

The complaint

R, a sole trader business, complains that Lloyds Bank PLC lost a copy of its loan agreement.

What happened

R had a commercial mortgage with Lloyds secured on business premises. The loan was taken out a number of years ago. Neither Lloyds nor R could find a copy of that loan agreement in 2019. R had wanted a payment holiday which it said was allowed for under the terms of the agreement. And it referred a separate complaint about that and other issues to this service.

An ombudsman colleague issued a final decision about that in January 2022. Notably the final decision stated that there had been a *“request for an investigation into missing paperwork”*. But about which the ombudsman then stated *“I can’t consider”* and that it could be raised separately. So that sole issue is now being considered in this complaint

Lloyds said that the last loan R took out was in 2008. And it noted that R had made a subsequent data subject access request (DSAR) in 2020. At that time too, Lloyds said that there was no loan agreement to provide to R. And it’s explained that this may be because of the retention policy to keep such documents for ten years. However, it couldn’t now say what the practice was about keeping documents at local level over time had been. And it thought that from the customer notes about R that had been recorded members of staff had assumed the loan agreement was lost and or misfiled when a previous payment holiday had been agreed. It said that this may have been the case during the lifetime of the loan, but it reiterated that by the time of the DSAR no agreement would be expected to be available due to retention timescales.

Our investigator said that Lloyds hadn’t made a mistake. She said that Lloyds had under its own retention policies only had to retain the documents for ten years. She said that she’d have reasonably expected R to keep a copy.

R didn’t agree and wanted an ombudsman to review the complaint. It wanted to know exactly when Lloyds destroyed the loan agreement and what evidence we have to show when and where this happened. It wanted to know the broad time period even if the exact date wasn’t known. R said it was never told before that this was destroyed but always that this had been lost. This had caused stress to the owner who wasn’t able to apply certain parts of the agreement while it remained live and was poor service. R said that Lloyds was required to be able to provide a copy of the documents under relevant regulations. And it wanted to know how Lloyds had adhered to its own retention policy and data protection requirements. Had the document been lost there could have been a breach of R’s information. It said that the loan hadn’t been paid off until the end of 2019.

my provisional decision

I issued a provisional decision to this complaint on 25 October 2022. I set out below what I said.

I said that this service provides informal dispute resolution and we aren't the regulator. I'd take into account what's relevant in deciding on this complaint and the impact for R.

I'd seen a note from a DSAR case officer at Lloyds stating that for a business loan document the general retention period would be ten years. But that prior to loans being opened centrally they were dealt with locally and due to all the business changes it isn't possible to obtain further data. And that there is no loan agreement with R available. I could see that Lloyds specifically responded to a DSAR from R on 20 November 2020.

Frankly I didn't think Lloyds knew *exactly* what has happened to this loan agreement. What it says is based on *inference*. As R has seen from the DSAR, the customer notes and internal emails by Lloyds staff referred to it. And for example, on 8 January 2019 stated that "*we should still have the loan agreement as it is live.*" And a note was made that it couldn't be found in a storage facility. It was noted that the agreement had been accessed in 2014 when a previous payment holiday had been granted and unsuccessful attempts were made to see if it had been misfiled. On 28 January 2019 a member of staff wrote an email referring to "*the loan agreement which is lost.*"

In a complaint response letter to R of 12 February 2019 Lloyds stated in relation to the loan agreement that "*unfortunately we cannot locate it*". When investigating the previous complaint this service was also under the impression that this was lost.

Given what is available I'm afraid it's just not going to be possible to provide the further detail that R wants. And so, I'll need to base my decision on what I have.

It seems to me that it would be entirely sensible for Lloyds to hold a copy of documentation for a live loan. And that relevant Lloyds staff would have a better understanding of that being necessary when this was looked into in 2019. As I've referred to above a complaint was upheld in favour of R. I was satisfied that the *consequences* of not having that loan agreement in terms of the payment holiday and other issues were considered as part of the previous complaint and dealt with my ombudsman colleague. And I needed to make clear that whether the loan agreement wasn't available due to being lost or destroyed made no difference at that stage. That complaint was resolved, the loan is no longer live, and it seems to me that such documentation as a result would fall to have been destroyed by now given its age in any event.

