

## The complaint

Mr S and Miss W's complaint is about their mortgage account with Clydesdale Bank Plc trading as Virgin Money (and referred to here as Clydesdale).

Mr S, who has dealt with the complaint throughout, is unhappy about arrears that have accrued on the account. Mr S said that he thought he'd arranged a new interest rate product in July 2023, but instead Clydesdale moved the account onto Standard Variable Rate (SVR), which has resulted in arrears of about £50,000 accruing.

## What happened

Mr S and Miss W's interest-only mortgage of about £560,000 was on a fixed interest rate product that was due to end on 1 July 2023. Mr S asked for, and was granted, a payment holiday for July 2023.

In July 2023 Mr S contacted Clydesdale to ask about a new seven-year 4.99% interest rate product, with a monthly payment of about £2,340. However, during the call he disclosed that he was unemployed and that Miss W was also not working and was in poor health. Mr S said was in receipt of Universal Credit but the main part of his and Miss W's income was made up of contributions from family and friends.

Mr S was told he'd need to speak to the credit servicing team, and on 20 July 2023 had a long call with that team. Mr S explained that he was expecting a payout of £300,000 from his former employer, but that this was still going through the courts. After taking details of income and expenditure, Mr S was told that the product transfer hadn't been put in place, because it wasn't affordable. As a result, the mortgage reverted to SVR, with a monthly payment of about £4,000. Payments were missed once the account moved onto SVR.

Mr S complained, because he believed the new rate had been agreed and put in place. Mr S then agreed a payment arrangement of £1,200, but this has resulted in significant arrears accruing due to the shortfall in the payments being made and the payments due under SVR.

Since the mortgage reverted to SVR, the arrears have continued to increase and are now about £50,000. In May 2024 Clydesdale agreed to a concessionary rate which appears to be a discount of 2.5% off SVR.

Mr S thought Clydesdale had acted unfairly and so he and Miss W brought their complaint to our service. An Investigator looked at what had happened. She said that if Mr S and Miss W had simply applied online for a new rate, Clydesdale wouldn't have been aware of their change in circumstances and the rate switch would have gone ahead.

The Investigator thought it was unfair that Clydesdale was saying that payments of £2,340 on the fixed rate Mr S had discussed were unaffordable, at the same time as expecting payments of £4,000 to be made on SVR. The Investigator thought Clydesdale should have allowed Mr S and Miss W to take out the 7-year fixed rate product.

Initially, the Investigator asked Clydesdale to re-work the mortgage as if the 7-year fixed rate had been taken out from 1 August 2023, and change the way it had reported the mortgage to the credit reference agencies. She also asked Clydesdale to pay compensation of £500 for distress and inconvenience, and to engage with Mr S and Miss W to put a plan in place for the arrears to be addressed.

Clydesdale didn't agree with the Investigator's findings and provided further information to be taken into consideration. The Investigator also spoke to Mr S about his plans for the property.

Mr S explained that he was going to pay the mortgage off in full in 2025. He said he had been granted planning permission to demolish the property and build houses on the land. In addition, Mr S also said that, due to Miss W's health, they needed to downsize to a bungalow. He said the property was worth about £1.2 million and so there was plenty of equity to enable them to do this. Mr S also said that his friends and family were happy to continue to help him pay the mortgage until the property was sold.

Given this, the Investigator asked Clydesdale to put in place a two-year tracker rate from 1 August 2023, which she believed had no early repayment charge (ERC), with the product fee being added to the mortgage if Mr S and Miss W didn't want to pay it upfront. The other redress in relation to the credit file and the compensation for distress and inconvenience remained unchanged from her previous findings.

The Investigator said that Mr S and Miss W would need to maintain the full contractual monthly repayment and make lump sum payments towards the arrears, as Mr S had told her they could do, and to keep Clydesdale updated on the sale of the property.

Clydesdale didn't accept this. The bank said that it wasn't able to locate a 5.75% tracker rate product with no ERC. Clydesdale also said that Mr S and Miss W had no income to show they could afford the mortgage, and that donations from family and friends cannot be considered as income. The bank felt the situation was unsustainable and that allowing it to continue indefinitely was not in the best interests of Mr S and Miss W, given the level of arrears, which were now about £50,000.

### **Provisional decision of 3 April 2025**

I issued a provisional decision in which I reached the following conclusions:

I understand Mr S's finances have been impacted due to a dispute with a former employer which went to court and which, Mr S has said, resulted in a judgement in his favour. I have also noted what Mr S has said about his and Miss W's health. I won't give any details here to preserve their anonymity, but I have no doubt this has been a very difficult few years for them.

