

The complaint

Mr W complains about the way Lloyds Bank plc has treated him. He has been through a period of financial difficulty during which he was unable to pay his mortgage, and says Lloyds didn't provide appropriate support or take proper account of his disability.

What happened

Mr W took out his Lloyds mortgage in 2002, and took some additional borrowing over the years. The mortgage is on a capital and interest repayment basis. Mr W has long-term and severe mental health conditions, and he has been unable to work since 2016.

By January 2019, Mr W could no longer afford to make his monthly mortgage payments. He phoned Lloyds to let it know about his situation. Lloyds arranged to give Mr W some breathing space without asking for payments while he sought independent debt advice and contacted his other creditors. It says it noted on its records that Mr W was vulnerable.

There followed regular phone calls – around every month – and reviews of Mr W's income and expenditure. Those reviews said Mr W's expenditure significantly outweighed his income and he couldn't afford to make his mortgage payments. Mr W was applying for benefits and looking into early access to his pension.

Mr W says he found the phone calls and reviews with Lloyds extremely traumatic and detrimental to his health. In or about October 2020, he asked Lloyds for an e-mail address he could use to communicate with it instead of having to phone.

Lloyds initially wouldn't provide an e-mail address, and said it would only communicate by phone or post. In March 2021, it did provide Mr W with an e-mail address he could write to and send documents to – but it said it wouldn't be able to reply to him by e-mail for security reasons.

Mr W complained. He said Lloyds hadn't made reasonable adjustments for him as it's required to do under the Equality Act 2010, and it hadn't offered him any realistic solutions to help him with the mortgage.

Lloyds maintained that it couldn't risk sending e-mails to its customers because it couldn't guarantee the security of customers' computers. It said if Mr W could authorise someone to act on his behalf it could communicate with them instead. It also said it couldn't offer him any concessions which would reduce his mortgage payments to a level he could afford.

Our Investigator thought Lloyds had given Mr W some satisfactory options for communication. However, he said it should have given Mr W an e-mail address to write to sooner, and he recommended it pay Mr W £250 compensation for the upset this had caused.

The Investigator went on to say that Mr W and Lloyds would need to engage with one another in order to find a way for Mr W to get his mortgage back on track and repay the arrears. He didn't think it was reasonable to expect Lloyds to set out a list of options from

which Mr W could choose; Lloyds would need to understand Mr W's situation in order to help him find a solution.

Lloyds accepted that conclusion, but Mr W did not. A friend responded on his behalf, setting out what he considered to be failings by Lloyds on a number of levels.

Our Investigator asked Lloyds for some additional information, and reviewed recordings of some of the conversations it had had with Mr W. He concluded that Mr W had been treated very poorly during some of these calls, particularly in the light of the severity of his health conditions, which Lloyds knew about. He recommended that compensation be increased to £500.

Lloyds accepted that; it agreed to pay £500 and said it would feed back to the staff involved. Mr W didn't accept it. He still wanted an Ombudsman's decision on the complaint, and said this dispute is about more than just the phone calls.

My provisional decision

I issued a provisional decision on this complaint. My findings were as follows:

"I'm very sorry to read about Mr W's ill health and his extremely difficult circumstances. I'd like to assure him that I've taken into account everything he and his friend have told us about his situation in coming to this decision.

I'll firstly set out my findings about Lloyds' response to Mr W's financial difficulty, and then move on to the way Lloyds has communicated with Mr W and how I propose that it should settle this complaint.

Financial difficulty

Mr W tried to engage with Lloyds at an early stage and let it know about both his financial situation and his disability. But he says Lloyds didn't offer any realistic solutions, such as extending the mortgage term, switching all or part of the mortgage onto an interest-only basis, or reducing the interest rate.

Lloyds has a responsibility to try to help customers in financial difficulty, and the suggestions Mr W has made are all things a lender should think about. However, solutions must be viable and sustainable, and what is most appropriate will depend on the borrower's particular circumstances.

Lloyds' review of Mr W's situation in April 2019 found that his monthly income was £370, and his expenditure was £1,378. The monthly mortgage payments came to around £990. Against this background, I think it's clear that there were no viable options for Mr W to make reduced mortgage payments. He simply couldn't have afforded to do so: his income didn't cover his expenditure excluding the mortgage, and that remained the case throughout the rest of 2019. Lloyds' records say that it explained to Mr W later in 2019 that it couldn't set up a payment arrangement which he wouldn't be able to afford.

Lloyds initially arranged for no payments to be required to the mortgage for two months while Mr W sought independent debt advice and contacted his other creditors. It then held off from taking further action in respect of the arrears through 2019 and 2020, and early 2021. Mr W was in regular contact with updates about his situation and the benefits applications he was making.

