

The complaint

Mr and Mrs G complain about the way that Lloyds Bank PLC has administered their mortgage.

What happened

In 2008, Mr and Mrs G took out an interest only mortgage with Lloyds over a term of 30 years. The interest rate tracked the Bank of England base rate, with a margin of 1.09%.

In December 2022, Mrs G spoke to Lloyds because interest rates were going up and she wanted a “payment holiday”. She said that after giving details of their income and expenditure, Lloyds said they should enter into a “nil payment arrangement” – so Mr and Mrs G would not be required to make payments to their mortgage for three months. Mr and Mrs G said they were not told that the arrangement would lead to their mortgage going into arrears – the missed payments would be added as arrears, recorded on their credit files and they would need to arrange for the arrears to be repaid.

When Mrs G later spoke to Lloyds it said that it had not set up the arrangement correctly. As result it wrote to Mr and Mrs G about the arrears while the arrangement was still in place. Lloyds paid Mr and Mrs G £50 for the stress that caused.

Once the arrangement ended, Mrs G spoke to Lloyds again. She said it came to light that their expenditure had been recorded incorrectly when the arrangement was set up – their travel costs were recorded as £667 instead of £320. Mr and Mrs G consider if Lloyds had dealt with their initial request properly, their financial situation would be better than it is now.

Mr and Mrs G also said that Lloyds had not contacted them as agreed to discuss setting up a new interest rate product. They said it then unfairly declined to offer a new interest rate because of the arrears on their mortgage and the type of mortgage they had.

I issued a provisional decision. My findings, which form part of this decision, were:

Jurisdiction

Lloyds has told us that it believes the complaint about the payment arrangement being set up incorrectly and continuing to contact Mr and Mrs G is not something we can consider.

It's unusual that Lloyds did not raise this when the investigator issued his view dealing with that point. But it has provided evidence that it agreed to pay Mr and Mrs G £50 to resolve that specific complaint on 3 March 2023. Mr and Mrs G did not refer their complaint to us until 20 September 2023. So I'm afraid they have brought that complaint too late under our rules – and Lloyds has not consented to us looking at it.

The only way I could consider that point, was if there were exceptional circumstances that prevented Mr and Mrs G complying with the time limits. I don't consider there were. So I can't consider the impact of contacting Mr and Mrs G incorrectly regarding “arrears”.

I would add that usually I would not look to interfere where a consumer accepts an offer in

settlement of a complaint.

Nil payment arrangement

There are two main points that Mr and Mrs G raised as part of this complaint:

- They wanted a payment holiday and weren't told that by agreeing to it their mortgage would go into arrears and affect their credit files.
- Lloyds recorded their expenditure incorrectly when setting up the arrangement – it recorded travel expenses of £667 rather than £320. If Lloyds had recorded the expenditure correctly it would not have given them a nil payment arrangement.

The difference between a payment holiday and a nil payment arrangement is that at the end of a payment holiday the missed payments are added to the mortgage balance and the term potentially extended. At the end of a nil payment arrangement, the missed payments are treated as arrears.

While I can understand why Mr and Mrs G wanted to avoid arrears, looking at what happened and what we know about Mr and Mrs G's circumstances, I consider it was reasonable for Lloyds to offer them a nil payment arrangement. I say that because the information they had given Lloyds about their income and expenditure showed they had a deficit and could not afford the contractual monthly payment. If a payment holiday had been agreed, their monthly payments would have gone up automatically at the end of the payment holiday. It was not clear that would have been affordable for Mr and Mrs G bearing in mind what they'd told Lloyds.

A nil payment arrangement meant the mortgage would fall into arrears. But it also meant that Lloyds could review Mr and Mrs G's circumstances and tailor a plan for them based on their circumstances once the arrangement ended. That would leave more options for them than a payment holiday. So I do not consider it was unreasonable for Lloyds to offer a nil payment arrangement rather than a payment holiday.

Lloyds has given us evidence to support that it told Mrs G that the missed payments would be treated as arrears and that it would impact Mr and Mrs G's credit files – but if they could afford to pay anything then they should get in touch. I am not persuaded that Lloyds misled them about nil payment arrangement.

