

## The complaint

Mr W and Miss S are unhappy that Clydesdale Bank Plc (trading as Virgin Money) declined their mortgage application. They say Clydesdale took too long to make its lending decision. By the time they sought a mortgage with a different lender the interest rates had almost doubled – causing them a loss over the five-year fixed rate period they opted for. They say the whole application process caused them significant distress and inconvenience and that they've incurred additional costs by having to reapply with a new lender.

## What happened

In March 2022 Mr W and Miss S approached a broker to assist them with obtaining a mortgage to purchase a new property as first time buyers. The broker recommended a five-year fixed rate product with Clydesdale. An application was submitted and received by Clydesdale on 22 March.

In late August Mr W and Miss S were told that their application had been declined on the basis that the property didn't meet Clydesdale's lending criteria. The valuation noted a section 106 restriction on the property – relating to a re-sale/occupancy restriction.

Mr W and Miss S first complained to their broker about the timeliness of the application process and the time taken to receive a lending decision. The broker responded to their complaint and upheld it in part. The broker said that it did not accept responsibility for Clydesdale's lending decision, or the time taken to reach it. In summary it said:

- Had Mr W and Miss S told them from the outset that the s106 restriction was in place, it would have recommended a different lender. It has since sourced Mr W and Miss S a mortgage with a suitable lender.
- Clydesdale first notified the broker of its lending decision in June, but the email was sent to an ex-employee and wasn't picked up.
- In July Mr W and Miss S applied for more borrowing. It wasn't until 18 August that Clydesdale informed the broker that the application had already been declined.
- The broker accepts it took too long (two weeks) from this point to inform Mr W and Miss S of the lending decision. It offered them £150 compensation by way of an apology.

Unhappy with the information given to them, Mr W and Miss S complained to Clydesdale. As well as raising their concerns about the time taken to communicate its lending decision, they also raised concerns with the length of time taken to instruct a valuation – in which the s106 restriction was picked up and what led to the declined lending.

Clydesdale initially said that it didn't uphold the complaint. It didn't agree that the application had been wrongly declined or that it took too long to reach its lending decision. Clydesdale said the application was declined in August and not in June as suggested.

Mr W and Miss S remained unhappy and challenged Clydesdale's response. Clydesdale subsequently upheld the complaint in part. It accepts it caused some delay but not to the extent Mr W and Miss S suggest. It offered £200 compensation to recognise the poor service provided. Clydesdale did not accept that the application process was poorly conducted or that an unfair lending decision was made.

Mr W and Miss S remained unhappy, so they brought their complaint to the Financial Ombudsman Service. In summary they say that a valuation should have taken place sooner and a lending decision was made in June but not properly communicated by Clydesdale. Clydesdale continued to entertain the application past this date, dragging things out until August when it confirmed the application had already been declined.

An investigator at our service looked into things and didn't recommend that the complaint should be upheld. She said that a restriction of this nature is usually picked up during the conveyancing process. It isn't something that would necessarily get picked up during a valuation. The surveyor only discovered the restriction after speaking to the estate agent.

The surveyor said it could not gain access from the seller to carry out a valuation when first instructed in March. The investigator said it wasn't unreasonable for Clydesdale to wait until the application had been approved to re-instruct the valuation. Even if the valuation had taken place sooner there is no guarantee the restriction would have come to light any sooner or in any other way other than during the conveyancing process.

Mr W and Miss S disagreed with the investigator's opinion. They said that without any proof from the conveyancer that they tried to contact the seller, they don't accept that a valuation was attempted sooner. Clydesdale has already admitted it declined the application in June. Mr W and Miss S also say that Clydesdale was aware of the s106 restriction through the Council's particulars of sale that they sent to it.

The investigator considered Mr W and Miss S' additional points but explained why her opinion remained unchanged. Mr W and Miss S didn't agree and asked for the case to be decided by an ombudsman.

### **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 given careful consideration to all the submissions made by both parties, but I won't address each and every point that has been raised. I'll focus on the matters that I consider most relevant to how I've reached a fair outcome – in keeping with the informal nature of our service.

