

The complaint

Mr and Mrs N complain that Lloyds Bank Plc:

- Mis-sold a business loan.
- Did not offer them support when their business experienced financial difficulty.
- Did not send them statements.
- Prevented them from switching the account that serviced the loan.

What happened

In May 2014, Mr and Mrs N took out a commercial loan in May 2014 with Lloyds. It was secured on their property, which was residential but also contained a business which they owned. Mr and Mrs N said they thought they'd taken out a "mortgage". That was supported by the fact that, in 2020, Lloyds asked if they wanted a mortgage payment break due to the Covid pandemic. Mr N had agreed to that as his business was closed.

In December 2022, Mr and Mrs N said that the cost of living and higher bills had a significant impact on their business. They asked Lloyds if they could switch the loan to interest only, have a payment holiday or extend the term of the loan in order to reduce the payments. Mr N said he was passed between the business and personal departments as Lloyds was unable to decide what type of product they had. He was eventually told that the product was a commercial loan and not a mortgage, which meant that he was unable to get any financial help. Mr and Mrs N therefore feel that the loan was mis-sold as they understood it was a mortgage.

In March 2023, Mr and Mrs N said as a result of not being offered any help they had to liquidate their business. Following this, they said there were delays in setting up a loan servicing account to pay the loan. They've asked to pay the loan from their personal account as the business was closing. But they said they were told they couldn't do this as it was a business loan. This means they have been unable to pay the loan.

Mr and Mrs N also said that they have never received statements for the loan. Mr N said that every time he has needed to do his accounts he has had to go into the bank and ask for one.

Lloyds said the product is a commercial loan, secured against Mr and Mrs N's property, and not a mortgage. This means that Mr and Mrs N are not entitled to any payment holidays, as they would have been with a mortgage. In relation to the loan servicing account, it says that Mr N was told to call the account opening centre. Lloyds said it sent statements to Mr and Mrs N annually by post. It said it had ordered copies of previous statements and sent them to Mr and Mrs N in January 2023.

Another ombudsman issued a decision regarding our jurisdiction. They said we don't have the power to look at the sale of the loan or any events before 5 January 2017. But we can look at events after that.

I issued a provisional decision proposing to uphold the complaint in part. Subject to any further submissions, my provisional findings, which form part of this decision, were:

Support in financial difficulty

I can't consider the complaint about how the loan was set up. A colleague has already explained that is out of jurisdiction.

The Lending Code sets out what is good practice for identifying and supporting business customers who fall into financial difficulty. It says that lenders should obtain details of a customer's income, expenditure, assets and liabilities. It should then explore a range of options, including repayment plans. Lenders should consider reducing or stopping interest or charges. But that will depend on the borrower's ability to repay the debt.

In this case, Lloyds' position is that it gave Mr and Mrs N details of the department they needed to deal with to obtain support – but they never contacted it. Mr and Mrs N say that they have contacted Lloyds but it has not offered any help.

I'm afraid the evidence I have does not support that Mr and Mrs N contacted the relevant department. In saying that, Mr and Mrs N have been clear and consistent that there was some confusion about what they needed to do. And Lloyds has not put forward a persuasive case that it has given Mr and Mrs N clear, fair and not misleading information about what they needed to do.

I have taken the above into account in deciding a fair way to resolve this complaint.

I also note that Lloyds has paused any recovery action while this complaint has been ongoing. So there has been no meaningful progress with the support offered – or indeed any of the matters here – while this complaint was ongoing. It would not be fair for Mr and Mrs N to lose out because of that.

Statements

Lloyds has produced copies of statements. I understand they are automatically generated and they are correctly addressed. I consider it more likely than not that they were sent. So I don't consider there was any error by Lloyds.

Loan servicing account

I agree with the investigator's findings that Lloyds has not acted fairly and reasonably in helping Mr and Mrs N to set up an account they can pay the loan from. Lloyds accepted that view. Even after giving us details of what Mr and Mrs N needed to do and following those steps, Lloyds has still not been able to set up an account for them. I do not consider Lloyds has treated Mr and Mrs N fairly or reasonably.

If the servicing account is still not in place – and that is what Mr and Mrs N told us recently – then I do not consider it would be fair to say that Mr and Mrs N should go through the usual process in view of the difficulties they've faced in doing so for around 18 months.

As the loan servicing account was not set up, I understand the payments were made from the limited company's overdraft. It is not clear if Mr and Mrs N have given a personal guarantee for the limited company's debts – and if that includes the overdraft. If Mr and Mrs N are not personally liable for the limited company's debts then they have not suffered any financial loss.

