

## The complaint

Mr and Mrs C complain that Coutts & Company (“Coutts”) didn’t handle their request to remove Mrs C from the mortgage fairly. Mr C said he was given assurances that doing this wouldn’t be an issue but when the application was made, it was declined. Mr C feels that Coutts haven’t properly considered his income when assessing affordability. Mr C says that this has caused him significant legal costs.

## What happened

Mr and Mrs C took out a mortgage with Coutts in May 2007. The mortgage was taken out for £850,000 on an interest only basis with a term of five years.

This facility was renegotiated in 2009 where Mr and Mrs C borrowed additional funds, they then borrowed an additional £30,000 in November 2014. In addition to this, in 2014, Coutts agreed to a loan of £120,000 and a £10,000 overdraft in order to refinance an existing overdraft to a more favourable interest rate.

In 2016, Mr and Mrs C’s mortgage facility reached the end of its term, but they were unable to secure a new mortgage because they didn’t pass the affordability assessment carried out by Coutts. However, by 2017, Coutts agreed to a ten-year interest only mortgage which was fixed for five years – as a concession to Mr and Mrs C situation.

Coutts said they didn’t think Mr and Mrs C’s mortgage was affordable but felt that consolidating the mortgages and loans together was in Mr and Mrs C’s best interests – despite this falling outside of what their lending policy allowed.

Shortly after, Mr and Mrs C separated and it was agreed that Mrs C was entitled to receive 66% of the property value and by March 2018, the property was put up for sale for £2.2M. It wasn’t until May 2020 an offer was made on the property for £2M which Mr and Mrs C considered.

Mr C said that the sale of the property would incur various costs. He said he would have to pay £23,000 early repayment charge (ERC), £20,000 in estate agent costs and around £5,000 conveyancing costs. So Mr and Mrs C considered the option of buying Mrs C out of the property rather than it being sold.

Mr C emailed his private banker at Coutts on 16 July 2020 to ask about the possibility of buying out Mrs C and he said that the adviser responded saying “*can’t foresee any issues with this*”. Mr C said he took this to mean that there wouldn’t be any issues with this, and it would just be a formality.

Mr C said that following this response, they decided not to accept the offer on the property and said he would buy out Mrs C instead. Mr C said that at this point, Mrs C began searching for a new home.

When Mr C spoke to Coutts again, he was told that he would need to make a formal application in order to buy out Mrs C and he proceeded to make an application on 9 November 2020. Coutts declined the application and said they didn’t accept the risk of removing Mrs C as the mortgage was then deemed to be unaffordable.

As a result of this, Mr and Mrs C entered into an alternative arrangement in order to settle Mrs C’s interest in the property which involved arranging a second charge against the

property which Coutts didn't object to. Mr C said that this option was far less favourable than if Mrs C was allowed to be removed from the mortgage instead.

Mr and Mrs C were unhappy that Coutts declined the mortgage application, so they brought their complaint to the Financial Ombudsman Service where it was looked at by one of our investigators.

The investigator thought that Coutts did misinform Mr C about the process for wanting to remove Mrs C from the mortgage and recognised that this caused them both trouble and upset. So he thought that Coutts should pay £250 compensation to both Mr and Mrs C – individually – so £500 in total. The investigator also concluded that Coutts should pay an additional £250 to Mrs C for the loss of expectation and stress when she had to withdraw an offer she made on a property - because of what happened.

The investigator however didn't think that the misinformation was the reason that Mr and Mrs C decided to pursue a different course of action rather than sell the property.

Mr and Mrs C were unhappy with this, so they asked for an ombudsman to look at the complaint. Mr C made the following comments:

