

The complaint

A company, which I will refer to as P, complains that Lloyds Bank Plc didn't inform it that its capped rate was due to come to an end.

What happened

Everyone accepts that P borrowed money from Lloyds in May 2018. The loan agreement said that the loan had a 15 year term. For the first five years, the loan had an interest rate of 3.75% above base rate subject to a cap of 5.15%.

P's representatives told us:

- In early May 2022 Lloyds' Relationship Director (RD) told them – wrongly – that P's capped rate was due to expire on 1 June 2022. They queried this at the time, and the RD eventually replied to them on 30 May 2022. However, her email contained several important errors. As one example among many, she said that the rate on the loan was effective *from* 1 June 2022 when she meant that it was effective *to* 1 June 2022. However, what she should have said was that the loan had a five year cap effective until 1 June 2023.
- Despite the serious errors in the RD's communication, Lloyds had set a precedent that it intended to forewarn them of an expiring loan and discuss their options. However, the bank made no attempt to contact them prior to the expiry of the cap. If it had done so, they would have had the opportunity to choose an interest rate that was lower than the variable rate P's loan reverted to.

Lloyds told us:

- P's directors had a review meeting with the RD in May 2023, but the RD was not obliged to tell them that the cap was due to expire shortly.
- On 30 May 2023 the cap expired, and the loan reverted to a variable interest rate in accordance with the loan documentation.
- In late June 2023, the RD provided P with various options for fixed rates (over terms of three years, five years, and 9 years 11 months, and ranging from 8.34% to 9.21%). The RD did not offer a capped rate, because Lloyds no longer offers that product.
- It has subsequently offered P's directors the opportunity to speak with their RD to look at alternative options, but they have not contacted the RD to discuss this matter since July 2023. The loan therefore remains on a variable rate.

One of our investigators looked at this complaint, but did not uphold it. She said that Lloyds was not obliged to notify P that the capped rate was due to expire. P's loan is unregulated, so the regulations P's directors referred to do not apply – but in any case, she thought Lloyds had treated P fairly. The bank made a mistake in 2022, but she thought it had done enough to correct that mistake. She also said that she had seen no evidence to suggest that

P had done anything to consider alternatives since the capped rate had expired, and she thought that implied P's directors intended to stay on the variable rate. In addition, she said that it wasn't possible to know whether a fixed or variable rate would be more beneficial until the expiry of the fixed rate.

Lloyds accepted our investigator's findings, but P's directors did not. They said that they did not believe that P's loan was unregulated, and that in any event Lloyds' behaviour in May 2022 had led them to believe that the bank would initiate a discussion on interest rates when necessary. Lloyds' RD had only put forward a complaint on their behalf because she was convinced that the bank would grant compensation. In addition, they said:

"The bank, of its own volition, had created an implied contract term of initiating timely negotiation at key junctures in the contract which it then failed to deliver going forward, leaving [P] considerably at a disadvantage.

In initiating discussions at regular junctures, but critically not at the relevant and correct juncture, the bank failed in its implied contract term, established by its previous conduct. As such it breached its contract. To put it another way, if the bank was free to provide the customer with false and misleading statements during the term of the contract and this had no bearing on the terms of the contract whatsoever then you are giving licence for the bank to act with impunity towards its customers. There must, in short, be consequences for the bank's misleading and confusing conduct surrounding the contract, failing which we face a very rocky road indeed in the remaining term."

Our investigator was unable to resolve the matter, so the complaint was referred to me 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.

Having done so, my findings are:

- Whether or not Lloyds should have drawn the expiry of the cap to P's directors' attention, I am satisfied that P's directors already knew when the capped rate was due to expire – and so I don't think Lloyds' failure to warn the directors of the expiry made a material difference.
- In any event, I am not persuaded that P's directors would have done anything differently even if Lloyds had explicitly told them that the cap was due to expire. That means it would not be fair for me to order Lloyds to pay compensation to P.

I give more details about my findings – and how I have reached them – below.

