clydesdale's standard variable rate (SVR) of interest. The letter offered to try to assist Mr A and Mrs A if they were in financial difficulties.

It appears that Mr A and Mrs A separated in 2018, but they both remained living in the property and the mortgage payments were maintained. Mrs A informed Clydesdale of the marital situation in November 2019 and said that it was planned that the property would be sold. In the meantime, Mrs A would try to maintain the mortgage payments herself. Mrs A was sent a link to Clydesdale's income and expenditure form to complete, so that discussions could be had about what was possible, including if it could help, going forward. The direct debit mandate was cancelled at that time.

The contractual monthly payment (CMP) was paid in full for the last time in November 2019. Mrs A started to pay what she could to the mortgage in December 2019, but this was significantly less than the CMP, although the payments were enough to cover the interest charged. In March and April 2020 the payments reduced to less than the interest being charged. No payments were made to the mortgage during the remainder of 2020. This was partially due to Clydesdale granting a payment holiday for July to December 2020.

Payments started again in January 2021. In March 2021 Clydesdale agreed a three-month payment arrangement for £250 a month. Mrs A continued to make the same payment most months until October 2021, when payment stopped again.

Over the nine months following Mrs A initially contacting Clydesdale in November 2019, she contacted it on numerous occasions. Mrs A wanted to make an arrangement to pay the mortgage. Following telling Clydesdale in March 2020 that the property might not be being sold, she asked for a payment holiday, because she'd been furloughed. The request was declined as the mortgage was in arrears. Mrs A also asked about extending the term, a new interest rate product and anything else Clydesdale could do to make the mortgage affordable. It was explained to Mr A and Mrs A on various occasions, both orally and in writing, that to be able to put forward a solution, Clydesdale need both of them to complete an income and expenditure exercise so that it could assess what was affordable. Mrs A was also told that it wasn't guaranteed that Clydesdale would be able to do anything. It wasn't until July 2020 Mr A and Mrs A completed an income and expenditure exercise.

The income and expenditure exercise established that Mr A and Mrs A's income was lower than their outgoings. As such, the mortgage was deemed unaffordable. However, Mr A considered that they could afford to pay £1,100 to the mortgage for the following three months. Clydesdale was only willing to agree to this for one month, with a review of the situation at the end of that month. Mr A was meant to call back the following day to confirm the date the August payment would be made, but didn't do so. No payment was made for August 2020 following the discussions and later in that month, a six-month payment holiday was agreed, to be backdated to July 2020.

During the payment holiday and thereafter Mrs A continued to speak to Clydesdale about what she wanted it to agree to in relation to the mortgage – a term extension, a lower interest rate product and additional borrowing to consolidate the arrears and pay for home improvements. Clydesdale explained the following throughout the discussions:

- That for a new interest rate product to be considered Mr A and Mrs A would need to demonstrate payments of at least the amount of the interest were sustainable – three monthly payments of a sufficient amount would need to be made.
- Further borrowing wouldn't be allowed as the existing mortgage was unaffordable, so borrowing more would make the situation worse.
- Any arrangement proposed would need to be evidenced to be affordable and sustainable.
- A new income and expenditure exercise would need to be done to establish what was affordable for Mr A and Mrs A.

Clydesdale decided to issue a formal demand for payment of the mortgage debt, which was the starting point for legal action to repossess the property, in February 2021.

As at the end of October 2021, when Mrs A raised this complaint, she had paid something to the mortgage every month after the payment holiday ended, but the payments had been at most in the region of half of the accrued interest. This was agreed as a payment arrangement for three months from March 2020 due to Mr A and Mrs A's health situation. However, the payments didn't increase thereafter, and no further agreement was made. As such, a further demand for payment of the mortgage was made in June 2021 as no resolution to the situation had been found.

Mr A and Mrs A didn't provide the income and expenditure information they'd been told was needed by the time the complaint was made. Mr A had also told Clydesdale some months earlier that he was unable to pay the mortgage due to his health situation, and considered that the property needed to be sold. As such, he didn't want a new interest rate product attached to the mortgage, as a new product would involve the payment of an early repayment charge (ERC) when the mortgage was repaid. Mr A also asked that Clydesdale progress the possession activity.

Mrs A provided information about her income and the household expenditure on 1 November 2021. This showed that her income was significantly less than the expenditure, not taking the mortgage into account. It was again concluded that Clydesdale couldn't propose anything that would help Mr A and Mrs A.

Clydesdale issued its final response letter to the complaint on 10 December 2021. It said that the income and expenditure exercises didn't show the ability to afford a new interest rate product as the CMP wouldn't be sustainable. It clarified Mrs A's understanding of what she'd been told about the requirements for three months payments for consideration for a new product and that even if those payments had been met, it wouldn't have been guaranteed that anything could have been done, due to the past history of the account and the amount of arrears. Clydesdale was satisfied that the correct procedures had been followed and so it rejected the complaint. It did, however, apologise if Mrs A felt the individuals she'd spoken to hadn't been sympathetic, as that was not its intention.