In these circumstances, I don't think there was anything Lloyds could have done to make the mortgage affordable for Mr W. His income wasn't enough to cover his mortgage payments and living costs, even if Lloyds had been prepared to accept significantly lower payments for a time. A switch to interest-only, term extension, or reduced interest rate wouldn't have resulted in affordable or sustainable payments for Mr W.

In April 2021, Mr W emailed Lloyds saying he could now afford to make the contractual monthly mortgage payments. He went on to make those payments and, as I understand it, has continued to do so. He has also made some inroads into the arrears, which by 2021 had reached around £25,000.

Mr W wants Lloyds to write to him, setting out all the various options open to him to repay the mortgage and arrears over the longest term possible. Those options, however, are dependent on Mr W's particular circumstances. I think it's reasonable for Lloyds to want to understand Mr W's current situation before looking either at concessions or contractual changes. Not to do so would run the risk of disappointing Mr W should he not be eligible for, or not be able to afford, a particular arrangement. So I'm not going to require Lloyds to send him a list of possibilities.

Mr W also wants to know whether he would be eligible for a fixed rate mortgage. Lloyds told him in March 2021 that he wasn't eligible, on the basis that he was in financial difficulty and a fixed rate wouldn't be affordable.

It's reasonable, in principle, for lenders only to offer interest rate products to customers who meet certain criteria. And it's not uncommon for lenders to require that a mortgage account be up-to-date before they will offer an interest rate product. I think it's reasonable that Lloyds would want to be satisfied that the mortgage would be sustainable moving forwards before agreeing to offer a new interest rate product, and to do that it would need to see a history of Mr W consistently managing his monthly payments, as well as an arrangement for the mortgage arrears to be repaid.

This is important because, while a fixed interest rate would usually result in lower monthly payments, it would also come with an early repayment charge if the mortgage needs to be brought to an end early – such as in circumstances where the mortgage is no longer affordable and the lender repossesses the property. So a fixed interest rate which a borrower can't maintain can end up costing more in the end.

Lloyds said in May 2021 that it had looked at how much Mr W's monthly mortgage payments would have been at that time on its lowest fixed rate and over the maximum possible term. They would have come to just over £840 a month. Against the information it had at the time about Mr W's monthly income of £815, this wouldn't have been affordable.

I don't think I can fairly conclude that Lloyds should have agreed a new interest rate product while Mr W's mortgage has been in arrears, because it wasn't clear whether Mr W would have been able to maintain the resulting mortgage payments.

Mr W appears now to be on a sounder financial footing and is keen to come to an agreement to repay the mortgage arrears. I understand that he has been able to maintain the monthly mortgage payments for some time, and so capitalisation of the arrears (that is, adding the arrears to the capital mortgage balance) may be something Lloyds can consider in these circumstances. Alternatively, it could agree a long-term arrangement to repay the arrears – in which context I remind Lloyds that the courts have said that clearing the arrears over an affordable period which lasts up to the remaining term of the mortgage can be acceptable. And in either case, Lloyds could consider offering a new interest rate to reduce the amount

of Mr W's contractual monthly payment – increasing the amount he could put towards reducing the arrears if not capitalised.

In either case, however, this would be subject to an assessment of Mr W's present financial situation – and Lloyds and Mr W will need to communicate with one another in order for an assessment to be made and an agreement to be reached.

Communication

Mr W has severe and long-term mental health problems and, through a friend, has explained the adverse impact on him of the regular phone calls he had to have with Lloyds in 2019 and 2020. He says they were extremely traumatic and detrimental to his health, leading at times to breakdowns and even attempts to take his own life. He also says that his other creditors didn't insist on as frequent contact with him as Lloyds did.

Lloyds knew in 2019 that Mr W is disabled and vulnerable. Its records reflect that. Mr W had explained his situation to it and provided medical evidence. Lloyds has a team which works specifically with vulnerable customers, and through which customers can have a single point of contact. Yet it didn't refer Mr W to that team until January 2021, despite knowing about his situation nearly two years earlier.

I consider that Lloyds should have made the referral far sooner. Had it done so, I think much of the distress Mr W was caused by its handling of his situation and the frequency of contact it insisted on could have been avoided.

I think that requiring updates around every month, knowing what Lloyds knew about Mr W's health and overall situation, and the steps he was taking to try to access benefits and his pension, was excessive – and adversely impacted Mr W's health further. In saying that, I understand that Mr W's other debts weren't secured on his property – so they won't have been priority debts in the same way as a mortgage is, and less frequent contact from his other creditors might reasonably have been expected in any event.