In reaching my decision, I am required to take into account the relevant law, regulations, regulators' rules and guidance and standards, relevant codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

In this case there are no relevant regulations. I am aware of P's directors' belief that a bank as reputable as Lloyds would not have become involved in any unregulated business, but I think the directors have misunderstood the scope of the regulations Lloyds is bound by. Many regulations, such as those set out in the Financial Conduct Authority's Consumer Credit sourcebook (CONC), are primarily designed to protect consumers, and do not always

apply to limited companies like P. In this particular case, the provisions of CONC do not apply.

I want to stress that the word “unregulated” is not in any way a synonym for “illegal”. Many banks, including Lloyds, legitimately offer a wide variety of unregulated products, and there is nothing to prevent them from doing so. It is for Parliament and/or the relevant regulator to decide whether a particular product offered to a particular type of customer should be regulated, and Lloyds cannot make its own decision about that. One thing Lloyds can do – and has in fact done – is register with the Lending Standards Board (LSB), and commit to complying with the LSB’s Standards of Lending Practice for business customers (the Standards). Even if Lloyds had not registered with the LSB, I would still consider that the Standards were relevant evidence as to what constitutes good industry practice.

In this case, I am satisfied that P’s directors knew from May 2018 onwards that the capped rate on P’s loan was due to expire at the end of May 2023. I accept that Lloyds’ RD gave the directors misleading information in May 2022 (in that she said the cap was due to expire in June 2022), but I do not think that the directors were in fact misled. I think it is clear from their response to the RD that they were fully aware of the actual terms of P’s loan.

Taking into account both the Standards and my own knowledge of good industry practice, I do think it would have been helpful for Lloyds to have drawn the imminent expiry of the cap to P’s directors’ attention during P’s May 2023 review. However, given my finding that the directors were already aware of that expiry, I think the effect of such a warning would merely have been to tell P’s directors something they already knew.

The directors have suggested that Lloyds should have warned them of the cap’s expiry in or around December 2022, and that if it had done so they could have obtained preferential rates from another lender and paid off the Lloyds loan. Whilst I think Lloyds should have told the directors of the imminent expiry of the cap in May 2023, I don’t think the bank had any obligation to do so in December 2022. I am also mindful that if the directors had wished to explore options with alternative lenders, it was always open to them to do so; they did not need any communication from Lloyds in order to review their borrowing.

I have considered P’s directors’ suggestion that Lloyds’ actions in 2022 had the effect of changing the contract between Lloyds and P, but I do not agree with that suggestion. I consider that the terms of the contract were set out in the documents produced in 2018, and were not in any way altered by Lloyds’ 2022 mistake about the date on which the capped rate expired.

I don’t know whether Lloyds’ RD was convinced that the bank would grant compensation to P, but I don’t need to know her opinion. My role is to reach a conclusion that I believe is fair and reasonable in all the circumstances of this complaint. The RDs’ opinion does not and should not determine my findings.

Even if I had concluded that Lloyds had made an error, I would only award compensation if I was satisfied that P would now be better off but for that error. The Financial Ombudsman Service is not a regulator, and I do not have the power to fine or punish Lloyds for making a mistake.

Having carefully considered the evidence, I have seen nothing to persuade me that P’s directors would have acted differently even if Lloyds had drawn the expiry of the cap to their attention on any specific date.

The fixed rates Lloyds offered in June 2023 were all higher than the capped rate P was paying up until the end of May 2023, which is not surprising given the rise in Bank of

England base rates since P initially took out this loan. I acknowledge that P will now be paying significantly higher rates for its loan than it did for the five years from May 2018, and that the consequences for P will be, to quote its directors, a “rocky road”. However, I cannot fairly conclude that P’s difficulties have been caused by an error by Lloyds. I am satisfied that P’s directors knew when the capped rate was due to expire, and it was for them to arrange an alternative if they wished to do so.

My final decision

My final decision is that I do not uphold this complaint about Lloyds Bank Plc.

Under the rules of the Financial Ombudsman Service, I’m required to ask P to accept or reject my decision before 18 July 2024.

Laura Colman
Ombudsman