R has seen two different explanations of what had happened to the documentation. When it believed the documentation was lost the owner says he was very worried and stressed about data protection. And if it had been destroyed then this wouldn't have been at issue, but he thinks still a mistake.

I needed to say that even if the documentation had been lost that didn't necessarily mean that it had left Lloyds' premises. R has no evidence of any breach of its data. The concern is about the potential risk and what might have happened. Given the time since the loan agreement was issued, the period over which it hasn't been locatable and the lack of any other evidence, I didn't have a basis to think that there has been any actual breach or misuse of R's information. And I wouldn't be taking into account what might have happened - only what did.

R was clearly impacted by there not being a loan agreement at Lloyds in 2019 as it didn't have its own copy. And the previous complaint dealt with that. So, I could and will only now think about any *marginal* impact for R from the inconsistent explanation it has seen from Lloyds about what happened to the missing agreement, the poor service and the element of worry and distress when seeing customer notes referring to the loss: that's the impact for R. And having taken into account our published guidelines about compensation and applied my

own judgement I consider that it would be reasonable for R to be paid £200 to reflect that.

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.

R said that the compensation of £200 was inadequate. It agreed that there had been poor service relating to the loss of the agreement. But it said that the impact of the loss of the agreement wasn't really dealt with in the previous complaint. R said that if Lloyds hadn't lost the agreement it would "*almost certainly*" have continued to repay the loan at two percent interest and paid it off in full by October 2020. But it said that instead of that it now has a loan with a different business at a significantly higher interest rate and that the compensation of £200 is only £5 a month which goes little way towards losses. Any compensation R received before wouldn't be for the loss of its documents in the first instance.

Lloyds didn't agree with my provisional decision. It wanted to know what distress R was caused by poor service. And it said that it paid R £300 on 22 September 2020 in relation to a complaint about a DSAR.

I consider I need to expand the quote I gave from the previous decision issued by my ombudsman colleague. In context that said:

"I will begin by explaining that I am unable to look at any issues that haven't yet been raised with Lloyds as a complaint. So, although I've noted [R's] comments about the bridging loan and his request for an investigation into missing paperwork, I can't consider these. [R] will first need to raise these with Lloyds and, if [] unhappy with the bank's response, [] can bring a fresh complaint to the Financial Ombudsman Service."

This complaint I am looking at is only about the missing paperwork which it was subsequently decided and agreed with Lloyds could be considered without the need for R to make a new complaint. However, it remains the case that if R wishes to raise the issue of the impact of taking the bridging loan and subsequent financing arrangements it will still need to pursue that with Lloyds first. I'm not aware it has yet done so from the evidence of either party and I'm clear that's not within the scope of what I have considered here.

I've looked again at the final response Lloyds has also referred to in relation to the DSAR. This said that it paid R £300 for "*not responding to you sooner and providing better service.*" And it related to Lloyds having not actioned an earlier request from R. I don't agree that this dealt with the investigation into lost paperwork.

I remain of the view that the compensation for the poor service and distress relating to the worry about possible data protection issues remains appropriate. I would refer Lloyds to what I said in my provisional decision above about that.

In summary I make clear that the previous final decision clearly addressed all complaint points for R in the knowledge that the loan paperwork hadn't been available. R had the opportunity to deal with all issues then raised but clearly excluding those arising from taking the bridging loan. So, I won't be reopening the assessment of any impact of this as far as that complaint is concerned. And I'm afraid I won't be able to look at any new complaint points here.

My final decision

My decision is that I uphold this complaint and I require Lloyds Bank PLC to pay R £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 20 January 2023.

Michael Crewe
Ombudsman