

The complaint

Ms R's complaint is against Aldermore Bank Plc. Ms R says that Aldermore refused to release £70,000 to her after she sold one of the properties mortgaged to Aldermore as part of a commercial portfolio mortgage. Ms R is also unhappy that, after granting a payment deferral from April 2020, Aldermore wanted Ms R to make up the payments (or alternatively deduct them from the £70,000) before the funds were released.

Ms R would like to be compensated for financial loss, distress and inconvenience.

What happened

I will summarise the complaint in less detail than it's been presented. There are several reasons for this. First of all, the history of the matter is set out in detail in correspondence. All parties are aware of the history of the matter, so there is no need for me to repeat the details here. I will instead concentrate on giving the reasons for my decision. In addition, our decisions are published, so it's important I don't include any information that might lead to Ms R being identified. So for these reasons, I will keep my summary of what happened quite brief.

The evidence in the case is detailed, running to several hundred pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. So in what follows, I have, by necessity, summarised events in rather less detail than has been presented.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

Briefly, what happened can be summarised as follows. Ms R has a commercial portfolio mortgage with Aldermore taken out in January 2008. After selling one of the properties in March 2019 and clearing £200,000 from the mortgage debt, Ms R was concerned that Aldermore had retained £70,000 and refused to release this to her. Aldermore said that this was because it had concerns about the operation and serviceability of the account and that it needed to re-value the portfolio. It wasn't until June 2020 that the funds were released.

Ms R complained to Aldermore, which didn't uphold the complaint. Ms R brought her complaint to our service. Two investigators looked at what had happened. Both thought that Aldermore had acted unfairly in retaining the funds for such a long period of time. The first investigator thought Aldermore should have released the funds by October 2019. By that time, Ms R had maintained a solid payment history, as Aldermore had asked.

The investigator asked Aldermore to do the following:

- pay Ms R 8% simple interest on the retained funds, calculated from 1 October 2019 to 24 June 2020 (the date of release)
- pay Ms R compensation of £500 for trouble and upset.

The investigator noted that Aldermore had released the funds without requiring repayment of the deferred payments, and so he wasn't able to uphold this part of the complaint.

Ms R disagreed with the investigator's findings, but before the complaint could be escalated to an ombudsman, another investigator reviewed it. Initially he endorsed the first investigator's outcome, but after further questions were raised by Ms R, and additional information provided by Aldermore, the investigator thought Aldermore should do the following:

- pay Ms R 8% simple interest on the retained funds, calculated from 24 July 2019 to 24 June 2020 (the date of release)
- pay Ms R compensation of £500 for trouble and upset.

The investigator also thought Aldermore followed the regulator's requirements in relation to Covid-related payment deferrals.

Aldermore has accepted the investigator's findings, but Ms R has not. The matter has therefore been referred to me for a final decision.

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.

After reviewing the case file, I can see how frustrating this matter has been for Ms R. Without in any way intending to trivialise her experience, I must make it clear that the Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we don't act for consumers, nor do we take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality. It's up to us to determine what evidence we need in order to investigate a complaint. So although I've noted the questions which Ms R would like answered, it's not my role to put those questions to Aldermore or act as a representative or go-between on this case.

In addition, Aldermore has now agreed that it did something wrong and has agreed to pay redress. It's not necessary, therefore, for me to examine in detail everything that's happened in order to decide if the bank is at fault, much as Ms R might want me to. My role is not to re-investigate the complaint, but to review it. All I need to determine is whether, in all the circumstances of the case, the redress offered by Aldermore is fair and reasonable in all the circumstances.

I think in March 2019 it was reasonable for Aldermore to want to assess the impact of the sale of one of the properties on the portfolio, and to revalue the portfolio assets. I'm also satisfied that the concerns Aldermore had about the operation of the account were legitimate, given that payments weren't always made in full, and that they hadn't been made by direct debit, which was a requirement of the account terms and conditions.

However, I agree with the investigators that the length of time it took Aldermore to release the funds to Ms R was unreasonable. I agree with the second investigator that, once

Aldermore had the valuations in July 2019, it should at that point have released the £70,000 to Ms R.

In relation to the payment deferral, this is a commercial mortgage and so it is not regulated by the Financial Conduct Authority (FCA). Therefore the FCA guidance on payment holidays for residential mortgage borrowers that were put in place at the height of the pandemic don't apply here. Nevertheless, Aldermore is required to treat Ms R fairly.

Ms R says that Aldermore demanded payment of deferred mortgage instalments before it would release the funds to her, by way of deduction from the £70,000. I've looked at the payment history for the account, and I can't see any lump sum equivalent to the deferred payments being applied to the account in June 2020 (or any other time after that) such as I would have expected to see if the bank had, in fact, deducted the deferred payments from the £70,000. Given this, I'm satisfied that the deferred payments weren't deducted from the £70,000, and weren't paid as a lump sum by Ms R in June 2020 before the lump sum was released to her.

Putting things right

I'm satisfied that Aldermore held onto Ms R's funds for longer than it should have and that the funds should have been released to her after the bank conducted its review of the account on 24 July 2019. In relation to this part of the complaint, I direct Aldermore Bank Plc to do the following:

- pay Ms R 8% simple interest on the retained funds, calculated from 24 July 2019 to 24 June 2020 (the date of release);
- if Aldermore considers that it is required by HM Revenue & Customs to withhold income tax from any interest, it should tell Ms R how much it has taken off. Aldermore should also give Ms R a tax deduction certificate if requested, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

I am also satisfied that the bank's actions caused Ms R distress and inconvenience. I therefore direct Aldermore Bank Plc to pay Ms R compensation of £500.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see from her submissions how important this is to Ms R. That's a natural reaction, and entirely understandable when you're as close to a situation as Ms R is here.

But I have a different remit. I have to be objective, and impartial, and sometimes that means stepping back from the fine detail, taking an overview and deciding what is fair, reasonable and pragmatic in all the overall circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome. Having done that, and considered everything that both parties have said and provided, I'm satisfied that the redress I have ordered Aldermore to pay is fair and reasonable in all the circumstances.

I've noted what Ms R has told us about taking legal action against Aldermore. If Ms R accepts this decision, it will be legally binding on her and Aldermore. If Ms R decides not to accept my decision, she will be free to pursue her complaint against Aldermore through the courts, should she wish to do so. I would suggest Ms R takes legal advice from a solicitor before commencing any legal proceedings against the bank.

My final decision

My final decision is that I uphold this complaint. I direct Aldermore Bank Plc to settle the complaint as set out above. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 21 December 2022.

Jan O'Leary
Ombudsman