If they are personally liable for the overdraft then they may have suffered an additional loss because they were being charged interest on the loan payments that were made from that account. But, depending on when Mr and Mrs N gave their guarantee, we might not be able to help them. That is because if Mr and Mrs N gave a personal guarantee for business purposes before 31 March 2019 – which appears likely in the circumstances – they would not meet the definition of a “consumer” under our rules. So they would not be eligible under our rules to make a complaint about the limited company overdraft.

Putting things right

If Mr and Mrs N accept my decision, Lloyds should, within 28 days of receiving notification of their acceptance:

- *Provide a named contact at Lloyds to deal with Mr and Mrs N on the following matters. I understand that different departments might deal with certain things. But the problems here all arise out of Mr and Mrs N being unable to navigate Lloyds’ processes. So the contact should take ownership of these matters until they are resolved and liaise with the relevant departments to sort these issues out.*
- *The named contact should arrange a mutually convenient time to speak to Mr and Mrs N.*
- *The named contact should then speak to Mr and Mrs N and:*
 - *Obtain the necessary information to set up a loan servicing account and then set up the new account within 14 days – unless in response to the provisional decision Lloyds tells us what a realistic time to do that is.*
 - *Gather all of the information it needs about Mr and Mrs N’s income, expenditure, assets and liabilities.*
- *If Mr and Mrs N aren’t able to clear the arrears, Lloyds should then consider what forbearance it can offer Mr and Mrs N any. It should write to Mr and Mrs N to confirm what was agreed or to explain why it is not able to help.*

Despite several requests, Lloyds has not told us what information it has recorded on Mr and Mrs N’s credit file. The position of the loan account is unclear. Despite the difficulties with setting up an account to service the loan, payments have been made to the secured loan – although it is not clear they were the full amount that was due.

As I explained above, if Mr and Mrs N are liable for the overdrawn balance on the limited company overdraft that has arisen because the loan payments have been made from it, then I will not be able to consider that – unless Mr and Mrs N gave their personal guarantee after 31 March 2019 – and that seems unlikely in the circumstances.

I agree it would not be fair to say that Mr and Mrs N should clear any arrears in one month. But I also do not think it would be fair for Lloyds to record the arrears position as it was, when its omissions have contributed to the position Mr and Mrs N are in – and as things have been paused for over a year while this complaint was ongoing.

For the period when the payments were maintained to the loan in full and on time, then Lloyds should record on their credit files that all of those payments were made in full and on time. If Mr and Mrs N are in a position to clear the arrears within 28 days of the above contact from Lloyds, then Lloyds should remove any adverse information.

If the loan is in arrears and Mr and Mrs N are unable to repay the full balance and they have provided details of their income and expenditure to Lloyds – and Lloyds is able to offer a repayment plan or other concession, then Lloyds should backdate their credit file to reflect that such a concession or repayment plan was in place from when the loan first fell into arrears.

This has been a frustrating experience for Mr and Mrs N. In the circumstances it does not appear that the support Lloyds could have offered would have been enough to save their business. But the lack of support and failure to guide Mr and Mrs N as to what they needed to do has had significant consequences for Mr and Mrs N. They've not been able to manage their secured loan as they should have – and the loan was secured against their home.

This matter has been ongoing for over 18 months. And Mr and Mrs N have had the inconvenience of many fruitless phone calls to Lloyds along with the ongoing worry and uncertainty because their home was at risk.

Looking at our guidelines and taking into account that the way Lloyds has dealt with this matter has caused considerable worry and inconvenience over 18 months, I consider an award up to £750 would be fair. After carefully considering what Mr and Mrs N have said and looking at the circumstances, I consider Lloyds should pay them £750 for any distress and inconvenience.

Lloyds responded to say:

- Mr and Mrs N had started the process to open a loan servicing account. But they had not returned the mandate needed to open the account.
- It would need to see Mr and Mrs N's credit file to see what information it had recorded.
- Mr and Mrs N gave a personal guarantee for the limited company's overdraft in 2015.
- When the loan was set up it was Mr and Mrs N's decision to have the loan payments taken from the limited company's account as they did not want to have two business current accounts as they would both incur charges.
- It could see that Mr and Mrs N first requested a loan servicing account in March 2023, so it agreed to pay £750 for the distress and inconvenience caused by that.
- There is no named contact at the account opening centre – Mr and Mrs N should quote the reference they were given if they want to discuss it.

