

The complaint

Ms M complains that Lloyds Bank PLC is unfairly pursuing her for a signature to allow it to register a charge on her property in respect of a mortgage she has outstanding.

What happened

Ms M took a £7,000 mortgage with Lloyds (then Cheltenham and Gloucester) in 1991. That was an equity release mortgage – usually designed to become repayable on the death of the borrower (last borrower where there is more than one). Lloyds says there was no contractual monthly payment on that mortgage.

Ms M took three further advances – one in 1996 and two in 1997, for £2,000, £3,000 and £3,000 respectively. The further advances were taken on an interest only basis. Lloyds says the contractual monthly payment (the interest on the three further advances) was partially met by DWP payments.

Ordinarily, when a mortgage is taken out, the conveyancing solicitor would arrange for a charge to be placed on the property deeds, in favour of the lender. The property then becomes the lender's security for the loan. Because of that security, the lender is able to offer the loan at a secured (mortgage) interest rate rather than an unsecured rate which would usually be significantly higher. In this case a charge wasn't placed on the property deeds.

Lloyds says it obtained a declaration from Ms M's solicitor in 1991 confirming that it would arrange for the charge to be placed on the deeds in Lloyds's favour. Lloyds has provided a copy of that declaration, signed by the solicitor.

Lloyds says it discovered it had no legal charge over Ms M's property in 2015 and that the title was still in Ms M's late husband's name. That was despite him passing before Ms M took the initial mortgage in 1991. Lloyds says the matter could have been resolved with a signature from Ms M, but, to date, she has refused to sign to allow Lloyds to obtain a legal charge.

In 2019 Lloyds received a letter from Ms M's solicitor. That said she was unwilling to sign the required documentation because there were other matters outstanding. Those matters were disputes about the amount still owing on the mortgage, the allocation of money from the department of work and pensions and the original sale of the mortgage. Those matters have not been resolved to Ms M's satisfaction and the documentation required by Lloyds remains unsigned.

Lloyds has told us, in June 2020, it informed Ms M's solicitor that it would start legal action if it didn't hear back from her to sign the documentation it required. In March 2021 Lloyds was told Ms M is vulnerable and wasn't able to visit a solicitor. In October 2021, Ms M's solicitor was willing to review the documentation so that arrangements could then be made for Ms M to sign it. Ms M's solicitor became non-responsive in 2022, so in June 2022 Lloyds drafted a demand for full repayment of the mortgage – it considered Ms M in default because the legal charge was a requirement of the mortgage according to its terms and conditions. Lloyds

says Ms M's solicitor did not respond to the demand, so it sent a Sheriff officer to serve it at Ms M's home. But it reported that the property was gated and locked – and it didn't appear to be occupied.

In summary, Lloyds says it has given Ms M ample opportunity to cooperate with the registration of the charge. And as it has no security on Ms M's mortgage it has no option but to continue to pursue Ms M for full repayment of the outstanding balance. But, should Ms M sign the documents it requires, all legal action will cease immediately.

Ms M is represented in this complaint by her son – Mr M. He says contact from solicitors about this issue is causing Ms M distress. He explained that she is in her nineties and has a number of health conditions. And Lloyds could have written to her politely about this but instead used solicitors. Mr M says Ms M is trying to establish the correct redemption figure for the mortgage with Lloyds – the subject of a separate complaint. And, if that were agreed there would be no need for her to sign additional documentation because she would redeem the mortgage.

Mr M also says Ms M has never refused to sign the documentation required by Lloyds. But her health concerns have made signing difficult in practice. And he says Lloyds should be open to discussing a fair redemption figure as Ms M still disputes the latest one provided by Lloyds.

In its final response letter dated 22 July 2022, Lloyds said it does not complete, register or amend legal charges – that's done by the conveyancing solicitor. Where it finds that wasn't done or completed correctly, it will take action to ensure its legal charge is secured over the mortgaged property. Lloyds said it instructed solicitors to act on its behalf to complete that work. It doesn't agree that's harassment – it is simply trying to correct an error made by a third party.

Ms M asked us to consider her complaint. Our investigator didn't find that Lloyds had treated Ms M unfairly. She said she thinks it's reasonable for Lloyds to seek to have the legal charge put in place to secure the loan. And she thinks Lloyds has contacted Ms M in a reasonable manner.

Mr M, on behalf of Ms M, disagreed. He says it's not appropriate to send court papers when Ms M is ill and bed ridden. He also said the mortgage will be repaid if Lloyds gives Ms M the correct redemption figure. And, he says, the monthly payments are being made, so Lloyds' action and treatment of Ms M is shameful. Mr M says Ms M will sign the required documentation when her health improves.

As Ms M disagreed with our investigator's findings, her complaint has been passed 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.

I think it would be helpful to explain that I've previously made a decision about issues Ms M has complained about in relation to her mortgage. In my decision of 6 October 2022, I said:

- We'll not consider Ms M's complaint about the balance of her mortgage because an ombudsman previously made a decision on that issue.
- We don't have the power to consider Ms M's complaints that the mortgage was mis-sold and that Lloyds allocated payments from the department of work and pensions

to the wrong sub-accounts of her mortgage. That's because Ms M referred those complaint points to us too late – after the six months she was allowed under our rules following Lloyds' final response letter addressing those points.