During the phone call, Lloyds recorded Mr and Mrs G's expenditure as £2,694.54 leaving a deficit of £259.34 – not including the mortgage payment. Mrs G confirmed that those figures sounded realistic during the call – but has later questioned their accuracy. Lloyds said there was only around £60 that wasn't properly accounted for. That would mean there was still a deficit and it would make no difference to Lloyds's decision to offer a nil payment arrangement. Mr and Mrs G said their travel expenses were incorrectly recorded as £667 instead of £320.

Listening to the phone call, Mrs G said she paid £60 a week for fuel and Mr G paid £80 – so a total of £140 a week. It was reasonable for Lloyds to accept that at face value. Lloyds recorded that as £667 a month – but in fact it is only £607 a month. So it does appear to have overstated their expenditure. But I can't see that the discrepancy was as much as Mr and Mrs G think. I would add that Mrs G said during the phone call that she calculated her expenditure to be £2,435.20 – but that would still not be enough to make any payment towards the mortgage.

It follows, that the difference in expenditure would not have made any difference to Lloyds'

decision to offer a nil payment arrangement. And for the reasons set out above, I consider that was a fair and reasonable decision.

In saying that, it is clear that Mr and Mrs G have been caused some upset and worry because their expenditure was recorded incorrectly. While I hope my explanation that the payment arrangement was in their interests anyway will give them some reassurance, it is clear that the mistake has caused Mr and Mrs G avoidable worry over some time. I will explain what I consider is a fair offer to reflect that later.

Interest rate product

Mr and Mrs G said they received conflicting information from Lloyds about whether they could switch interest rate or not. It appears there was some confusion because Mr and Mrs G were in arrears and because they were on a tracker rate. Mr and Mrs G said they were told on a number of occasions that they could not arrange a new interest rate product.

In its letter dated 27 July 2023 Lloyds accepted it was possible for Mr and Mrs G to change the rate. It agreed that Mr and Mrs G had later asked for a new rate but were not offered one. Lloyds has agreed to backdate a rate that was available in June 2023. But Mr and Mrs G said the interest rates on offer were higher than they were already paying. So I understand why they would not agree to that. It is open to them to apply for a new interest rate product if they wish.

I consider that Lloyds added to Mr and Mrs G's distress and inconvenience by not properly informing them about their ability to take a new interest rate product. They are already worried that Lloyds is not concerned with what is in their interests and that they have been deprived of the opportunity to get things back on track. This will have added to that.

Capitalisation

Capitalisation is one of the things that Lloyds must consider when a borrower is in arrears. That is adding the arrears balance to the main mortgage and recalculating the payments so that the mortgage is repaid at the end of term. It can be reasonable for a lender to look for a borrower to maintain payments before agreeing to capitalise arrears.

In the circumstances, I don't consider it was unreasonable for Lloyds to require Mr and Mrs G to make six full payments before considering capitalisation. I say that because Mr and Mrs G's payments would go up if the mortgage was capitalised. It was reasonable for Lloyds to look for a consistent track record of payments from Mr and Mrs G before agreeing to it.

Compensation

I've found that Lloyds did not treat Mr and Mrs G fairly by recording their expenditure incorrectly and in telling them they could not arrange a new interest rate product.

I note what Mr and Mrs G have told us about the stress and worry this matter has caused them. I don't agree that is all Lloyds' fault. If it had not made the errors I've identified I can't see that Mr and Mrs G would be in a different position overall – but I accept that it has made it more difficult for them to accept the position they are in and has added to their worry.

In all the circumstances, I consider Lloyds should pay them £200 to reflect that it has not always treated them fairly.

I note Mr and Mrs G are both in IVAs. The terms of the IVA say that they must tell the IVA supervisor if they receive any material sums of money over £500. The supervisor said they

wanted any redress paid to it. But it is for Mr and Mrs G to comply with the IVA. It is for them to decide whether the terms of the IVA require them to notify the supervisor of the compensation if they choose to accept my decision.