Where the available evidence is incomplete, contradictory or missing, as some of it is here, our rules require me to reach my conclusions on the balance of probabilities – that is, what I consider is most likely to have happened, in light of the evidence that is available and the wider surrounding circumstances.

Before I explain my findings, it's worth pointing out the several parties involved in this mortgage application process. Including Clydesdale and its appointed surveyor, and Mr W and Miss S' broker. In my decision I will only focus on the actions of Clydesdale as the respondent to this complaint. I make no finding in relation to any of the third parties involved in the transaction.

Mr W and Miss S sought the services of a broker when applying for their mortgage. Advice and information about the mortgage were given by their broker. So, during the application process it was the broker's role to carry out a fact find and recommend a mortgage suitable to their needs.

The broker approached Clydesdale as a suitable lender. Clydesdale's dedicated webpage for mortgage brokers is available online.

<https://www.clydesdalebankintermediaries.co.uk/help-support/residential-help/>

Under the relevant section about unacceptable properties, the criteria says that Clydesdale will not accept certain occupancy restrictions, including "*Section 106 (any - including affordable housing, for example any re-sale restrictions geographically, person type)*"

It's not clear whether Mr W and Miss S' broker was aware of the restriction on the property. That's not something I'm required to make a finding on here in this decision. But nonetheless it approached Clydesdale as a suitable lender. I've seen a copy of the application form submitted to Clydesdale and there's no mention of the restriction. Neither is there any other evidence that suggests that Mr W and Miss S and/or their broker made Clydesdale aware of the restriction through different means. I say this because Clydesdale's contact notes make no reference to information about the restriction being provided.

So, the starting point here is that when the application was submitted to Clydesdale, it wasn't unreasonable for it to presume that the application met basic lending criteria. That was not the case here. So, I've thought about when it was that Clydesdale ought reasonably to have known of the restriction and whether it caused unnecessary delay during the application process and when communicating its lending decision to Mr W and Miss S.

It's worth noting here that a restriction of this nature (unless information is volunteered by the buyer) would usually come to light during conveyancing - that is when the solicitor acting for the lender does its relevant searches, including obtaining the title deeds in preparation for transfer of ownership. Conveyancing usually begins once the application has been approved and a mortgage offer issued. Whilst it's possible the restriction would be identified through a valuation survey - that's not guaranteed.

I've considered Clydesdale's application process - a process that is common amongst the industry. In this case Mr W and Miss S' broker would have given them an *indication* of how much they could borrow with Clydesdale. Once the application was submitted to Clydesdale, it would need to obtain any supporting documentation and instruct a valuation. Once in receipt of all the necessary information (including the valuation report), only then can it make its lending decision and provide a formal mortgage offer.

Clydesdale received Mr W and Miss S' application on 22 March. A valuation was instructed on 27 March. Clydesdale outsourced the valuation to an independent surveyor with the relevant qualifications in line with the Royal Institute of Chartered Surveyors (RICS).

On the application form, the purchaser(s) are asked to provide the name and contact details to gain access to the property for the purpose of a valuation. There is a section to provide an alternative contact too. The only contact details given by Mr W and Miss S on the application form was a landline number for an estate agent. No alternative contact details were provided.

On 28 April, the surveyor informed Clydesdale that it had been unable to make contact with the relevant party to arrange a valuation. On that basis it cancelled the instruction. It's unclear why Mr W and Miss S were led to believe that it was the seller who the surveyor was

seeking to gain access through. The seller's contact details weren't provided on the application form, and I think it's likely it was the estate agent, the surveyor was trying to reach, given that was the only landline number provided. This is further supported by the fact that access for the second valuation attempt was sought through the estate agent.

I can't know for certain what the reason for the failed contact was, but in any event my remit in this case only allows me to make a finding on Clydesdale's actions. Not those of the surveyor or the estate agent. And for clarity I can't hold Clydesdale responsible for the surveyors' actions in this case because the surveyor was independent. Clydesdale did not carry out the survey. So, any acts or omissions will have been by the surveyor – not Clydesdale. Clydesdale was entitled to rely on the surveyor's professional expertise and opinion here. If it said it couldn't gain access to the property, Clydesdale could reasonably trust that to be the case.

