

The complaint

Mr and Mrs B complain that Lloyds Bank PLC have inaccurately recorded the payment history of their mortgage account with credit reference agencies.

What happened

Mr and Mrs B had a repayment mortgage with Lloyds. In May 2017, they contacted Lloyds to explain they were struggling with cashflow issues and Lloyds agreed a temporary payment arrangement from June, which would be reviewed in August. In August Mr B wrote to Lloyds to ask for the arrangement to continue for another three months. An arrangement was agreed with Lloyds for the months of August, September, and October 2017.

In November, Mr B called and asked for the arrangement to be extended but Lloyds declined the request. Mr B complained about that at the time. Mr and Mrs B paid the full contractual monthly payment (CMP) in November but called again in December to discuss their options.

Lloyds told Mr B that the account would be placed on hold from collections activity until January, but a full CMP would still be expected for December. They said if Mr and Mrs B can't pay that, they should make a token payment, but any shortfall would be added to the arrears on the account. Mr and Mrs B didn't pay the full CMP in December.

In January 2018, Mr and Mrs B asked Lloyds to consolidate the arrears on the mortgage, but Lloyds said they didn't meet the criteria for that. Mr and Mrs B paid the full CMP in January, but then later that month Mr B lost his job. Mr and Mrs B decided to sell their home to repay the mortgage. The mortgage was redeemed in July 2018 when the house sale completed.

Mr and Mrs B complained to Lloyds on 21 August 2023. They were unhappy that Lloyds had not recorded the payment arrangements correctly on their credit files. Lloyds issued their final response letter on 4 October. They said payment arrangements had been agreed from June to October 2017. October's payment was due on 28 October but wasn't paid until 30 October, so Lloyds reported a broken arrangement.

Lloyds said at the end of the arrangement, the arrears balance was £7,034.26. They said no further arrangements were agreed from that point, and they're required to provide a true and accurate record of accounts to credit reference agencies. As per the terms and conditions of the mortgage, Lloyds expected a CMP to be paid each month, and if there were any arrears at the end of the month equal to or more than one CMP, Mr and Mrs B's credit file would have been impacted. They said whilst Mr and Mrs B were selling their property, they put a hold on the account to stop collections activity, but that didn't mean they weren't still expecting payments to be made.

Mr and Mrs B brought their complaint to our service on 14 October 2023. They said they wanted Lloyds to amend the way they'd recorded the payments made on the mortgage account to reflect the arrangements they'd agreed, and they also wanted compensation for the distress and inconvenience they'd suffered.

Our Investigator looked into what had happened and said Lloyds had failed to record that a payment arrangement was in place for the months of July and October 2017. She said

Lloyds should amend the reporting for those months. However, she did also note that as those records were more than six years old at the time of her assessment, they would not be showing on Mr and Mrs B's credit files anymore and so Lloyds may not be able to update them. She said Lloyds should pay Mr and Mrs B £200 for the impact their mistake may have had on Mr and Mrs B's reputation and ability to obtain finance.

Lloyds said they were unable to update the records from more than six years ago. They also asked the Investigator to revisit the compensation award she'd made.

Mr and Mrs B said that Lloyds needed to go further because:

- There was an arrangement to pay in place for August 2017 which hadn't been reported.
- The payment status for July to October 2017 should not show arrears as arrangements were in place.
- The CMP was paid in November 2017 and January 2018.
- Lloyds clearly agreed for no payment to be made in December 2017.
- From February 2018 they agreed with Lloyds that no payments would be made and had completed a Sale of Property Form. This was effectively an arrangement to pay.

They said the damage Lloyds have caused as a result of the incorrect reporting is immeasurable and £200 was not sufficient.

The investigator agreed that Lloyds had also failed to record an arrangement to pay in August 2017, but they were unable to update that now given the time that had passed. She didn't think Lloyds needed to do anything else to put things right in light of Mr and Mrs B's further comments. And she remained satisfied that £200 was an appropriate level of compensation.

Mr and Mrs B still disagreed. They felt the Sale of Property form completed in February 2018 constituted a permanent change to the mortgage contract and as such, arrears should not have been reported from that point. They also said they've had to rely on high-cost credit as a result of Lloyds' mistake and the compensation award should be much higher as a result.