However, I have to put aside my natural feelings of empathy and decide the case on the basis of the evidence, taking into account Mr S and Miss W's specific circumstances, and Clydesdale's regulatory obligations, both in relation to helping customers in financial difficulty, and ensuring it doesn't offer lending that is unaffordable.

It is possible that, if Mr S and Miss W had applied online for a new rate in July 2023, Clydesdale would have been none the wiser about their financial situation and the rate would have gone through without any issue. However, given that Mr S had asked for a payment holiday for July 2023, I think it's likely Clydesdale would have wanted to discuss affordability of a new rate in any event.

I'm satisfied that Clydesdale did *not* confirm to Mr S that the 7-year 4.99% rate had been put in place. This was after a detailed discussion between Mr S and the bank where Mr S had explained that the bulk of his income was by way of donations from family and friends. I'm satisfied that Clydesdale was justified in having concerns about affordability, because ad hoc third party contributions cannot be taken into consideration when assessing the affordability of a mortgage.

I've thought carefully about whether Clydesdale should have done more to help Mr S and Miss W after that. The starting point is that lenders have a duty to treat all customers, but particularly those facing financial hardship, fairly. Balanced against that, one of the fundamental principles underpinning the mortgage contract is that a lender has the right to receive payment of the money owed to it.

The Mortgages and Home Finance: Conduct of Business Sourcebook (known as MCOB) sets out at MCOB 13 what lenders are required to do to help borrowers in arrears. A lender is required to explore ways to resolve an arrears situation, especially if the problem that created the arrears to begin with is one that looks to be short-term and capable of being resolved.

For long-term difficulties, a lender must also look at other ways to help, such as transferring a mortgage from capital and interest repayment to interest-only, deferring interest for a period of time or capitalisation of arrears. Balanced against that is the lender's obligation to ensure that any arrangement is affordable and sustainable.

The mortgage is already interest-only, and Clydesdale has put in place payment arrangements to reduce the monthly repayments, which haven't always been kept to. Capitalisation of arrears wouldn't be helpful, because this would increase the account balance and thus the monthly repayment would also increase, making it even more unaffordable than it already is.

I can understand why it seems illogical that Clydesdale wouldn't agree a new product that would have a monthly payment of about £2,300 but expected Mr S and Miss W to pay SVR of about £4,000 per month. But Clydesdale is under a regulatory obligation to ensure that any mortgage product it offers is affordable and sustainable, particularly where a customer is going to be tied into an ERC. In this case, Clydesdale was entitled to decide that it couldn't offer a new rate, due to concerns about affordability which I am satisfied are entirely legitimate.

Clydesdale has explained that it hasn't been able to identify a tracker rate with no ERC available in July 2023. The bank said that all its rates have an ERC. I'm not persuaded, therefore, that Clydesdale should be required to put in place a notional tracker rate from August 2023.

I think by putting in place the discounted rate in May 2024, Clydesdale has acted reasonably. This currently requires a payment of about £2,240 per month, which is subject to fluctuation as it is a 2.5% discount off SVR and so will be affected by any changes to SVR. There is no ERC on this rate, and so this limits Mr S and Miss W's exposure to the risk of additional charges.

From what Mr S has told us, his and Miss W's financial difficulties have been long-term, since about 2021. Their situation in relation to employment isn't likely to change, but they do have an exit strategy for the mortgage, involving either a sale to a developer or Mr S going into partnership with a developer, in order to demolish the property and build four houses on the site. Mr S said he will be raising development

finance for this latter proposal. Although I note planning permission was initially denied by the local authority in 2023, Mr S says this has now been granted. I would like to see a copy of the planning approval, as this isn't available through the local authority's online portal.

In addition, I note that Mr S told Clydesdale on 20 July 2023 that he was due to receive £300,000 from his court case. This is not the first time Mr S has mentioned this to the bank, as it's recorded several times in Clydesdale's notes.

I see that in April 2022 Mr S told Clydesdale that he was expecting to be paid £100,000 by the local authority within ten days. In August 2022 he said he was due to receive £90,000. On 16 October 2022 Mr S said he'd been awarded judgement against the local authority for just over £139,000 and would be receiving the money the following Monday. There is no evidence on file of the court's judgement in Mr S's favour, and no details about whether or not this has been paid.

