

The complaint

Mr and Mrs S have complained that, when they contacted Lloyds Bank PLC in October 2021 to discuss their mortgage arrears, the bank failed to offer them a mortgage review, even though they asked for this. Mr and Mrs S say that, if they had been offered a mortgage review, they would have switched their mortgage onto a lower interest rate.

To settle the complaint, Mr and Mrs S would like Lloyds to compensate them for the financial losses they have incurred as a result of being on Standard Variable Rate (SVR) which has increased their monthly mortgage payments due to interest rate rises.

Mr S has dealt with the complaint throughout, with the consent of Mrs S.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs S being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Mr and Mrs S have an interest-only mortgage originally taken with another lender which was later taken over by Lloyds. The mortgage is made up of seven sub-accounts with total borrowing of around £510,000, with the terms on each sub-account due to end at various dates between April and December 2025.

In October 2021 Mr S spoke to Lloyds' collections department about consolidating arrears on the account. This was agreed by Lloyds.

In June 2023 Mr S contacted Lloyds to make a complaint. The crux of the complaint is that Mr S says that he asked during this call for a mortgage review so that he could look at a new interest rate product. However, Lloyds failed to offer this. As a result, the mortgage has been on SVR, which is a variable rate. Mr S says that if he'd been offered a mortgage review, he would have chosen a lower interest rate and the monthly mortgage payment wouldn't have increased significantly, causing financial loss.

Lloyds didn't uphold the complaint. The bank said that a collections agent Mr S spoke to in October 2021 wouldn't have offered a mortgage review, or been qualified to offer advice about this; Only a mortgage advisor would be able to offer a mortgage review and there was no evidence to suggest Mr or Mrs S requested to speak to a mortgage advisor either in October 2021 or at any time thereafter.

Lloyds also explained that every annual statement invited Mr and Mrs S to review their mortgage interest rate, as well as letters confirming changes in the interest rate. Lloyds also

sent a letter in May 2022 reminding Mr and Mrs S that the mortgage had three years left to run, which should also have prompted Mr and Mrs S to look at the interest rate on their mortgage.

Dissatisfied with Lloyds' response, Mr and Mrs S brought the complaint to our service. An Investigator looked at what had happened but didn't think the complaint should be upheld. He explained that the onus was on customers to check their interest rates. He also explained that, although the call recording from October 2021 wasn't available, he was satisfied that Lloyds' contemporaneous notes could be relied on, and that these made no mention of Mr S asking for a mortgage review when discussing consolidating arrears.

The Investigator explained that Lloyds would pro-actively contact customers who were in arrears, as it had a regulatory obligation to do so. However, the bank would not pro-actively chase customers to change their interest rate product.

Mr S disagreed with the Investigator's findings and asked for an Ombudsman to review the complaint. He's reiterated the points he's already made. Mr S also questioned whether the Investigator worked for Lloyds, or was paid by Lloyds. Mr S reminded the Investigator that the Financial Ombudsman Service is supposed to be supporting the customer, which was him, not Lloyds. Mr S said that only relying on Lloyds' notes would not stand up in a court of law.

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 will explain first that the Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we don't act for consumers, nor do we take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality. It's up to us to determine what evidence we need in order to investigate a complaint.

So although I've noted the questions which Mr S has raised about the evidence in the case, it's up to me to determine the weight I will attach to the available evidence when reaching my decision. Where the evidence is incomplete and/or contradictory, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

Lloyds has a responsibility to administer Mr and Mrs S's mortgage account – that is, collect payments and apply them to the account, and to deal with any problems that come up, for example, mortgage arrears. But Lloyds isn't under any obligation to manage the mortgage for Mr and Mrs S; it's up to borrowers to decide for themselves if they want to switch to a new interest rate product, which they can either do themselves online or, if they want advice, by speaking to the bank.

It would, of course, have been helpful if there had been a call recording from October 2021. By the time Mr S raised his complaint, almost two years later, the call recording was no longer available. There's nothing sinister about this; businesses aren't required to keep call recordings indefinitely.

So what I have is Mr S's account, which is that he said he asked for a mortgage review when he spoke to the collections agent in October 2021. I also have looked at the bank's notes, compiled during the call.

The value of these notes is that they are contemporaneous – that is, made at the time of the events now complained about. Therefore they should reflect what was said and agreed at the relevant time. They're not fool-proof of course; it's always possible information might be recorded incorrectly, but it's typically more reliable than people's individual recollections at a distance of time which, although given in good faith, can sometimes be inaccurate or contradictory, or more generally influenced by hindsight. So unless there's a compelling reason to believe the information is inaccurate (and I'm not persuaded there is), I'm satisfied I can attach some weight to the contemporaneous notes.

There's no mention in the notes of Mr S asking for a mortgage review when he was discussing consolidation of arrears in October 2021. As I said above, that's not fool-proof; it's entirely possible that Mr S asked for this, but it wasn't recorded in the notes. So I've considered whether I think it's likely that happened, and if so, what should have happened next.

I'm satisfied that a collections agent would not be able to offer a mortgage review, so if this had been requested, it would have been necessary for it to be set up as a separate appointment with a mortgage adviser.

It's a reasonable assumption to make that if a mortgage review had been requested by Mr S in October 2021, but he'd heard nothing about this, that he'd have followed it up within a reasonable period of time. However, there's nothing in Lloyds' notes to show that either Mr or Mrs S contacted Lloyds shortly after the call in October 2021 to say that they'd requested a mortgage review in October 2021 but hadn't heard from the bank. In fact, there is no mention anywhere in the bank's notes of Mr and Mrs S requesting a mortgage review at any time after October 2021.

I've also looked at the letters Mr and Mrs S received from Lloyds after October 2021.

First, they'd have received the annual mortgage statement for 2021 in early 2022. This contained the following information:

"Understand your mortgage

As all or part of your mortgage is on a variable rate, your payments can go up or down as interest rates change. Staying on a variable rate might suit your needs and circumstances but we recommend that you regularly review your mortgage options.

Things to consider when looking at fixed and variable rates are summarised over the page.

You can visit our website at any time where you have the option to review and manage your mortgage online – there's information at the end of this letter...."

The bank's website confirms that customers who are on a deal that is due to end soon, or who are thinking about moving onto a fixed rate can switch online to a new deal.

I also note that Mr and Mrs S were sent twelve letters about interest rate changes up to the time they made the complaint in June 2023. These letters contained the following information:

"Understand your options

As all or part of your mortgage is on a variable rate, your payments can go up or down as mortgage interest rates change. Staying on a variable rate might suit your current needs and circumstances but we recommend that you regularly review your mortgage options...

Do you have any other products I can switch to?

Yes. You can find information about alternative mortgage options and how to apply at [website]. If you do not have internet access or if you would prefer to have advice from us on your next steps then you can contact us in brand or by telephone..."

Given this, I'm not persuaded that Mr S did request a mortgage review in October 2021; if he had done so, I've have expected him to have followed this up within a reasonable period of time.

I'm also satisfied that Lloyds provided Mr and Mrs S with all the information they needed to enable them to switch the mortgage to a new interest rate product if they'd wanted to do so after October 2021.

In the circumstances, I'm unable to find Lloyds has done anything wrong.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 26 March 2024.

Jan O'Leary
Ombudsman