The Investigator reviewed everything again, including how Lloyds had dealt with Mr B's queries about the credit file reporting during 2023. She said she couldn't specifically consider how Lloyds had handled Mr and Mrs B's complaint as complaint handling isn't a regulated activity that our service has the power to consider. She didn't feel it was ancillary to a regulated activity in this case either.

Lloyds agreed to pay Mr and Mrs B the £200 compensation, but Mr and Mrs B still disagreed with the Investigator's outcome. They said that from June 2017 there were variations to the mortgage contract that were agreed. They said those contract variations were legally binding, and so that meant all CMPs were met under the contract and no arrears ever accrued. They still wanted our service to consider how Lloyds had handled things during 2023 when they made their complaint.

As the Investigator wasn't persuaded to change her outcome, the complaint has been passed to me to decide.

My provisional decision

I issued a provisional decision on 20 March 2024. In that decision I set out my provisional findings on both our service's jurisdiction to consider Mr and Mrs B's complaint, and the

merits of it. I then issued a jurisdiction decision on 25 March 2024 which said our service had the power to consider all of Mr and Mrs B's complaint.

In relation to the merits of Mr and Mrs B's complaint, this is what I said in my provisional decision.

"Have Lloyds acted unfairly?"

As a lender, Lloyds are required to ensure the data they're recording with credit reference agencies is accurate and up to date. I know that Mr and Mrs B are aware of the Information Commissioner's Office's (ICO) Principles for the Reporting of Arrears, Arrangements, and Defaults at Credit Reference Agencies. These principles explain how lenders will report the status of an account when the full monthly payments haven't been made in line with the terms and conditions of the account. It's also important to note that Lloyds will report information to credit reference agencies in a certain format, but how that information is displayed to the borrower may differ depending on how each credit reference agency chooses to present it.

Following our Investigator's involvement, Lloyds have now agreed that Mr and Mrs B's mortgage account had been reported incorrectly to credit reference agencies for the months of July, August and October 2017. For those months the mortgage was reported as being in arrears, when there should also have been an arrangement to pay recorded. Lloyds have not been able to rectify the error as the entries were recorded more than six years ago and are no longer showing on Mr and Mrs B's credit files. Lloyds have agreed to pay Mr and Mrs B £200 in compensation.

Mr and Mrs B feel that Lloyds should have recorded that an arrangement was in place for all months from June 2017 until the mortgage was redeemed in July 2018, except when full payments were made in November 2017 and January 2018. They're also unhappy with the level of compensation awarded and feel that the impact of Lloyds' mistakes is worth far more than the £200 the Investigator recommended.

Did Lloyds agree an arrangement to pay?

This dispute ultimately comes down to whether or not Lloyds agreed arrangements for Mr and Mrs B to pay less than their CMP from November 2017 onwards. Having considered all the information and evidence provided by both parties, I'm not satisfied they did.

In November 2017, Mr and Mrs B asked for the arrangement to be extended and Lloyds declined. Mr and Mrs B complained about that at the time. Mr and Mrs B did manage to pay the full CMP that month, but the mortgage was still reported as being in arrears. By November 2017, Mr and Mrs B had been underpaying their mortgage for five months. Whilst this was under an agreement with Lloyds, as the full CMPs had not been met, there were arrears on the mortgage account. Each month Mr and Mrs B didn't pay their full CMP, the arrears balance increased by the shortfall in the payment. So, whilst Mr and Mrs B did make their full monthly payment in November, there were arrears on the account and Lloyds reported that information to the credit reference agencies. At that point, Mr and Mrs B had not agreed with Lloyds how the arrears on the account would be repaid. And so, it would not have been accurate to report an arrangement for November.