Lloyds accepted my provisional findings. Mr and Mrs G did not. They made a number of points, including:

- They were not happy with the proposed compensation, bearing in mind I'd found Lloyds had not done everything correctly.
- The reason for the complaint was that the nil payment arrangement wasn't set up correctly, they never received the letter about the arrangement, and that there was language barrier – and I'd not mentioned that at all.
- If they'd received the letter and had realised that the missed payments weren't being added to the balance, they would have carried on paying what they could afford.
- Lloyds told them they had six months to make the complaint – so they did not understand why we could not look at part of the complaint. And they had explained to Lloyds that they shouldn't have accepted the £50 compensation and the complaint was reopened by them.

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.

Jurisdiction

It is only the point about Lloyds continuing to contact Mr and Mrs G after the arrangement was set up where our jurisdiction is in dispute.

It wasn't clear from Lloyds initial response to us that this matter was dealt with separately. But based on the evidence we have it is likely to be out of jurisdiction as it was not referred to us within six months of the summary resolution being issued. Even if that is not correct, we might not look at a complaint where an offer has been accepted in full and final settlement.

But if I were to give Mr and Mrs G the benefit of the doubt – and taking into account that Lloyds incorrectly contacted them about arrears when it should not have done so – I think that a total payment of £250 (the £50 already paid and the £200 I have awarded) would be a fair and reasonable way to resolve the complaint as a whole, including this part.

Nil payment arrangement

I consider that Lloyds gave Mr and Mrs G clear, fair and not misleading information about the nil payment arrangement during the phone call when the arrangement was set up. I don't agree that there was a "language barrier". Lloyds explained things in a clear way – and there was no reason for Lloyds to consider that Mrs G did not understand what she was told. I consider it gave Mr and Mrs G enough information to make an informed choice about what to do, whether they received a letter confirming the arrangement or not.

The information that Mr and Mrs G gave Lloyds did not support that they could afford to make any payments to their mortgage. In those circumstances, it would not be fair and reasonable for a lender to agree a payment plan or payment holiday. The only options

available to Mr and Mrs G were to accept the nil payment plan or to reject Lloyds' offer of the arrangement and to pay what they could afford.

The difficulty I have is that we do not have any evidence that Mr and Mrs G could have afforded to make any payments to their mortgage. The information they gave Lloyds about their income and expenditure shows a deficit – even after taking into account that the information was not recorded correctly. It follows, that it is more likely than not that Mr and Mrs G would have fallen into arrears in any event, even if they had not agreed to the nil payment arrangement. I would add that Lloyds told Mr and Mrs G during the phone call to contact it if they could afford to make payments.

I understand why – with hindsight and because Lloyds has made some mistakes – Mr and Mrs G feel that they have lost out because they entered into the nil payment arrangement. But based on the information available to me there were not any other options available to them. Overall, I consider that it was fair and reasonable for Lloyds to set up the nil payment arrangement based on the information it had.

Interest rate

I see no reason to change the conclusion I reached in my provisional decision.

Lloyds' has agreed to honour its offer to give them an interest rate product that was available in June 2023 and to re-work Mr and Mrs G's account accordingly as if that interest rate was in place.

Capitalisation

Mr and Mrs G said that Lloyds has told them they now qualify to have the arrears capitalised. But I don't consider Lloyds' position of requiring a track record of payments before agreeing to that was unreasonable in the circumstances.

Compensation

After reviewing everything again, I see no reason to increase the compensation I proposed in my provisional decision. I consider £200 is a fair amount to reflect the distress and inconvenience caused by Lloyds' recording Mr and Mrs G's expenditure incorrectly and in telling them they could not arrange a new interest rate product.

My final decision

My final decision is that Lloyds Bank PLC should pay Mr and Mrs G £200. It should also honour its offer to give Mr and Mrs G an interest rate available in June 2023 and to re-work their mortgage, if Mr and Mrs G change their mind about that.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 16 October 2024.

Ken Rose
Ombudsman