Mrs A referred the complaint to this service, and Mr A consented to us considering it. When it supplied its file, Clydesdale confirmed that due to the income deficit of over £1,100 a month, that it hadn't been able to offer an affordable solution to the situation. In addition, it commented that Mr A had indicated that as he wanted the property sold, he wouldn't consent to a new interest rate product being attached to the mortgage.

One of our investigators considered the complaint and recommended that it be upheld in part. He was of the opinion that when Mrs A first asked for a payment holiday in March 2021, Clydesdale shouldn't have declined the request. However, as Mrs A had been granted a payment holiday of the maximum number of months available to her shortly thereafter, he didn't think she'd been disadvantaged by it running from July to December 2020, rather than April to September 2020. The investigator recommended that Clydesdale pay Mr A and Mrs A £150 each, for the upset and inconvenience this error caused them. In relation to Mrs A's requests to make changes to the mortgage to make it more affordable, he didn't think Clydesdale had done anything wrong as the evidence showed that none of the options would have been affordable.

Clydesdale accepted the investigator's conclusions and agreed to pay the compensation recommended. Mr A and Mrs A didn't accept the investigator's conclusions. They highlighted that they'd asked for a re-mortgage in 2020 and had repeatedly asked Clydesdale for help. Mrs A asked that it be noted that she had always attempted to complete the income and expenditure forms online, but they had always failed. She also stated that they had been making payments all the way through, even if they weren't the full payments.

The investigator considered Mr A and Mrs A's response, but he didn't change his conclusions. He highlighted that the income and expenditure that had been completed, had shown that the mortgage was unaffordable. In that situation, further borrowing would have made the mortgage even more unaffordable. He also confirmed that he had considered the full payment history of the account and all the contact notes for the applicable period.

Mr A and Mrs A remained unhappy with the investigator's conclusions. As agreement couldn't be reached, it was decided the complaint should be referred to an ombudsman.

Subsequently, Mr A and Mrs A said that the information they'd received from Clydesdale indicated that both of their salaries hadn't been taken into account when it had decided that it couldn't help them in July 2020.

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.

Before I comment on the merits of the complaint, I would set out the scope of this decision. The legal action continued following Clydesdale's final response letter of December 2021, the situation has evolved, and I am aware that further complaints have been raised. However, this decision will only be considering the events and behaviours complained about at the end of October 2021.

Mr A and Mrs A have expressed their thoughts on further investigations that we should undertake before the complaint is decided. I would firstly explain that we are impartial, and we don't act for either side in a dispute. As such, we also don't take either side's instructions on how we investigate a complaint, or when we have enough information on file to decide it.

In this case, given the detail included in the information we have and the fact that the case turns on some quite basic facts, I am satisfied that the complaint can be decided fairly on the evidence available at this time.

As our investigator explained, Clydesdale shouldn't have declined Mrs A's March 2020 request for a payment holiday due to the account being in arrears. This meant that the holiday wasn't applied to the account until July 2020. While Clydesdale did make a mistake, it rectified that mistake within a relatively short period of time. As such, I consider the £300 (£150 each) compensation for the worry and inconvenience this delay would have caused Mr A and Mrs A is appropriate in the circumstances.

The complaint is essentially that Clydesdale didn't help Mr A and Mrs A during a period of financial difficulties, and they have suffered as a result. Initially, I would explain that the Mortgages and Home Finance: Conduct of Business Sourcebook (known as MCOB) sets out at MCOB 13 what lenders are required to do to help borrowers in arrears. A lender is required to explore ways to resolve an arrears situation, especially if the problem that created the arrears to begin with is one that looks to be short-term and capable of being resolved.

For long-term difficulties, a lender must also look at other ways to help, such as transferring a mortgage from capital and interest repayment to interest-only, deferring interest for a period of time or capitalisation of arrears. Balanced against that is the lender's obligation to ensure that any arrangement is affordable and sustainable. The requirement for a lender to try to help a borrower doesn't mean that a consumer should be given whatever they ask for, but rather the lender needs to determine if it can put forward any proposals that will actually help the consumer and not just postpone the inevitable if the mortgage isn't and won't be affordable going forward.

In this case Clydesdale kept detailed notes of its interactions with Mr A and Mrs A. While Mrs A has indicated at times that the financial difficulties that meant the CMP couldn't be paid were due to the Covid-19 pandemic, they started in 2019, several months earlier. It appears that the financial difficulties started due to Mr A and Mrs A's marital breakdown, and were then exacerbated by the pandemic and later health issues.