This is relevant because, given the level of arrears, if Mr S is about to receive a large lump sum that could pay off the arrears in full, both I and Clydesdale need to see evidence of this. Clydesdale has said that due to the level of arrears (about £50,000), it is considering legal action. So if Mr S has credible evidence that he's about to receive a large lump sum, it may influence the future forbearance that can be put in place.

Therefore, before I make a final decision on this case, I require Mr S to provide me with full particulars of the current situation in relation to the court case, including a copy of the judgement in his favour, as well as evidence of any payment made in settlement of the judgement debt, or any action that has been taken or is being taken through the courts to recover the outstanding debt due to him.

I also require Mr S to provide me with a copy of the planning approval for the demolition of the property and construction of the new houses on the site, as well as any evidence that the property is currently actively being marketed for sale as a development project.

### **Provisional conclusion**

Overall, after considering everything that's happened, I'm satisfied Clydesdale did not offer Mr S a 7-year fixed rate product in July 2023. I'm also satisfied that, given Mr S and Miss W's financial circumstances – both short-term and long-term – Clydesdale could not have offered them a new interest rate product as there was no income to support this. It would have been in breach of Clydesdale's regulatory obligations to do so. I'm satisfied that the forbearance Clydesdale has shown in relation to offering payment arrangements and a discounted interest rate is fair and reasonable in all the circumstances.

I'm therefore not intending to ask Clydesdale to do anything further. However, subject to anything further Mr S and Miss W and Clydesdale wish to say – and Mr S providing the documents detailed above in relation to the court case and planning consent – I will review the matter again before issuing a final decision.

### **Responses to the provisional decision**

Both parties responded to the provisional decision. Mr S provided a copy of the judgment I'd requested, and an email chain about the planning consent.

Clydesdale said that it wouldn't agree to Mr S developing the property himself, as any demolition of the property would be a breach of the mortgage conditions. If this was what Mr S was intending to do, he would need to work with the bank.

Mr S provided a copy of the judgement, which was a default judgement in favour of the company Mr S used to work for (which I will call A Ltd). Mr S explained that A Ltd is no longer trading.

Mr S also provided an email chain showing that the only outstanding planning issue was a s.106 agreement, and details of the estate agent marketing the property. This shows the property is under offer for £1.2 million as a development project.

Following this, I reviewed the complaint again, and on 8 April 2025 I sent an informal response to both parties explaining how I intended to resolve the complaint. This was as follows:

First, I have not changed my position in relation to the interest rate on the mortgage or the conclusions I reached about the mortgage being unaffordable. So I will not be changing my findings on this part of the complaint. Clydesdale did not offer a lower interest rate, and Mr S and Miss W have insufficient income to show affordability of the mortgage on any basis.

What is now important is what is going to happen going forward.

It's apparent that Mr S is unlikely to be paid any money arising from the court orders he's provided. Mr S has explained that the business he used to work for is no longer trading. There is therefore no prospect of Mr S recovering any payment due to him from that company. In my opinion, there is no possibility of clearing the arrears out of any money owed to Mr S arising from the judgement against his former employers. In the circumstances, a line can be drawn under this issue, as there will be no lump sum payment to clear the arrears.

Clydesdale is correct that Mr S cannot demolish the property without its consent, as this would be a breach of the mortgage conditions. The bank is also correct that any development project undertaken by Mr S himself would need to have the full involvement and consent of the bank.

However, it appears that Mr S and Miss W are now looking at an exit strategy to sell the property and clear the mortgage, because the property is (according to the estate agents) about to be sold as a development project, the only outstanding issue being the s.106 agreement. The last email on this was on 19 March 2025 when Mr S confirmed to the planning department that he'd paid all the fees and completed the forms.

I therefore intend to decide the case as follows:

- I'm not upholding the complaint about the interest rate, for the same reasons given in my provisional decision.
- I will direct Clydesdale to hold off taking legal action until 31 July 2025 to allow contracts for a sale of the property to be exchanged, during which time Mr S and Miss W must pay the full monthly instalment due under the interest rate concession.

- In this regard, I will expect Clydesdale to extend the interest rate concession currently applied to the mortgage to 31 July 2025.
- I expect Mr S to provide Clydesdale with updates from his solicitors on the progress of the sale of the property when requested to do so by the bank.
- If by 31 July 2025 there is no imminent exchange of contracts, or if prior to that date Mr S and Miss W have failed to pay the monthly instalments due under the mortgage, Clydesdale will be entitled to pursue its legal remedies to seek possession of the property.