In December 2017 Mr B had a conversation with Lloyds about his circumstances. Mr B feels that during that conversation, another payment arrangement was agreed, as Lloyds said he could make a token payment that month instead of the full CMP. I've not been able to listen to a recording of that conversation, but I have seen a copy of Lloyds' contemporaneous notes of the conversation that were recorded at the time. Those notes state that Lloyds made Mr B aware that they would expect him to make the full CMP in December. They say that if Mr B was unable to make the full CMP he should make a token payment, and that any shortfall would be added to the existing arrears balance on the account. They said that they would put a hold on collections activity until January, but if the situation hadn't changed by then they may proceed to litigation. They told Mr B what the arrears balance was at the time.

Considering the evidence that has been provided by both parties, I'm not satisfied Lloyds agreed to a payment arrangement in December. I think Mr B may have interpreted the conversation he had with Lloyds as them 'allowing' him to make a payment that was less than the CMP that month. But I think on balance, Lloyds did tell him that they would expect the full CMP to be paid. This conversation followed Mr and Mrs B's complaint about the fact Lloyds would not agree to further payment arrangements in November. Mr and Mrs B were aware of Lloyds' position on agreeing to any payment arrangements beyond the five months they'd already had. So I'm persuaded that Lloyds did not agree an arrangement with Mr B for the month of December. As a result, I'm satisfied that they have reported that month accurately to credit reference agencies.

Mr and Mrs B made the full CMP in January, but the account was still reported as being in arrears. Again, whilst Mr and Mrs B had made the full payment, there were still outstanding arrears on the account with no arrangement in place to repay them. So I'm satisfied that Lloyds were reporting accurate information by reporting that although Mr and Mrs B had made their full payment that month, there remained outstanding arrears on the account with no arrangement to repay them.

Unfortunately, Mr B lost his job in January and Mr and Mrs B made the difficult decision to sell their home. They kept Lloyds updated with their plans, and completed and signed a Sale of Property form in February 2018. Lloyds agreed they would not be carrying out any collections activity on the account to recover the arrears balance, as Mr and Mrs B were expecting the arrears to be repaid when the house was sold. Mr and Mrs B have said that by completing that form, they had agreed a permanent change to the mortgage contract that was legally binding, and so there should not have been any arrears reported on the account. But I don't agree. That form simply gave Lloyds the authority to discuss the progress of the house sale with the relevant parties directly. There is nothing contained in that form which suggests Lloyds had agreed to a permanent change to the mortgage contract.

I understand why Mr and Mrs B are unhappy about Lloyds reporting their mortgage as being in arrears with no arrangement from February 2018 onwards. From their point of view, they were being pro-active and trying to resolve the problems they were facing by selling their property to repay the mortgage, including the arrears. But whilst the mortgage was still in force, the terms and conditions of the mortgage still applied. And that meant that Mr and Mrs B were still obliged to pay the CMP when it fell due. They didn't do that, and in fact they didn't make any payments to the mortgage once the house was on the market. I've not seen any evidence to suggest that a formal arrangement was agreed with Lloyds that Mr and Mrs B would not pay their CMP whilst they were trying to sell their home. As a result, I'm satisfied that Lloyds were reporting the status of the account accurately for that period.

Mr and Mrs B's conversations with Lloyds in 2023

Mr and Mrs B raised their complaint with Lloyds in August 2023. In line with the rules set out in DISP, Lloyds had eight weeks to respond to the complaint, and they did respond within

that time. Mr and Mrs B were unhappy with the response and had conversations with Lloyds about their concerns on the phone. I can see from Lloyds' call notes, and from what Mr and Mrs B have told us, that the conversations did not satisfy Mr and Mrs B's concerns. Mr B didn't agree with what Lloyds had said in their final response about the payment history of the account and wanted them to consider the further information and evidence he'd provided. Lloyds did issue two follow up letters in October and November in response to Mr and Mrs B's additional points, but I appreciate those still didn't provide Mr and Mrs B with the outcome they wanted.

During the phone calls Mr B asked to discuss his concerns with senior members of staff. I can see he requested call backs from them within short timeframes. Lloyds explained to Mr B that they had issued their final response and if he remained unhappy the appropriate next step was to refer the complaint to our service. I'm satisfied that was reasonable and is in line with what we'd expect to see during the complaint handling process.