- It was never their intention to repay the mortgage except when Mr C's business was sold
- Whilst Coutts claim there was a concession to grant the mortgage in 2016, Mr C was under the impression it was granted as he did what they asked him to do – (he had to deposit a sum into another account for a year and keep the repayments going)
  - It would be Mr C's assumption that as he kept repayments going for five years, this would also work
  - If Coutts staff were so clear that the mortgage was granted despite their belief it was affordable, there should have been some communication with him
- There is confusion that Mr C had been told in July 2020 that removing Mrs C from the mortgage would require a full application, and the outcome would have been the same as if he was 'rejected' in November. Mr and Mrs C would have applied for a mortgage in July and if it had been rejected, they would have sold their house to the prospective buyers. It would have taken Coutts a matter of days to agree or decline the application.
- Coutts claim that there was a risk of removing Mrs C from the mortgage as "*two people are better than one*", so why did they reject the idea of him adding his new partner onto the mortgage?
- The mortgage was declined because the business performance should be considered when considering the mortgage. He is 100% the owner of his business and most banks will recognise in an Entrepreneurial world that owners and business finances get blurred. He takes out of the business the minimum he can but enough to keep his financial situation afloat. His mortgage payments have almost doubled but he has no issues servicing the debt as the business is very profitable (£700K last year)
- Mr and Mrs C decided to buy out Mrs C rather than put the house back on the market in November to reduce the emotional strain on the family. Mrs C had found a house and wanted to make a fresh start. Remarketing the house could have taken months and the property had already been on the market for nearly two years.

Mr C said the key to the complaint here is that had they been given the correct information in July by his private banker, they would have taken a different path and sold the house. Mr C said this has caused a great deal of stress for them and due to the complexities of still

having joint financial connections – the house has now been sold. So all of the costs they paid previously to lawyers were clearly wasted.

Mr C said that his private banker should have known that the mortgage would have been declined as Coutts have been very clear in stating all the reasons why Mr C didn't pass the affordability assessment. This has resulted in costs incurred of around £5,000. Mr C has put this in perspective by saying this is:

- 15% of Mr and Mrs C's legal costs
- Less 1% of his annual mortgage cost
- Approximately 7% of the annual salary of a private banker
- 0.0002% of Coutts predicted profits for 2022

As Mr and Mrs C disagreed with the outcome, the complaint has now been passed to me to decide.

### **My provisional decision**

I issued a provisional decision on 20 January 2023. I said:

I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into consideration everything that Mr and Mrs C have said and I know they feel very strongly about their complaint. They have provided detailed comments in support of their views which I can confirm I've read and understood in their entirety. However, I trust that Mr and Mrs C will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn't to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them.

The crux of the issue here is that Mr and Mrs C feel they have been misinformed by Coutts when an email was sent to Mr C saying that Coutts didn't foresee a problem in response to Mr C's email about removing Mrs C from the mortgage. Mr and Mrs C feel that had they of been given the correct information at the time – that they would need to make a full application which wouldn't have been agreed due to the mortgage not being affordable – they would have gone ahead and accepted the offer made on their property in July 2020 – rather than waiting until November 2020 when they were told an application would be needed.

*Did Coutts mislead Mr C about the possibility of removing Mrs C from the mortgage?*

I've looked at the email that Mr C sent to his private banker on 16 July 2020. Mr C said:

*Thanks for sending the mortgage redemption. Think it's worth keeping it going for at least one more year. One of the plans we have is that I might buy Mrs C out of the house. This would also mean taking her off the mortgage. I would be moving into the house with my new partner who would effectively buy Mrs C's share.*

*Do you foresee any issues?*

Mr C's private banker responded with the following:

*No can't foresee any issues with this – do let us know when ready and will assist you accordingly.*

Mr C said he took this to believe that there would be no issues in removing Mrs C from the mortgage and off the back of this information, both he and Mrs C made

certain decisions, such as not accepting the offer on their house – which has since resulted in them incurring considerable financial costs.

Coutts have said they felt the reply by the private banker implied that he didn't see any issues with Mr C *applying* to remove Mrs C from the mortgage. But that the outcome was dependent on Coutts meeting the regulator's requirements which they are required to do.

While I understand the point that Coutts are making here, I don't think Mr C was asking if he could *apply* to remove Mrs C from the mortgage. He was specifically asking about taking her off the mortgage and adding his new partner on. He then asked if there would be any issues with this.

I appreciate that Mr C took this response to mean that there would be no issues in doing so and he strongly believes they made decisions off the back of that – which I will come on to shortly.

