

The complaint

Miss R and Mr S complain that Lloyds Bank PLC unfairly chased them to repay their mortgage arrears when they were making payments in accordance with a court order.

They ask that Lloyds stops collection activity, puts aside a possession order from 2012, re-imburses court fees and compensates them for their time, inconvenience and upset and for not being able to take out a new interest rate product in 2022, before rates increased.

What happened

Miss R and Mr S's mortgage was in arrears. In early 2022 Lloyds started legal action, including asking the court for leave to enforce a possession order issued in 2012. Miss R and Mr S applied to court for a suspended possession order (SPO). They say they made payments in accordance with the SPO, despite which Lloyds continued to harass them to pay the arrears.

Our investigator said we can't consider Miss R and Mr S's complaint about not being able to take out a new interest rate product as this hadn't been raised with Lloyds.

Our investigator said it wasn't unfair for Lloyds to start legal action in 2022 or to ask Miss R and Mr S for information so it could agree an arrangement to repay the arrears. But it was unfair to continue collection activity after the court issued the SPO, so long as payments were maintained. Our investigator said Lloyds should pay £500 compensation for the upset this caused.

Miss R and Mr S said £500 isn't enough for what they've been through.

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.

Miss R and Mr S's mortgage had previously been in arrears and a possession order was issued in 2012. The arrears were cleared in 2014 but the possession order remained in place.

Miss R and Mr S's mortgage fell into arrears again in 2020. Lloyds says it received no payments from Miss R and Mr S between April 2020 to May 2022 and by May 2022 the arrears were about £12,500.

Lloyds says it was unable to agree an arrangement with Miss R and Mr S regarding the arrears, as they didn't provide income and expenditure information. Lloyds started legal action in early 2022. It asked the court for leave to enforce the possession order, which was granted in March 2022.

Miss R and Mr S set up a direct debit to make contractual monthly payments and a monthly overpayment of £215. Miss R and Mr S say this was agreed with Lloyds. Lloyds says it didn't agree a payment arrangement with Miss R and Mr S, they simply set up a direct debit which

included an overpayment. Lloyds' letter confirming it had set up the direct debit supports this. The direct debit was in place until November 2022.

Miss R and Mr S applied to court to vary the possession order. On 4 October 2022 the court issued an order saying the possession order from 2012 should be varied so that it's suspended on terms that Miss R and Mr S pay £215 each month in addition to their contractual monthly payment.

Miss R and Mr S say Lloyds continued to chase them for the arrears. They say it sent letters threatening possession action, cancelled the direct debit for the £215 meaning they have to pay it manually, and sent a debt recovery manager to the property in mid-2023.

Did Lloyds treat Miss R and Mr S fairly?

I think it was fair for Lloyds to ask Miss R and Mr S to contact it to discuss their income and expenditure with the aim of agreeing an affordable arrangement to repay their arrears. Before agreeing an arrangement, Lloyds needs to assess affordability, and re-assess this on a regular basis. Miss R and Mr S's circumstances could change or their monthly contractual payment could change (as has been the case).

I don't think it was unfair for Lloyds to re-start recovery action in early 2022, given the level of arrears on Miss R and Mr S's account and that there wasn't an agreed arrangement in place. I think it was reasonable for Lloyds to instruct solicitors to attend the court hearing in early October 2022 for Miss R and Mr S's application to vary the possession order. Lloyds is entitled under the mortgage terms and conditions to add legal costs to the mortgage account, and I don't think it was unfair to do so here.

However, I think matters were different after the court issued the new SPO in October 2022. Although the possession order remains in place, it's unlikely Lloyds would be able to enforce it so long as Miss R and Mr S maintain payments in accordance with the court order. I don't think it was fair for Lloyds to send letters to Miss R and Mr S suggesting otherwise.

Lloyds says it shouldn't have set up the direct debit in June 2022. It says the correct process when an account is in arrears, is to transfer the borrower to its customer financial assistance team. In recognition of its error it left the direct debit in place until November 2022. In December 2022 it told Miss R and Mr S they can contact it with income and expenditure information, so it can set up a new direct debit, or they can pay their contractual monthly payment by direct debit and set up a monthly standing order for £215.

Given the terms of the SPO, I think it would have been fair for Lloyds to leave the direct debit (which included the £215 payment towards the arrears) in place. Cancelling it caused inconvenience to Miss R and Mr S who, under the terms of the court order, needed to make the payment. Lloyds did offer an alternative to Miss R and Mr S which would have avoided them having to make manual payments each month.

Putting things right

I don't think it's fair and reasonable to require Lloyds to give up the possession order. Miss R and Mr S have significant arrears. The possession order was issued by a court and a court gave Lloyds leave to enforce the possession order in 2022. Provided Miss R and Mr S maintain payments under the SPO Lloyds won't enforce the possession order.

Miss R and Mr S were upset when Lloyds started legal action in 2022. But, for the reasons I've explained, I don't think it was unfair to do so. It follows that I don't think it's fair and reasonable to require Lloyds to pay compensation for any upset or inconvenience this

caused or require it to refund legal costs and court costs.

I don't think it was fair for Lloyds to continue collection activity after the SPO was issued in early October 2022. Lloyds' letters suggested it could take action for possession despite Miss R and Mr S maintaining payments in accordance with the SPO. It's understandable that Miss R and Mr S found this upsetting.

When considering the amount of compensation I need to take into account the wider circumstances. Miss R and Mr S's mortgage has been in arrears for some time and its likely this would have caused them worry and upset. They've recently missed payments which suggests they could have been struggling to maintain payments, and this would also have caused worry. While Miss R and Mr S's circumstances are difficult, I can't require Lloyds to pay compensation for this. I can require it to pay compensation for the additional upset and worry caused by Lloyds' collections activity between mid-October 2022 and May 2023. For this additional worry and upset, I think £500 compensation is fair and reasonable in the circumstances.

Lloyds says Miss R and Mr S have recently missed payments. It provided account records showing the direct debits for the contractual monthly payments due in May 2023 and June 2023 were returned unpaid. I can't fairly require Lloyds to hold collection activity if payments aren't maintained. Miss R and Mr S have taken advice previously and they might want to do so again. I'd urge them to engage with Lloyds to see what options and support it can offer. For Lloyds to consider what support might be available, it will need Mr S and Miss R to engage with it to provide income and expenditure information.

A large part of Miss R and Mr S's mortgage is on interest only payment terms. I don't know if Miss R and Mr S have a plan in place to repay the balance when the term expires in 2027. If not, they might consider taking independent financial advice about what options might be available to them.

My final decision

My decision is that Lloyds Bank UK Plc should pay £500 to Miss R and Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R and Mr S to accept or reject my decision before 2 October 2023.

Ruth Stevenson
Ombudsman