That said, Clydesdale accepts that it didn't act on this in a timely way. The valuation wasn't re-instructed until 15 August. I've thought carefully about whether this delay had any impact in the circumstances.

On 14 April, whilst awaiting the valuation to take place, Clydesdale contacted the broker to ask for more information consisting of bank statements, a Department of Work and Pensions (DWP) statement and information relating to other credit commitments.

Clydesdale continued to consider the application and it sought more information from the broker during the process. The broker has confirmed that during this time, the agent dealing with the application left the company. No updated direct contact details were given to Clydesdale, and so it continued to use the agents registered email address for correspondence.

On 18 July Clydesdale logged a request from the broker (dated 11 July) to increase Mr W and Miss S' borrowing amount. I can see that at this point the application was ongoing. I've seen no evidence that the application was declined in June as suggested by the broker. Clydesdale's system notes show that by July – prior to the request for additional funds – the application had been approved by the underwriter subject to confirmation of no childcare costs to be included as part of affordability considerations. The broker confirmed no childcare costs on 18 July and the underwriting process continued.

On 3 August the broker firm emailed Clydesdale asking for an update. The email said that the last the broker heard, the application had been approved and was set for offer. The broker asked if any further information was needed. Taking this into account, I'm satisfied that by early August the broker knew that the application was ongoing, and this email contradicts the assertion that this mortgage was declined in June.

Clydesdale responded the same day. It said that due to the request for additional borrowing, the application had been re-processed and referred back to underwriting. Clydesdale confirmed that it would give an update to the email address held on file (that being for the ex-employee). At this stage no updated alternative broker details were provided and so Clydesdale continued to communicate using the registered email address it had on file.

On 5 August Clydesdale emailed the broker to ask for more information – but it appears the email was likely sent to the inactive email address. On 9 August the broker firm called for an update – the outstanding information was relayed. The necessary information was provided on 11 August. It was once all the necessary information had been provided that the valuation was re-instructed and received on 18 August.

The surveyor made contact with the estate agent to gain access. During the call, the estate

agent mentioned the restriction. The surveyor was in possession of Clydesdale's valuation guidance notes which states it won't lend where a s106 restriction is present. Once in receipt of such information, it was not necessary for the surveyor to physically attend the property any longer as it knew from that point that the property did not meet Clydesdale's lending criteria. So, it completed the valuation remotely, returning a declined valuation.

I can appreciate why Mr W and Miss S feel that a valuation should have been re-instructed sooner. Clydesdale instructed a valuation within a week of receiving the application. I can't reasonably hold it responsible for the initial valuation not going ahead. Even if the valuation did take place sooner there is no guarantee that this information would have come to light at that stage unless verbally communicated to the surveyor – and that's not something I can say for certain would have happened. As explained, it's usually at conveyancing stage that documented information of a restriction of this nature would come to light.

In any event, I don't find it unreasonable that after the first failed attempt, Clydesdale waited until all the necessary information to support the application had been provided and accepted before re-instructing a valuation – that happened on 11 August. That is the usual sequence of events in the application process. This is because there is no point a lender instructing a valuation (sometimes at a cost to the purchaser) if an application isn't approved on paper first.

Clydesdale accepts that, while awaiting information from Mr W and Miss S' broker, it could have sent more proactive chasers. It also accepts that it could have responded sooner to their request to change the loan amount in July 2022. To compensate Mr W and Miss S for this, Clydesdale offered to pay £200 for any distress and inconvenience caused.

I think this is fair and reasonable in the circumstances. I appreciate Clydesdale may have caused some delay, but for the reasons I've explained, I can't reasonably hold it responsible for all the things that went wrong during this application that led to the late discovery of the s106 restriction.

### **My final decision**

My decision is that Clydesdale Bank Plc (trading as Virgin Money) should pay Mr W and Miss S £200 compensation as offered in its final response letter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Miss S to accept or reject my decision before 14 February 2024.

Arazu Eid  
**Ombudsman**