However, I do think that Coutts should have made things clearer to Mr C. This was Mr C's private banker after all, and he would have been aware of Mr C's circumstances and situation and would also have been aware that the mortgage Mr and Mrs C currently had – was agreed as a concession. Coutts said they agreed this previously even though they didn't believe the mortgage was affordable.

Coutts have said that the email that the private banker sent had no contractual effect, so they were not bound by what Mr C had inferred from the response. I do agree with this – I don't think it had any contractual effect. But the private banker should have explained that it was something that Coutts could do (taking Mrs C off the mortgage) but that Mr C would need to make an application in order to do so.

Mr C was given the correct information in November 2020 – several months after he sent the email to the private banker. So he knew at this point that the mortgage wouldn't be agreed because Coutts deemed it to be unaffordable.

What I have to now consider is what would have happened had the private banker made it clear in his email of what the process actually was. So in essence, If Mr C knew what he knew in November back in July – what would Mr and Mrs C have done. And is the email that was sent by the private banker in July the reason that they took the actions that they did.

#### *Impact of misinformation*

Mr and Mrs C said that because of the email they were sent by the private banker, they decided not to accept the offer they had on their house at the time. And instead decided not to sell their property – and buy Mrs C out instead. They said they have now lost out on that buyer and have since incurred additional unnecessary legal fees associated with Mrs C having to also pull out of the property that she had found and made an offer on.

Having considered everything carefully, I can't agree that the reason for Mr and Mrs C deciding not to go ahead with the sale of their property was solely reliant on the email Mr C received from his private banker. I'll explain why.

The email that Mr C sent his private banker on 16 July 2020 said the following:

*“Thanks for sending the mortgage redemption. Think it's worth keeping it going for at least one more year. One of the plans we have is that I might buy Mrs C out of the house”.*

Based on this email, it looks like this is something Mr C was already thinking about – as in not selling the property and instead, considering buying Mrs C out of the property.

Mr C also said when he complained to Coutts that selling the property would incur costs of around £48,000 which included £23,000 ERC. So these costs could have been avoided if the property wasn't sold. So again in my view, it seems like this was something they were already thinking about beforehand.

When Mr and Mrs C found out in November 2020 that Coutts wouldn't allow Mrs C to be removed from the mortgage, they made alternative arrangements in the form of a second charge in order to settle things instead of going ahead and selling the property. I note what Mr C has said, in that putting the property back on the market could have taken months to resolve considering it had already been on the market for two years – but I don't think this is because of the response Mr C got from his private banker. I think it's more likely, based on the actions that Mr and Mrs C took – that they would have gone ahead with the option of a second charge against the property rather than selling it because it seems they were already thinking about not selling the property due to the high costs involved.

And even if Coutts had given the correct information in July 2020, that Mr C could apply to remove Mrs C from the mortgage, this application would still need to be considered by Coutts. So either way, Mr and Mrs C would need to decide whether to sell the property and incur the costs involved or find another way to release Mrs C from the mortgage. I'm not persuaded that Mr and Mrs C decided not to sell their property solely because of the information they were given by the private banker in July 2020.

#### *Legal costs*

Mr and Mrs C feel they have incurred legal fees unnecessarily. But I think these were incurred because they decided to buy out Mrs C rather than sell the property which I don't think Coutts should be responsible for. I also have to consider that it's also the result of Coutts declining their application in November 2020 which is an application that always had to happen.

Had Mr and Mrs C been told in July 2020 that they needed to make an application to remove Mrs C from the mortgage, it's likely that Mrs C wouldn't have started to look for other properties and put in any offers on them until she knew that the mortgage application with Coutts had been approved. That's because she would need to be released from their current mortgage until she would be able to commit to a new one.

Mrs C may have incurred other costs as a direct result of her having to pull out of the property purchase after finding out that she couldn't be removed from her current mortgage. I haven't seen any evidence of this but if Mrs C is able to provide this, I will consider asking Coutts to refund this. I also think that Coutts should pay Mrs C £250 for the trouble and upset that this caused her.

I do think that this would have been very stressful for Mrs C. She put in an offer on a property with the expectation that she would purchase it and be released from the mortgage – only to find out that this wasn't possible. Mrs C only started to look for a new home because she believed she would soon be released from the mortgage. So while Coutts declined the application to remove her from the mortgage, the steps she had taken based on being misinformed that she could come off the mortgage, meant there was a loss of expectation.

