

The complaint

Ms K complains about the service she experienced whilst Coutts & Company were considering her buy-to-let mortgage applications, which they ultimately declined.

What happened

In July 2022 Ms K had conversations with an adviser at Coutts about her plans to restructure the finance she had on her property portfolio held in the name of a business she owns with her partner, as well as a new property purchase in her own name. Ms K wanted to re-mortgage two existing buy-to-let properties in the name of her business, re-mortgage her existing residential property with a buy-to-let mortgage in the name of her business, and purchase a new buy-to-let property in her own name, which she planned to transfer to the business once the purchase had completed.

The application for the re-structure was submitted on 3 August 2022, and following receipt of some further information, it was passed to Coutts' credit risk team on 16 August 2022 to review. Coutts wanted to see a lot more information about the overall structure and tax implications of the lending and the application was passed to their specialist lending team to review further. They decided they wanted more information from Ms K's tax adviser before proceeding and arranged a conversation with them for 15 September. The information Coutts requested was received on 15 October, and they declined Ms K's application on 25 October on tax reputation grounds. They were concerned Ms K was using Coutts' products and services to gain a tax advantage that was not intended by HM Revenue & Customs.

Ms K complained. She was unhappy that Coutts had taken so long to reach their decision when they knew her plans in relation to tax from the outset. She felt she had been given assurances by the Coutts adviser that the application would succeed and so as a result, she hadn't progressed applications with other lenders. She said if she'd known earlier in the process that Coutts wouldn't lend to her, she could have gone elsewhere sooner and secured lower interest rates than she was now going to have to pay given the rises that had taken place in the meantime.

Coutts issued their final response to Ms K's complaint on 2 December 2022. They said that Ms K's application was not a straightforward case and they had to involve a number of areas in the bank. As a result, the process took longer than they would have liked. There were also some delays caused as a result of annual leave on the team and a significant increase in demand for their services. They also said the explanations for the decline decision could have been more detailed. They acknowledged that interest rates had risen during the application process, but they hadn't provided any assurances that the lending would be agreed so Ms K had been free to seek alternative borrowing via the wider market. They did however acknowledge that communications Ms K received from them had been positive during the application process, which might have raised her expectations. Coutts offered to pay Ms K £500 in recognition of the failures in their service.

Ms K brought her complaint to our service and an Investigator looked into things. She explained that whilst she felt Coutts could have done a better job of managing Ms K's expectations at the beginning of the application process, she felt the £500 offered by Coutts to put things right was reasonable.

Ms K disagreed, and asked for her complaint to be reviewed by an Ombudsman. The Investigator explained to both parties that whilst she had considered Ms K's concerns under one complaint so far, an Ombudsman would not be able to do so as the complaint relates to mortgage applications made by two separate eligible complainants – Ms K in her own name, and the business that she jointly owns with her partner. So whilst the finance re-structure was dealt with by Coutts as one proposal, the decision for this complaint would only consider how the application for Ms K's property purchase in her own name was handled by Coutts.

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.

Firstly, I will explain that I agree with the Investigator that this is Ms K's complaint only and I'm not considering anything purely about her business's applications in this decision. But nevertheless, since Coutts looked at everything in the round and there wasn't a separate process for the two separate borrowers, I've taken everything into account as context for how Ms K herself was treated in respect of the application she made in her own right.

As a starting point, Ms K was applying for new mortgages with Coutts. Coutts are not obliged to lend to new borrowers, but they must consider any applications made fairly, applying their lending criteria consistently. In this case, Ms K's application was declined because Coutts were concerned about their reputation in relation to tax as a result of Ms K using their products to achieve her objectives. I've seen Coutts' internal guidance and policy on this point, and I'm satisfied they've followed that when considering Ms K's application.

What Ms K was proposing to do through this finance re-structure was not straightforward, and I've seen internal notes and emails which show that Coutts did give this proposal serious consideration before they decided to decline it. It was considered by their credit risk team as well as their specialist lending team, and further information was sought from Ms K's tax adviser before Coutts made their decision. Whilst I appreciate Ms K feels Coutts should have declined her application at the outset if they weren't willing to lend to her, I'm not satisfied the adviser Ms K was speaking to at Coutts would have had enough information at the outset to make that decision, and there was a compliance process the application needed to go through before a decision could be made.

However, as Coutts have acknowledged, the adviser regularly used positive language when discussing the application with Ms K. Initially, the focus of the conversations and assessment was on the affordability of the applications, and the adviser did explain that he didn't see there being any problems. It was only after the application had been passed to the credit risk team and specialist lending team and they'd asked for a lot more information that the tone of Coutts' communications changed in August. So I can appreciate why Ms K had initially hoped that her application would be successful.

But Coutts didn't at any point guarantee that they would lend the funds to Ms K, and as an experienced property owner with mortgages on multiple properties, Ms K would have known that there's no guarantee the lending would be agreed until all the checks had been completed and the mortgage offers were produced. On 19 August the adviser at Coutts told Ms K that he was now less confident about whether the application would be successful, and that he wanted to manage her expectations based on the amount of additional information that was being requested. So Ms K was clear from that point at least about the position of the application. It was up to her to decide whether she wanted to pursue her application with Coutts, or look elsewhere to secure the lending she needed. I'm satisfied she had the information she needed from Coutts to make that decision.

From that point there were some slight delays in progressing Ms K's application during the end of August and early September. Coutts have said that was a result of annual leave in the team and significantly higher demand for their services than usual. When looking at the

timeline of events, I'm not persuaded those delays added a significant amount of additional time onto the overall process. Especially considering the complexity of Ms K's application and the amount of information that had been requested and needed to be reviewed. I'm satisfied the £500 Coutts have offered to Ms K is a fair and reasonable amount to reflect the distress and inconvenience she experienced as a result of those delays and the earlier failure to manage expectations appropriately. Particularly because by that point Ms K was already aware that the adviser was not confident her application would succeed, and she still chose to continue and wait for the outcome rather than look elsewhere.

Ms K is also unhappy that she now has a Coutts bank account that she doesn't need, and marks on her credit file as a result of Coutts insisting she take out an account in order to secure the mortgages she was applying for. It was Coutts' policy that Ms K would need to open an account with them in order for the mortgages to be approved. That was discussed at the very beginning of the process when Ms K had no guarantees her mortgage applications would be approved. I'm not satisfied it's a result of anything Coutts have done wrong that Ms K now has that account. Coutts have explained that she can close the account if she no longer wants it. And in any case, I'm not persuaded that a single credit search for opening a bank account will have any meaningful impact on how future lenders assess her credit record.

I do appreciate that whilst Coutts were considering Ms K's applications, she was paying variable rates on her existing mortgages, and she's also ended up having to take new mortgages with a different lender at a higher rate than what she'd applied for with Coutts. But for the reasons I've explained above, I'm not satisfied that's a result of anything Coutts did wrong. Ms K's existing mortgages had already reverted to variable rates before she started this application process, and she was aware by mid-August at the latest that there was a strong chance Coutts weren't going to approve her applications.

Putting things right

Coutts have offered Ms K £500 to apologise for the distress and inconvenience caused as a result of their service. I'm satisfied that's a reasonable way to put things right.

My final decision

Considering everything, for the reasons I've explained, I uphold this complaint in part and instruct Coutts & Company to pay Ms K £500 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 6 May 2024.

Kathryn Billings
Ombudsman