Mr and Mrs N responded to make a number of points, including:

- They had not received any correspondence from Lloyds – if they had they would have signed it and returned it.
- I had sided with Lloyds and had not dealt with their complaint impartially. They had spend a lot of time dealing with this matter and it had caused them anxiety.
- Lloyds has not given us all of the phone calls and they don't trust it.
- Lloyds has no intention to help them and if it does it will only do the bare minimum.

Following an exchange of emails between the investigator, Lloyds and Mr and Mrs N, it turned out that Lloyds had sent the mandate to the wrong address.

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.

At the ombudsman service we have a set of rules, which say what types of complaint we can (and can't) look at. I must apply those rules and decide whether a complaint is one we can look at. If I were to make a decision about the merits of a complaint where we did not have the power to look at under our rules, that decision would not stand.

A colleague has already explained that we can't look at the complaint about how the loan was set up as it has been brought outside our time limits.

Some of the complaint relates to accounts held by a limited company, where Mr and Mrs N gave a personal guarantee for the company's debts. But it is Mr and Mrs N in their personal capacity who have brought this complaint. So I can't consider a complaint about anything to do with the limited company's accounts.

Although Mr and Mrs N gave a personal guarantee for the limited company's debts, I'm unable to consider anything to do with that. That is because under our rules we can only consider complaints from consumers or certain types of entities. In 2015, when Mr and Mrs N gave a personal guarantee, they were not acting as consumers – so they are not eligible to complain about things that arise out of the personal guarantee. I'd note that if they are personally liable for the debt that arose because of the way the loan was paid, then they are in the same position they would have been in had they paid the loan themselves – albeit they did not have control of the payments in the same way.

Looking at everything again, I see no reason to change the outcome or redress I set out in my provisional decision.

In my experience, it is very unusual for a business not to be able to tell us what information it has recorded on a borrower's credit file. Presumably there is some mechanism that Lloyds is in control of to decide what information to record on its customers' credit files and a way of amending it if it is wrong. But if it needs to see Mr and Mrs N's credit file to comply with the decision - if Mr and Mrs N accept it – then it should contact Mr and Mrs N directly and tell them what information it needs.

There has been some progress in opening the loan servicing account. But Lloyds has made a further mistake. Hopefully that has been rectified. But I still consider that Lloyds needs to give Mr and Mrs N a named contact as set out in my provisional decision. It is not good enough to expect Mr and Mrs N to phone up its account opening centre. That is because Lloyds' usual process has proven itself to be insufficient in this case. And even if the account has been opened, the named contact will still need to carry out the other steps set out in this decision.

For the avoidance of any doubt, if Mr and Mrs N accept my decision then Lloyds is bound to do what my decision says – it is not optional. And it would not be fair for Lloyds to simply restart recovery action once this complaint is resolved. Mr and Mrs N have suffered some detriment because things were on hold while they complained and because of the difficulties they've faced in opening an account to pay the loan. That is why I consider it is fair in the circumstances for Lloyds to take all of the steps set out in this decision – but it would only be obliged to do so if Mr and Mrs N accept it.

But even if Mr and Mrs N don't accept the decision, Lloyds would still be required to treat

them fairly. And that would include taking into account the delays in this matter because of the delays and because of its own failure to set up a loan servicing account in a timely manner.

My final decision

My final decision is that Lloyds Bank PLC should, within 28 days of receiving notice that Mr and Mrs N have accepted this decision:

- Provide a named contact at Lloyds to deal with Mr and Mrs N on the following matters. The contact should take ownership of these matters until they are resolved and liaise with the relevant departments to sort these issues out.
- The named contact should arrange a mutually convenient time to speak to Mr and Mrs N.
- The named contact should then speak to Mr and Mrs N and:
- Obtain the necessary information to set up a loan servicing account and then set up the new account within 14 days – unless in response to the provisional decision Lloyds tells us what a realistic time to do that is.
- Gather all of the information it needs about Mr and Mrs N's income, expenditure, assets and liabilities.
- If Mr and Mrs N aren't able to clear the arrears, Lloyds should then consider what forbearance it can offer Mr and Mrs any. It should write to Mr and Mrs N to confirm what was agreed or to explain why it is not able to help.
- If Mr and Mrs N repay the arrears in full within 28 days of the above contact from Lloyds, then Lloyds should remove any adverse information relating to the loan from their credit files.
- If the loan is in arrears and Mr and Mrs N are unable to repay the full balance and they have provided details of their income and expenditure to Lloyds – and Lloyds is able to offer a repayment plan or other concession, then Lloyds should backdate their credit file to reflect that such a concession or repayment plan was in place from when the loan first fell into arrears.
- Pay Mr and Mrs N £750 directly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs N to accept or reject my decision before 8 September 2024.

Ken Rose
Ombudsman