I've listened to recordings of some of Lloyds' calls with Mr W which took place before Lloyds made the referral to its vulnerable customer team, and I find that staff handled some of the calls very poorly – as Lloyds has now accepted. It's clear from the calls that Mr W was caused significant distress and upset following some aggressive questioning and inappropriate comments. I have kept this in mind in coming to my provisional conclusion about compensation, which I will set out more fully later in this decision.

Means of communication

Mr W says he wants to be able to communicate with Lloyds by email, and this would be a reasonable adjustment for him given his disability, and as required under the Equality Act 2010. He initially requested this in or about October 2020.

Lloyds, however, says email isn't a secure means of communication. It has given Mr W an email address which he can write to, but it won't reply through email; instead it has sent Mr W letters. Lloyds also says that telephone is the best way to interact in order to find a suitable way forward for the arrears on Mr W's mortgage. That's why it thinks the most suitable option for Mr W would be for him to appoint a trusted representative who could speak to it on his behalf.

Mr W says he doesn't want to appoint someone to discuss his financial affairs with Lloyds for him and nor should he have to. That's a choice he is entitled to make. He has also explained that he lives alone and doesn't have frequent visitors. His disability means he isn't always

able to open letters received by post, so they may go unopened for a week or two until a friend visits.

All of this means that the current arrangement – Mr W emails Lloyds; Lloyds sends him a letter (which in itself takes time); the letter may go unopened for a couple of weeks – results in significant delays. So I can see why Mr W wants a more workable solution.

In making my decision, I must take account of relevant law. That includes the Equality Act 2010. It's not, however, for the Financial Ombudsman Service to make a decision on whether there's been a breach of the Equality Act. That's a matter for the courts. While I'm required to take into account relevant law, amongst other things, ultimately I must decide what I think is a fair and reasonable outcome in all the circumstances of this complaint.

Disability (a physical or mental impairment that has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities) is a protected characteristic under the Equality Act. Mr W has such a disability and so, under the Equality Act, Lloyds is required to make reasonable adjustments to enable him to use its services – including in the way it communicates with him.

I must also take into account relevant regulatory guidance and rules in making my decision. How financial businesses treat vulnerable customers is something the regulator, the Financial Conduct Authority, has looked at closely, and it published its 'Guidance for firms on the fair treatment of vulnerable customers' in February 2021.

That guidance says firms should: "Consider how they communicate with vulnerable customers, taking account of their needs. Where possible, firms should offer multiple channels so consumers have a choice". The guidance goes on to say that firms should look for solutions to fill gaps in the way they provide their services – and gives an example¹ of a situation where a firm didn't offer email to meet a disabled customer's communication needs. It describes that firm's response to that situation as poor practice.

Lloyds thinks it has done enough, by providing Mr W with an email address he can write to. But I don't consider this a reasonable solution in all the circumstances.

Lloyds says it can't guarantee the security of customers' computers, and so it won't send customer information by email. Data protection and security are important considerations, and Lloyds has obligations under the General Data Protection Regulation. However, I find it difficult to accept that there's a fundamental difference in risk to the customer in Lloyds accepting emails but not being prepared to send them, as long as the customer is aware that they're responsible for their security of their own device.

In any case, this is primarily a concern for standard non-secure email. Lloyds could use secure email to communicate with Mr W – I think it's incredibly unlikely that a firm like Lloyds doesn't have access to and can't use secure email.

Besides that, electronic communication isn't limited to email, and I think it's disappointing that in 2022 Lloyds apparently can't communicate with its mortgage customers electronically. There are other methods of electronic communication which don't involve using the phone, and which are far quicker and more practical than Lloyds sending letters in the post. Some firms, for example, use live webchat. Lloyds has told us that it does offer an online messaging facility through online banking – but this is for basic enquiries only.

¹ <https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf> p.40, section 4.69

It's unclear why Lloyds will only deal with basic enquiries via its messaging facility. It must consider this facility secure as customers would need to log into online banking in order to use it. What this does show, though, is that Lloyds *can* communicate with its customers by means other than letter or phone.

Mr W is a vulnerable, disabled customer. He wants to get his mortgage back on track. He isn't trying to avoid his liability, and having no plan in place for the mortgage is causing him anxiety and distress. He has explained the extent to which communicating by phone puts him at risk of harm, and the practical barriers to communicating by post. I consider that Lloyds could and should go further in seeking a better, faster, and more practical way of engaging with Mr W, and that it should communicate with him electronically by one of the various means available. I invite its proposals in response to this provisional decision. But Lloyds should note that unless there is good reason not to, I intend to direct it to use such means to communicate in my final decision – and I am unlikely to consider Lloyds' general communication policies a good reason not to make an adjustment in this case.