That means, while Ms M still disagrees with Lloyds regarding those issues – particularly the issue relating to the amount outstanding on her mortgage – I can't and won't address those points in this decision. I know Ms M's dispute about the amount outstanding on her mortgage is central to her reasoning not to sign the documentation Lloyds requires. But to decide this complaint I've thought about whether it's reasonable that Lloyds sought security for Ms M's mortgage and whether it has acted fairly in trying to achieve that.

I've considered the available documentation from the time of the original mortgage. Lloyds has provided a copy of a declaration it asked the conveyancing solicitor to sign – which it appears to have done. Lloyds says the declaration shows that the conveyancing solicitor was responsible for ensuring a charge was placed on the deeds, so it wasn't Lloyds that made the error. However, I'll not decide here whether Lloyds made the error or not – only whether it's reasonable that Lloyds sought to correct that error and whether it did that fairly.

Lloyds has also provided a copy of the loan agreement dated 4 July 1991. The loan agreement says:

“The loan shall be secured by a mortgage (standard security in Scotland) over the property which incorporates the Society's mortgage conditions. The mortgage (standard security) and the mortgage conditions are embodied and form part of this agreement.”

From that, it's clear to me that the loan taken by Ms M was always intended to be secured against her property (the property address was also noted on the loan agreement).

For clarity I'd explain that a loan becomes a mortgage when it is secured against a property – the property becomes security for the loan. In practice that means placing a legal charge on the title deeds. That doesn't appear to have happened in this case and that meant that Lloyds didn't have security on Ms M's loan. Lenders are able to lend the amounts they do on mortgages at lower rates than other loans because they have the security of the property. In short, having the security of the property means the lender is able to take possession of the property and sell it to repay the balance outstanding if a borrower defaults on the loan.

So, in this case, the loan agreement shows that Lloyds intended for the loan to be secured by a charge on Ms M's property. And that allowed it to take the risk of loaning her the amount she wanted at a 'mortgage' rate. Without the security it may not have lent the money to her and wouldn't have done so at that rate. Ms M has therefore benefited from the money she borrowed and by being charged interest at a rate lower than she would have done had she applied for an unsecured loan.

From Lloyds' point of view, I can see that it has unknowingly taken a much greater risk than it would ordinarily have agreed to because of the error not to place a legal charge on Ms M's property deeds. Irrespective of the cause of that error, I think it's reasonable that it sought to have it rectified. In doing so, it would bring the risk level down to what it would ordinarily accept and believed it was accepting when it agreed to make the loan to Ms M.

I've seen no evidence to indicate that Ms M was aware of the error until Lloyds brought it to her attention. The loan agreement told her that the loan was to be secured on her property and I've seen nothing to suggest she has knowingly benefited from the error. I think securing the loan now by way of placing a legal charge on the title deed would not change the position she agreed to be in when applying for and agreeing to the loan. Nor would it change

the position she believed she was in up to the point Lloyds informed her of the error. So, I think it's reasonable that Lloyds sought to have the loan secured – as both parties agreed it would be at the time it was taken out.

Mr M has written at length about the distress and anxiety Lloyds pursuit of his mother's agreement is causing her – given her age and general vulnerability. But he's not been specific about that apart from mentioning a home visit from a Sherriff's officer.

Generally, I think, to achieve the reasonable outcome Lloyds has sought, it's fair that it made contact with Ms M – as it would need to communicate for any other reason. It appears from what Lloyds has told us that it initially attempted to contact Ms M via her solicitor. But when her solicitor became unresponsive and it received no response from Ms M directly, it decided on a home visit. From what I've seen from Lloyds that decision wasn't taken lightly and it was initially delayed due to covid concerns. And when the Sherriff officer did visit the property, they didn't get to speak to Ms M and it appeared to them that she wasn't present or living there.

I haven't seen that Lloyds has been unreasonable in its contact with Ms M and I don't think it's unreasonable that its action has gone from asking her to sign the documentation it required to starting legal action. I say that because I don't think Ms M left it with an alternative, given that she and her solicitor appear to have stopped responding to Lloyds.

I understand that Ms M is vulnerable because of her age and health issues, but overall, I think the distress caused to her is the result of her non-cooperation with what I think is a reasonable request from Lloyds. I don't think Lloyds' attempts to contact Ms M or the action it has taken is unreasonable in the circumstances.

From what I've seen I think an agreement can be reached as Mr M says his mother is willing to sign the documentation required and Lloyds says it will cease legal action as soon as she does so. There may be practical concerns over obtaining Ms M's signature and it's reasonable that she expects Lloyds to be sensitive to those concerns. Essentially, I think both parties would be best served by communicating openly with a view to keeping Ms M in her home.

My final decision

My decision is I don't uphold Ms M's complaint about Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 29 December 2022.

Gavin Cook
Ombudsman