#### *Were Coutts acting unfairly when they declined to remove Mrs C from the mortgage?*

A lender is required to carry out an affordability assessment when they want to make changes that might affect affordability. There are certain situations within the mortgage regulations where a lender can set aside an affordability assessment if it's in the borrowers' best interests to do so. But the mortgage that Mr and Mrs C entered into was as a concession which Coutts had originally agreed to even though they

said they didn't think it was affordable. So I think under these circumstances, it was fair for Coutts to want to carry out an affordability assessment to see if it was possible to remove Mrs C from the mortgage. Having assessed Mr C's income, Coutts remained of the opinion that the mortgage wasn't affordable. Mr C doesn't think that Coutts have assessed his income correctly.

Mr C sent an email to Coutts on 15 December 2020 stating that when accounting for future growth and with his new partners income – the income would be £215,000. Even if Coutts accepted this income, it wouldn't have been enough to cover the current mortgage and the additional amount that Mr C would need to borrow in order to buy Mrs C out. Mr C's new partner would also need to be on the mortgage in order for Coutts to include her income.

Mr C said that if his income wasn't sufficient, his own business would be able to afford the mortgage. But this isn't how things work. Lenders do not rely on the performance of a borrower's business when taking into account affordability assessments. It is based on the income itself to ensure that the mortgage repayments can be made.

Mr C has also said that Mrs C's income wasn't used as part of the refinancing in 2017 so there is no reason to keep her on the mortgage – and that she hasn't contributed to it. Coutts deemed the mortgage to already be unaffordable and they said it would be unfair to burden a single borrower with an unaffordable mortgage or allow a new borrower to join the mortgage when it is already deemed as unaffordable. This to me seems the reason why Coutts were not willing to add any new party to the mortgage or remove Mrs C. Having looked at the information that I have and the notes provided by Coutts surrounding Mr C's income, I am not persuaded that they have assessed Mr C's income incorrectly and I can understand why they were not happy to remove Mrs C from the mortgage.

Even though I don't think the misinformation from July 2020 was the sole reason why Mr and Mrs C made the decisions they did, I do understand that this has caused them considerable upset and worry. Like I already mentioned, I do understand why Mr C accepted the email that was sent from the private banker to mean that removing Mrs C from the mortgage wouldn't be an issue. And I agree with our investigator that Coutts should pay Mr and Mrs C £250 each for the trouble and upset they have been caused. As Mr and Mrs C are now separated, it's evident that the misinformation impacted both of them for slightly different reasons which is why I think it's fair to split this award between them.

I will await further comments from both parties before issuing my final decision and I know that Mr and Mrs C will be disappointed with my provisional decision. But unless any new information changes my mind – my final decision will be based on what I have said above.

### **My provisional decision**

I am currently minded to uphold this complaint and direct Coutts & Company to pay Mr and Mrs C £250 each for the distress and inconvenience caused.

In addition to this, they should pay Mrs C a further £250 for the loss of expectation and upset when she had to pull out of the property she wanted to purchase.

If Mrs C can also evidence any financial losses incurred in doing so, she should provide this to me, and I am currently minded to ask Coutts to settle this too.

### **Developments**

Coutts responded to the provisional decision and didn't have anything further to add.

Mrs C responded and said she accepted the provisional decision and wouldn't be submitting any further information for consideration.

Mr C responded and disagreed. He made the following comments:

### **Why Coutts would not accept a change on the mortgage agreement**

Coutts stated a salary of £215,000 would not be enough to furnish the mortgage and the extra funding required to buy Mrs C out.

