DRN-5258081

The complaint

This complaint is about an interest-only mortgage Mr H holds with Lloyds Bank PLC. The essence of the complaint is that Mr H believes Lloyds wrongly turned down an application he made several years ago to borrow more money, and to convert the mortgage from interest-only to capital repayment.

Mr H additionally believes that in its actions Lloyds has broken the law, and breached its regulatory obligations.

What happened

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat the details here. Instead I'll focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we work within the rules of the ombudsman service and the remit those rules give us. We don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

That includes everything Mr H has sent us since the case was referred for review by an ombudsman on 19 December 2024. I've also listened to recordings of Mr H's telephone conversations with Lloyds. The majority of the calls took place in late 2023 and early 2024, and relate to the progression of the complaint. I've also listened to a recording of an 80 minutes-plus conversation that took place on 11 March 2020, the primary event that gave rise to the complaint.

Where the evidence is incomplete and/or contradictory, as is the case here, I'm required to reach my decision on the basis of what I consider is most likely to have happened, on the balance of probabilities. That's broadly the same test used by the courts in civil cases.

It's for us, rather than the parties to the dispute, to decide what evidence we need to reach a fair outcome. It's also for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual pieces of evidence in isolation. We consider everything together to form a broader opinion on the whole picture.

It's not in my remit to decide if Lloyds has broken the law or committed criminal acts; only a court can decide those things. Similarly, having no regulatory power means I have no remit to find that Lloyds has breached its regulatory obligations. Rather, the test for me to apply, taking into account relevant law and regulation, is whether Lloyds has treated Mr H fairly.

In the event that I was to find Lloyds hasn't treated Mr H fairly, I would then have to consider detriment and mitigation.

I've taken all of that into account. Having done so, here are my findings on what I consider to be the key issues on which the outcome turns.

Mr H maintains that he made an application in 2019. There's nothing documented on this, but I have noted that the conversation on 11 March 2020 starts with the staff member referencing having met Mr H before. This was apparently in relation to an earlier application that was unsuccessful due to an adverse credit entry placed by another credit provider, that was later revealed to have been a mistake.

It's possible that this is the application from 2019 that Mr H is thinking of, but I can't be certain, and in any event, I'm not persuaded the outcome of the case turns on that. That's because it's not in dispute that Mr H did apply for further borrowing and a switch to capital repayment early in 2020; hence the conversation on 11 March 2020. His request for further borrowing didn't proceed, and no further consideration was given to switching to capital repayment. So the first thing for me to decide is whether Lloyds handled that borrowing request fairly.

It seems likely from the available evidence that Mr H was given an invalid reason why the application shouldn't proceed. He was told it was outside policy to consolidate more than three existing consumer credit debts. Lloyds has since confirmed that this wasn't a policy restriction. However, I still have to consider whether, but for that, the application would not have proceeded in any event.

Mr H argues with some strength that Lloyds' failure to retain all the information that the law requires it to keep is indicative that it is trying to hide its shortcomings. I've already said that it's not in my remit to decide if the law has been broken or regulations have been breached. What I can observe generally is that the relevant law on data retention doesn't require a business to keep everything indefinitely.

It's too binary an argument to say that because Lloyds has kept some information from that time, (indeed, going back as far as the inception of the mortgage in 2007) it ought to have kept everything and is holding information back that is harmful to its position. Of course, if Mr H believes that to be the case, it's open to him to refer his concerns about data retention to the Information Commissioner's Office. But generally speaking, I don't find it surprising or alarming that a business hasn't retained information about a lending application from 2020, or possibly one from 2019, that didn't proceed.

My view is that I have enough evidence to reach a finding, on the balance of probabilities, that Mr H's application for further borrowing would still not have proceeded for reasons that *did* fall within Lloyds' lending policy at the time. The most likely of these, in my view, is that the limits Lloyds' criteria imposed on the amount of borrowing and the maximum term duration, meant Lloyds couldn't lend Mr H enough additional borrowing to meet his objectives at the time.