I accept that Mrs A contacted Clydesdale on numerous occasions to ask for help with the situation and as time passed, asked for specific changes to the mortgage which she believed would help the situation. It is also clear that Clydesdale didn't agree to do any of the things that Mr A and Mrs A put forward as something they wanted. However, I don't consider that this was because Clydesdale wasn't willing to help, but rather that Mr A and Mrs A didn't for long periods provide it with the information it asked for in order to assess what, if anything, it could do to help. Mrs A was told orally on many occasions and both Mr A and Mrs A were written to and emailed on other occasions, explaining that they needed to complete an income and expenditure form so Clydesdale could assess their situation property.

While I note Mr A and Mrs A have said that they tried completing the online income and expenditure form on many occasions, but were unable to, Clydesdale also sent them the form in a paper format for completion several times and offered to complete it for them over the telephone. So I am not persuaded that they were prevented from providing the necessary information. However, the information was not received, for the first time, until more than eight months after Mrs A was initially asked to provide it. In the case of the second income and expenditure assessment, it was more than ten months after the payment holiday ended before it was provided. I can't find that Clydesdale did anything wrong in not helping Mr A and Mrs A during those times.

When Mr A and Mrs A did provide the information that Clydesdale needed in July 2020, it was shown that the outgoings were more than their income and the mortgage wasn't affordable. I have noted that Mrs A has said that this didn't take into account both of their incomes, but Mrs A confirmed to Clydesdale shortly thereafter that her furlough payments had stopped. Given that she would have known this at the time the income and expenditure was completed, it wouldn't seem unreasonable for her income to not have been taken into account, as the process was to assess what was affordable going forward. Mr A suggested monthly payments of £1,100 for the next three months at that time. As that payment was significantly less than the CMP of nearly £1,900, Clydesdale said that it would only agree to that amount being paid in August 2020, and that it would have to be reviewed the following month. Mr A was meant to call back the following day to confirm what day the payment would be made, but didn't and no payment was made for August 2020, although the payment later became unnecessary due to the backdated payment holiday.

Shortly after the income and expenditure exercise was done, and it was established that the mortgage wasn't affordable, Mrs A asked Clydesdale to re-mortgage for a higher amount to clear the arrears, do some home improvements and to get a 'better' interest rate product. There were various conversations about this, and it was explained that in order to get a new interest rate product, consistent payments of at least the amount of the monthly interest, would need to be made for three months. This requirement was to show that Mr A and Mrs A were able to maintain a certain level of payments on an ongoing basis.

That requirement wasn't unreasonable, given that a new product would involve the payment of an ERC if the mortgage was paid off before the end of the product term. The payment of an ERC would place Mr A and Mrs A in a worse financial position if the property had to be sold either voluntarily or due to repossession because the mortgage was unaffordable. I don't consider this was an unreasonable approach.

While Mrs A had been making payments to the mortgage each month during 2021, the payments were around £1,600 a month lower than the CMP and around half of the amount of interest charged on the account before the interest rate product expired. So in the run up to the existing interest rate product ending, Mrs A hadn't fulfilled the first of the requirements for a new interest rate product to be considered a possibility. In addition, it would then have needed to be shown that the mortgage, with the new product attached would have been affordable. Given the amount that Mrs A had been able to pay to the mortgage up to that point, it seems very unlikely that the mortgage would have been considered affordable, even if a lower interest rate product was applied to it. I say this as the interest on the 1.89% product was slightly under £500 each month, even if Mr A and Ms A had qualified for the 1.34% product they mentioned, the £250 that they had demonstrated they could pay at that point wouldn't have covered just the interest. Even with a term extension, it is clear that the CMP, with a capital payment included, wouldn't have been affordable.

It was made clear at an early stage that increasing the borrowing, given that the existing mortgage wasn't affordable and due to the conduct on the account, wasn't an option. In the situation where a mortgage is unaffordable, increasing the borrowing and, therefore, the amount that Mr A and Mrs A would need to pay for it, would again place them in a worse financial position. I don't think Clydesdale acted inappropriately when it declined to consider further borrowing at an early stage.

I am satisfied that Clydesdale was honest with Mr A and Mrs A about the situation regarding the mortgage throughout. I also consider that Clydesdale's conclusion that it couldn't put anything in place that would actually help them was not unreasonable in the circumstances. Overall, I don't think that, other than the delay in granting the payment holiday in 2020, that Clydesdale treated Mr A and Mrs A unfairly.

My final decision

My final decision is that I uphold this complaint in part. In full and final settlement of the complaint, I require Clydesdale bank Plc to pay Mr A and Mrs A £150 each for the worry and upset the delay in granting them a payment holiday in 2020 caused them.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr A and Mrs A to accept or reject my decision before 20 September 2022.

Derry Baxter
Ombudsman