- Mr C said he was not looking to increase the level of the mortgage and his new partner was supplying the additional funds.
- Coutts have stated that their risk is reduced by having two people on the mortgage and they were planning on removing Mrs C and adding his new partner
- He had to pass a test when he first took out the mortgage by depositing £1,200 a month. He would have assumed that as the mortgage had never been in default since parting with Mrs C and the fact that this transaction would reduce his costs by over £3,000 per month, there would be no issue in swapping names on the mortgage
- His new partner had more assets than Mrs C which would provide Coutts with even greater security

### **The belief that had Mr and Mrs C got the correct information they would have taken the same course of action and not accepted the offer on the house**

Mr C said there is no way they would have continued if they had been informed that it was not possible to remove Mrs C and add his new partner for several reasons:

- His new partner provided the funds (£600,000) to buy Mrs C out of the house but as she can't be on the mortgage and is unable to have a charge on the house, she has effectively no security
- The legal complexity of keeping someone on the mortgage without any ownership and protecting that person in the event of a mortgage default was very complex and costly
- Part of the agreement was that Mr C would not be able to provide personal guarantees for the business. As the sole director, this has made trading very hard
- If anyone wanted evidence, two months after moving, discussions were happening with estate agents on what they needed to do to put the house on the market. The house went on the market within 12 months after various repairs were carried out

Mr C said they had an option of either putting the house on the market or they could find a way of buying Mrs C out. They looked at all options and decided that buying Mrs C out was the best one.

- The house had been on the market for a considerable period having had the option of selling six months earlier and they felt the family needed some stability
- Each time they hit a block in their plans, Mr C's children pleaded with him to find a way forward and they would look to a legal adviser to help map out a way forward
- It had taken the family six months to find a house, having made several offers only to be gazumped and the stress levels were impacting the health of the family on top of a bitter divorce

Mr C said they have been impacted financially and emotionally, as:

- The offer would have been accepted and the family would have moved on
- Additional legal fees would not have been incurred

- Mr and Mrs C would not still be linked financially
- Mr C's new partner would have legal claim on the house securing her contribution to buying Mrs C out

Mr C said his mortgage is now over £6,000 a month so a £750 penalty represents slightly more than 1%. He said it's not about him wanting more compensation as it's the level of penalty that's the issue and that he would be more than happy to donate any compensation to charity.

### **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've thought very carefully about what Mr C has said but unfortunately, this doesn't change my mind. I've explained in detail in my provisional decision why I don't think Coutts acted unfairly when assessing Mr C's income and whether they should remove Mrs C from the mortgage.

Based on the income that Mr C said he would have with his new partner, this still didn't deem the mortgage to be affordable and it's not normal practice for any lender to rely on the performance of a business as a guarantee that the mortgage will in fact be affordable. Coutts explained that as they felt the mortgage was already unaffordable, they would not want to burden one borrower with this by removing the joint party from the mortgage. They said the same about adding a new party onto the mortgage – they would not do this when the mortgage is still not affordable. This isn't unreasonable and I understand why Coutts didn't want to take this risk. Mr C said that his new partner has more assets than Mrs C – but mortgage affordability isn't based on assets – it's purely based on the income and in this situation, Coutts didn't find the mortgage to be affordable in any event.

Mr C has given various reasons as to why he believes he and Mrs C wouldn't have taken the same course of action had they been given the correct information by Coutts in July 2020. He said they would have accepted the offer on their property and proceeded to sell their home allowing Mrs C to find her own property. I still don't agree with this.

The email that Mr C sent Coutts in July 2020 was clear enough that they were thinking about other options rather than just selling the house. Mr C has said that there were high costs involved in selling the property and based on what he said and the actions they took, I think it's more than likely based on what I have seen, that they would have taken the same course of action – by trying to remove Mrs C from the mortgage.

I have no doubt that this has been a very stressful situation for both Mr and Mrs C but the further information that Mr C has provided doesn't change my mind. I therefore see no reason to depart from my provisional decision.

Mrs C accepted the provisional decision and said she would not be submitting any further information about any financial losses she incurred in pulling out of the property that she found. I therefore won't be asking Coutts to consider anything further with regards to this.

I know that Mr C will be disappointed with this, but I won't be asking Coutts to do anything further other than what I said in my provisional decision.

### **My final decision**

For the reasons given above and in my provisional decision, I uphold this complaint and I direct Coutts & Company to:

- pay Mr and Mrs C £250 each for the distress and inconvenience caused.
- In addition to this, they should pay Mrs C a further £250 for the loss of expectation and upset when she had to pull out of the property she wanted to purchase.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 24 March 2023.

Maria Drury  
**Ombudsman**