Mr H wanted £70,000; £46,000 for consolidation of unsecured debts, and the rest to go towards a house extension. In the conversation of 11 March 2020, the indication was that

the likely maximum Lloyds could lend was around £48,000. There was some uncertainty around this due to difficulties with data input, but it was left that a follow up would take place. There was no follow-up other than the staff member's email indicating that the number of loans for consolidation was above the limit.

Overall I'm not persuaded Lloyds treated Mr H unfairly. Giving Mr H the wrong reason for not referring to underwriters was unhelpful, but even if that message hadn't been sent, I'd need to be persuaded that any follow-up after the data input questions had been resolved would have resulted in Lloyds indicating a willingness to lend Mr H all of the money he wanted. But to do that requires me to go beyond considering the balance of probabilities, and venture into speculation, which is not in my remit.

I've next considered that Mr H's mortgage remained on interest-only after the abortive loan application. The first thing to take into account is that it's Lloyds' standard practice to deal with any extra borrowing requirement first, and then to deal with additional matters such as a change of repayment method after that. So Mr H wasn't refused a switch to capital repayment when his application for additional borrowing didn't proceed. It just wasn't followed up, and to be clear, it wasn't up to Lloyds to follow it up.

If Mr H still wanted to pursue a switch to capital repayment, it was incumbent on him to take whatever steps were necessary to have Lloyds consider a standalone request for a change of repayment method. I'll explain why that is.

Even where a business has been found to have done something it shouldn't have done (or as is the case here, given the wrong explanation for doing something it was in all likelihood permitted to do for other valid reasons) I have to consider whether and to what extent Mr H could have mitigated the effect of Lloyds' error.

The general legal position is that mitigation requires a person to take steps to minimise their loss and to avoid taking unreasonable steps that increase their loss. A person can't recover damages for any loss (whether caused by a breach of contract or breach of duty) which could have been avoided by taking reasonable steps. A person is said to have a "duty to mitigate".

This isn't a duty that's enforceable by anyone, rather it is a recognition that if a person fails to do so, their capacity to seek redress will be affected by that failure. This is the general position the courts would take. Although we aren't a court, and don't operate in the same way, we do take into account the same kind of legal principles a court would apply when we are deciding what's fair and reasonable. Therefore, in my view, the issue of mitigation is relevant and appropriate here.

Switching to capital repayment was important to Mr H; he said as much in conversation with a staff member I'll call LD on 12 October 2023. He told LD that he was otherwise relying on an offshore trust to repay the mortgage. Mr H's testimony is that he sent letters inviting Lloyds to contact him for a discussion on the repayment method, but the letters were returned marked "*address gone away".* Given it was Mr H who wanted the discussion, and taking into account the duty to mitigate, I think it was incumbent on him to find another way to get in contact with Lloyds and instigate the discussion himself.

I don't know what would have happened if Mr H had telephoned and pro-actively set up an application to switch to repayment, or booked one online, as Lloyds suggested in one of its letters in 2021. However, I don't need to know. The fact that this didn't happen is enough to persuade me that Mr H didn't do enough to mitigate the potential detriment to himself of the mortgage staying on interest-only.

Another thing I don't know is whether Mr H could have afforded the higher monthly payments that always go with a switch to capital repayment when everything else is remaining the same. If Mr H could not have afforded to pay more, then he's suffered no detriment from the mortgage not changing to capital repayment. Meanwhile, if he could have paid more, then another way Mr H could have mitigated the potential detriment of the mortgage still being interest-only was to have made regular overpayments to bring the balance down. The terms of the mortgage allowed that without any charge.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see how strongly Mr H feels. That's a natural, subjective reaction, and entirely understandable in the circumstances. Be that as it may, I have to take a different approach. I'm impartial and I have to look at things objectively. That's what I've done.

Mr H isn't under any obligation to accept my decision, and if he doesn't, he'll be free to pursue his complaint against Lloyds in court, should he wish to do so. I would suggest, if Mr H decides to follow this course of action, that he takes legal advice before doing so.

My final decision

My final decision is that I don't uphold this complaint or make any order or award against Lloyds Bank PLC.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 February 2025.
Jeff Parrington
Ombudsman