Overall, I'm not satisfied Mr and Mrs B were treated unfairly by Lloyds during their interactions in 2023. Lloyds listened to what Mr and Mrs B were unhappy about, and provided three response letters addressing their concerns. They also discussed the complaint with them on the phone. Whilst it is disappointing Lloyds did not realise the errors they'd made when reporting Mr and Mrs B's mortgage account to credit reference agencies during their own complaints process, that is being put right now the complaint has come to our service.

The distress and inconvenience suffered by Mr and Mrs B

Mr and Mrs B have said that the mistakes made by Lloyds have resulted in them having to rely on high-cost forms of credit over the years, and they've been unable to get a new mortgage. I'm sorry to hear about the difficulties Mr and Mrs B have faced in obtaining credit. It's clear they were going through a difficult time during 2017 and 2018 as a result of the problems Mr B was experiencing with his business and then his employment. But I'm only able to instruct Lloyds to pay Mr and Mrs B for the distress and inconvenience that was caused as a direct result of their errors. In this decision I've found that the errors Lloyds made were not reporting that Mr and Mrs B had an arrangement in place with them for the months of July, August, and October 2017.

If Lloyds had reported the mortgage status correctly at the time, the accurate position would have shown that Mr and Mrs B were in a payment arrangement with Lloyds from June to October 2017. However, there still would have been arrears reported on the mortgage for that period, as well as the period in 2018 when the arrears were growing with no arrangement in place.

So, whilst Lloyds' errors likely would have resulted in the mortgage status looking worse than it actually was, I'm not persuaded that would have been the reason that Mr and Mrs B had to turn to high-cost credit rather than taking out prime credit products from mainstream lenders, or that they were unable to get a new mortgage. That's because regardless of the errors Lloyds made there still would have been arrears reported on their mortgage account. And whilst the mortgage ought to have been reported as being in an arrangement for a period of five months, that still indicates to prospective lenders that although a borrower is taking steps to engage with the lender about their circumstances, they're still in a position where they're unable to meet their financial commitments.

Overall, considering the circumstances, whilst I appreciate Mr and Mrs B's strength of feeling about their concerns and the impact this matter has had on them, I'm satisfied the £200 Lloyds have agreed to pay is a reasonable amount to reflect the direct impact their errors may have made.

Given the time that's passed between Lloyds reporting Mr and Mrs B's mortgage to credit reference agencies, and this complaint being resolved, the incorrect entries are no longer showing on Mr and Mrs B's credit files. So Lloyds are unable to make any amendments. As a result, I won't be instructing Lloyds to do anything else to put things right for Mr and Mrs B other than to pay them £200 for the distress and inconvenience they've caused.

Responses to my provisional decision

Lloyds accepted my provisional decision.

Mr and Mrs B weren't happy with the outcome I'd reached. In summary they said:

- They didn't feel our service had acted impartially and have defended Lloyds' actions without considering things objectively.
- When Lloyds agreed to the payment arrangements with Mr and Mrs B, they were varying the terms of the mortgage contract. Under the varied terms the 'CMP' was changed and agreed for a different amount. Mr and Mrs B paid that agreed amount, and so they were not breaching the mortgage terms when making payments under the arrangement. As a result, there should be no arrears reported.
- I haven't explained how I've calculated the £200 award for distress and inconvenience. This amount is still not commensurate to the damages caused by Lloyds' mistakes.
- The way Lloyds dealt with their complaint in 2023 was unacceptable. They refused to call them back and respond to their emails.

I want to reassure Mr and Mrs B that I have listened to the call Mr B had with our Investigator about my provisional decision, and the above is just a summary of what was discussed. I have considered everything he's said before issuing this 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'm sorry to hear that Mr and Mrs B feel as though our service has not considered their complaint impartially. I want to assure them that I have considered the evidence and information provided by both sides objectively, and my decision is based on what I believe is a fair and reasonable outcome for all parties. Whilst I have listened carefully to what Mr B has said in response to my provisional decision, I haven't been persuaded to change the outcome I reached. I'll explain why.

