

The complaint

Mrs H and Mr S' complaint about Lloyds Bank PLC (Lloyds) relates to their mortgage account and the service they received when asking for information about it.

What happened

Mrs H and Mr S took out a commercial property loan (mortgage) against a property they owned in June 2011. Lloyds say that the terms of the mortgage were that the interest rate agreed was 4.29% above the Bank of England Base rate (BBR) and at the time the mortgage was taken out BBR was 0.5%. Mrs H and Mr S maintained payments on the mortgage account in line with the agreement.

On 15 February 2023 Mr S contacted the Lloyds to complain about the service he received when he'd made earlier enquiries about the mortgage as he felt he hadn't been given clear information. He also thought that the then current interest rate was not that which had originally been agreed and he wanted to change it to something more manageable.

On 11 August 2023 Mr S asked again about changing the interest rate and Lloyds provided a number of options but as the rates were higher than his existing rate Mr S decided against it.

Lloyds did however agree that the service he had received when calling had been poor. Not all his questions had been addressed and the advisor hadn't been as helpful as she could have been as she ought to have provided her manager's name. In recognition of this poor service, it offered Mrs H and Mr S £150 compensation which they declined.

With regard to the mortgage interest rate Lloyds confirmed that the rate was 4.29% above BBR and had remained so since the mortgage was taken out and that they couldn't reduce it.

Mrs H and Mr S were unhappy with Lloyds' final response and so approached this service to see if we could assist in resolving the dispute. Our investigator thought that although there had been poor service, the amount of compensation Lloyds offered was enough to put things right. Mrs H and Mr S didn't agree and asked for the complaint to be passed to an Ombudsman 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 know the parties have provided a lot more detail than set out in my summary but have focussed on what I see as the key issues, because it reflects the nature of our service. We are an informal dispute resolution service and an alternative to taking Court action. So, if I've not mentioned something then this isn't because I've ignored it, it's simply because I don't

need to comment on every individual argument to be able to reach what I think is the right outcome.

Naturally, I have considered the views of both Mrs H and Mr S and Lloyds and all the available evidence. Where evidence is not complete, I think about what is more likely to have happened in the light of the evidence which is available.

The accepted facts are that in 2011 Mrs H and Mr S took out the mortgage. They maintained payments on that mortgage in line with the agreement. Currently neither Lloyds nor Mrs H and Mr S have been able to produce the original loan documentation or copies thereof.

The absence of the original loan documentation or copies of the same is unfortunate but it does not invalidate the mortgage. Further, as Mrs H and Mr S made the agreed monthly payments following the inception of the mortgage and did not challenge Lloyds as to its validity, I must conclude that they accepted, at least in principle that they had entered into a mortgage with Lloyds.

That said I cannot look into whether the loan was mis-sold, if indeed that is Mrs H and Mr S' complaint, since this element of the complaint is brought out of time. Although it is not clear whether Mrs H and Mr S do complain about this, for the avoidance of doubt I have addressed it below.

The Dispute Resolution Rules (DISP), which form part of the Financial Conduct Authority's (FCA) handbook, a financial services' regulator, govern what we as a service can consider.

DISP 2.8.2 states:

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint.

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received; unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances.

Applying this rule, it's clear that the mortgage was sold in 2011, and whilst I appreciate that Mrs H and Mr S are not mortgage experts that does not negate the need for the complaint to be brought within the FCA timescales.

This service did not receive Mrs H and Mr S' complaint until February 2023, which is more than six years after the mortgage was sold to them. But I must also consider whether Mrs H and Mr S 'ought' reasonably to have been aware of a cause for complaint – in other words 'should' Mrs H and Mr S have been aware that the mortgage may have been mis-sold more than three years before the complaint was referred to us. I think Mrs H and Mr S knew what the terms of the mortgage were since they were explained to them prior to taking out the

mortgage. They also requested and received mortgage statements which contained financial information which would have allowed them to see how their account was progressing.

I therefore find that more than three years have elapsed since Mrs H and Mr S became aware (or ought reasonably to have become aware) that they had cause for complaint.

I'm also allowed to consider late complaints if the failure to comply with the time limits is due to exceptional circumstances. Mrs H and Mr S have not advanced any other argument which would go to the issue of exceptionality. So, I'm not persuaded exceptional circumstances apply, and I'm afraid this element of the complaint isn't something I can look into as it is out of time.

Mrs H and Mr S have challenged the interest rate being applied and Lloyds have produced their meeting notes from April 2011 which confirm that the rate agreed was 4.29% above BBR with a 1.5% arrangement fee. This document is sufficient evidence to conclude that on the balance of probabilities this was the rate of interest agreed to by the parties.

Lloyds have also produced a spreadsheet of the interest charged on the mortgage account which shows that the rate which was being applied throughout was 4.29% above BBR. I am satisfied by this evidence that the rate has not changed. I can see of course that the overall rate from Mrs H and Mr S' perspective will have risen because the BBR has also risen since they took out the mortgage.

In so far as Mrs H and Mr S' request to Lloyds to transfer them onto a better rate is concerned, Lloyds did look at this for them but the only products it had on offer at that time were not as advantageous as the rate they were on, and so naturally they declined. I can't therefore say that Lloyds have treated Mrs H and Mr S unfairly in this respect.

With regard to the service Mrs H and Mr S received Lloyds have accepted that it didn't get things right and because of that it compensated Mrs H and Mr S with £150. This relates to two aspects, the service received from Lloyds' advisor and the loss of the original mortgage documentation. I accept that Lloyds have made attempts to locate the original documents and that in so doing it may have appeared somewhat contradictory for Mrs H and Mr S to then ultimately be told that they could not locate them. However, I am satisfied that Lloyds did at least try to locate them, and sadly have been unable to. But, as I have said above, this does not invalidate the mortgage agreement and so has little impact, if any, on the substance of the complaint save that I agree it will have caused some frustration and irritation for Mrs H and Mr S.

Lloyds have accepted that in handling the complaint a previous complaint manager had closed the complaint too early and that subsequent calls between that complaint manager and Mr S could have been handled better.

The remaining issue is whether the £150 compensation offered to Mrs H and Mr S adequately compensates them for the failure in the level of service they experienced. When I consider the issue of compensation, I start from the point that any award for the trouble and upset caused should be balanced against the ups and downs of everyday life which we all face when dealing with other people, businesses, and organisations, and recognising that at times this can be inconvenient.

It is also very important to remember that there is no set figure for compensatory awards, since the facts of each case are different. Ultimately it is an exercise of judgement, looking at all the circumstances and coming to a figure which feels fair, when set against the effect of any failures in service on the person bringing the complaint. In my view I think Lloyds' offer was very reasonable.

My final decision

Lloyds Bank PLC has already offered to pay Mrs H and Mr S £150 to settle this complaint, and I think that is fair and reasonable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr S to accept or reject my decision before 30 April 2024.

Jonathan Willis
Ombudsman