Mr W says that, ideally, he never wants to communicate with Lloyds again. But I'm afraid that's not realistic nor something I can reasonably require. The only way for that to happen would be for the mortgage to be repaid. Re-mortgaging elsewhere may be something Mr W may wish to consider but, in the short term, Mr W and Lloyds will have to work together in order to try to come to an arrangement for repayment of the mortgage arrears. Contact between them may not, however, need to be particularly frequent if the matter of the arrears can be resolved.

In summary, I find that Lloyds has dealt poorly with Mr W for the reasons I've set out above, and this has had a substantial adverse impact on him. In all the circumstances, I think Lloyds should pay Mr W more compensation than recommended by our Investigator, and I intend to increase the award to £1,200. In reaching my conclusion about the level of award, I have also kept in mind that the awards I make aren't intended to be punitive or a fine on financial businesses."

To settle this complaint, I proposed to require Lloyds to:

- communicate with Mr W electronically about his mortgage arrangements and arrears. I invited it to provide its proposals for doing so in response to my provisional decision, and
- pay Mr W (directly, not by way of credit to the mortgage, unless Mr W requests it be paid to the mortgage) £1,200.

Responses to my provisional decision

Lloyds said it accepted the resolution I had proposed. It said digital and/or email communication isn't something it offers as standard, but it will offer email contact when needed. It accepted it had got things wrong in Mr W's case and said it's committed to ensuring communication between it and Mr W about his mortgage arrears is in electronic format going forward.

Lloyds went on to say that it would review capitalising the mortgage arrears, an interest rate product, and a term extension with Mr W – but it may need to speak to him as part of this process, although it would make sure first that he's comfortable with this. It said it would, however, "limit the amount of telephone contact only to that which is absolutely necessary in order to support [Mr W] in the long term management of his account". Certain documents, such as annual mortgage statements, would continue to be sent by post.

Lloyds also said it recognises that Mr W is vulnerable and since January 2019 it had tried to support him and hadn't applied its usual collections strategy. It provided some records of its contact with Mr W to reflect that.

Mr W didn't say whether or not he accepted my provisional decision. He provided a copy of a letter he had recently received from Lloyds, asking him to call it about his mortgage arrears, and said this had caused further detriment to his mental health.

Mr W also said interest rates have changed significantly since he made this complaint. He wanted to know whether a fixed rate, if Lloyds would offer him one, would be based on previous or current rates.

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.

Having done so, I've come to the same overall conclusions I set out in my provisional decision, for the same reasons.

I'm pleased to read that Lloyds accepts it is able to communicate with Mr W by email. However, there is clearly more to be done to put this into practice.

The records Lloyds has provided with its response to my provisional decision include a note dated 22 October 2022. This note says Lloyds' vulnerable customer team had reviewed Mr W's account, and "letter issued as team have no facility to email inviting customer to call to discuss capitalisation of arrears as per FOS recommendation".

This letter appears to be the one Mr W has provided a copy of, which he has explained has affected his health and taken him back to how he felt when he first made this complaint.

I find it extraordinary that Lloyds' vulnerable customer team thought, following receipt of my provisional decision, that asking Mr W to phone it was acceptable. It was entirely inappropriate. I also don't accept that there is a need for Lloyds to speak to Mr W to discuss his mortgage arrangements in the circumstances.

I expect Lloyds to communicate with Mr W in an appropriate way in future – otherwise he may make a fresh complaint and/or, if he accepts this final decision, he may initiate enforcement action on the basis that Lloyds hasn't complied with a binding Ombudsman's decision.

Finally, I note what Mr W has said about changing interest rates. Fixed rates available on the market now are generally considerably higher than they were a year ago, for example. However, whether a fixed rate is the right thing for Mr W is subject to an assessment of his financial situation and, as I said in my provisional decision, it would need to be both affordable and sustainable. That's a matter for Mr W and Lloyds to discuss, and I don't find that I can reasonably require Lloyds to offer Mr W a rate which was previously available in settlement of the complaint at hand here – although this is not to say that Lloyds shouldn't do so following its assessment of Mr W's finances and circumstances. If Mr W feels that Lloyds isn't treating him fairly during this process, he may be able to make a fresh complaint.

Putting things right

Lloyds Bank plc must:

- communicate with Mr W electronically about his mortgage arrangements and arrears, and
- pay Mr W (directly, not by way of credit to the mortgage, unless Mr W requests it be paid to the mortgage) £1,200.

My final decision

My final decision is to uphold this complaint. I require Lloyds Bank plc to take the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 December 2022.

Janet Millington
Ombudsman