Mr and Mrs B say that when Lloyds agreed to payment arrangements in 2017, they were agreeing to vary the terms of their mortgage contract. But I'm afraid I don't agree. When Lloyds agreed to a payment arrangement with Mr and Mrs B, they were agreeing to a temporary concession. The aim of that concession was to allow Mr and Mrs B to pay what they could afford to the mortgage account whilst they overcame the cause of their financial difficulty at the time.

A payment arrangement is intended to be a short-term measure of forbearance, where the lender will agree to the borrowers paying less than the amount set out in their mortgage contract for an agreed period, and they will not take any other collections activity to recover the mortgage payments, or the arrears that are accruing as a result of the reduced payments made during the arrangement. The mortgage contract and the contractual monthly payment 'CMP' do not themselves change as a result of the short-term arrangement. And as the CMP

was not being met whilst the arrangement was in place, arrears began to accrue on the mortgage as Mr and Mrs B were not operating the mortgage in line with the terms that were agreed when they took it out. So whilst Mr and Mrs B did comply with the arrangements agreed by Lloyds, they were still falling behind on their mortgage payments as set out in the contract, which meant the account fell into arrears. As a result, Lloyds had an obligation to report those arrears to credit reference agencies (along with the fact that an arrangement was in place).

I appreciate Mr and Mrs B remain unhappy with the award I've made for the distress and inconvenience Lloyds caused them. This is largely a result of them disagreeing with what I've said the impact of Lloyds' actions was. Considering everything that's happened, I remain satisfied that the direct impact of Lloyds not reporting arrangements were in place during 2017 meant that Mr and Mrs B's credit file looked worse than it should have done. But there would always have been arrears reported alongside the arrangements for the reasons I've explained above. So I cannot reasonably conclude that the absence of the arrangements on Mr and Mrs B's credit file was the cause of them not being able to secure credit with mainstream lenders, or being unable to get a new mortgage.

Mr and Mrs B have asked for a calculation of how the distress and inconvenience award of £200 has been determined. Our service does not make calculations for these types of awards, rather we consider the impact the mistake has had on the complainant, and award an amount that feels fair and reasonable in all the circumstances. Mr and Mrs B are aware of our published guidance on awards for distress and inconvenience. When considering Mr and Mrs B's particular circumstances, I found that £200 was a fair amount. Mr and Mrs B had information reported on their credit files that was incorrect, and they've had to spend some time getting that sorted out. I don't think the incorrect information would have had a significant wider impact on their overall credit score or ability to obtain finance, for the reasons I've explained. That's why the amount I think Lloyds should pay is modest.

I said in my provisional decision that it was disappointing Lloyds didn't identify the errors they'd made when reporting Mr and Mrs B's mortgage to credit reference agencies during their own complaints process, especially when Mr and Mrs B provided information and evidence to show arrangements were in place. Mr and Mrs B are unhappy that Lloyds didn't always return their phone calls or reply to their emails when they were raising their concerns in 2023. I can appreciate this was frustrating for Mr and Mrs B at the time, because as far as they were concerned, Lloyds hadn't resolved things for them. But I'm satisfied Lloyds followed their internal complaints procedure by investigating Mr and Mrs B's concerns and providing a final response letter. They also issued follow up letters when Mr and Mrs B contacted them again to explain they weren't changing their decision.

In Lloyds' letter dated 12 October, they explained that as the complaint had been fully investigated, any further letters would be noted on file but not responded to. They didn't think any further communication would resolve things for Mr and Mrs B and they had reached an impasse. Lloyds had told Mr and Mrs B that if they remained unhappy, the next step was to refer their complaint to our service. I'm still satisfied that was reasonable and what I'd expect to see once Lloyds had completed their own investigation.

Considering everything again, whilst I appreciate Mr and Mrs B will be disappointed, I'm satisfied that the outcome I reached in my provisional decision is fair and reasonable in all the circumstances.

Putting things right

To put things right for Mr and Mrs B, Lloyds should pay them £200 for the distress and inconvenience caused by failing to report that an arrangement was in place from June to

October 2017.

My final decision

Considering everything, for the reasons I've explained, I uphold this complaint in part and instruct Lloyds Bank PLC to pay Mr and Mrs B £200 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 23 April 2024.

Kathryn Billings
Ombudsman