I think this will be a fair resolution to the complaint, balancing Mr S's intention to sell the property to a developer against the bank's entitlement to repayment of the arrears.

### **Further responses**

Both Mr S and Clydesdale have now provided their further responses so I am able to proceed with this decision.

Clydesdale responded in writing to confirm it has extended the concessionary rate until 31 July 2025, and that it expects Mr S to keep the bank updated on progress of the sale of the property. Clydesdale said that it would not take legal action provided there was an imminent sale, and no default on the mortgage repayments.

Mr S had two telephone calls with the Investigator, which I confirm I've listened to. Although Mr S wanted to speak to me, that is not part of our process, but I'm satisfied he's made his position clear from his conversations with the Investigator. I summarise Mr S's position below:

- Mr S maintains that the decision not to offer him a new rate was unfair, because he's never missed a payment. He said it defies logic that the bank expected him to pay £4,000 a month when it was saying he couldn't afford to pay £2,200 a month.
- Clydesdale should have consolidated the arrears and given him a new interest rate product. The bank had already agreed to give him a new rate, then changed its mind.
- He wondered what would happen if the sale hadn't gone through by 31 July 2025, and the impact of this on the mortgage.
- Everyone Mr S has spoken to believes it's unfair that he wasn't offered a new rate.
- His solicitors have advised him to seek a judicial review of the final decision because the refusal of a new rate is not logical.
- He's received the forms relating to the s.106 agreement, and needs to fill out one further form and send it back to the planning authority.
- Mr S maintains that he could have afforded to pay the mortgage at £2,200 per month.
- Mr S feels he has no option but to accept the proposal to settle the complaint.

### **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've reviewed the file from the outset, re-listened to all the previous calls, and listened to the two phone calls Mr S had with the Investigator.

I acknowledge Mr S feels very strongly that Clydesdale should have given him a new interest rate product, and I do understand why he feels it is illogical that the bank wouldn't agree to him taking on a new product at £2,200 per month, yet put the mortgage on SVR at £4,000 per month.

However, the fact remains that the money being used to pay the mortgage was primarily made up of donations from family and friends. This is not "income" in any sense of the word, and so Clydesdale was entirely correct to disregard this when considering whether or not the mortgage was affordable. I know Mr S thinks this was unfair, but I'm satisfied Clydesdale acted correctly, and in line with its regulatory obligations to lend responsibly.

So whilst I've noted Mr S's arguments that "*everyone he's spoken to*" thinks Clydesdale acted unfairly, and that my decision not to uphold this part of the complaint is unfair, it is simply an incontrovertible fact that Mr S and Miss W did not have the earned income to sustain the mortgage repayments, whatever the interest rate.

In the circumstances, I am not upholding the complaint that Clydesdale treated Mr S and Miss W unfairly when it declined the request for a new interest rate product.

But as I said in my response of 8 April 2025, things have now moved on. It is clear from what he's told us that Mr S will not be receiving a lump sum payment from his former employees that would allow him to clear the arrears. That is now therefore a moot issue.

Mr S is not able to develop the property himself without the consent and full involvement of Clydesdale, as he cannot demolish the house on the land, or split the title to construct multiple houses on the land. But the estate agent's details show that the property is 'under offer' for sale as a development project.

I'm satisfied that by 31 July 2025 the sale should have progressed to the point of exchange of contracts, given that Mr S has confirmed there is just one outstanding form that he's now sent back to the planning authority. Mr S (through his solicitors) needs to provide Clydesdale with regular updates about the progress of the sale of the property, with evidence in support.

Clydesdale has extended the interest rate concession to 31 July 2025, which I asked the bank to do, and has also put legal action on hold until after that date.

Therefore, all parties are "on the same page" and know the parameters within which they are operating in relation to payment of the mortgage, the sale of the property and the time limit I have set.

Mr S has asked what would happen if contracts haven't been exchanged by that date. If by 31 July 2025 Mr S's solicitors are able to provide Clydesdale with confirmation that exchange of contracts is imminent, with evidence in support, then I would expect the bank to show reasonable forbearance if there is a genuine and realistic prospect of the property being sold within the foreseeable future after 31 July 2025. However, if there is no realistic

prospect of an exchange of contracts by that date, then Clydesdale will be entitled to pursue legal action.

Clydesdale will also be entitled to pursue legal action if the mortgage payments aren't maintained, although I note Mr S has said that paying the mortgage will not be an issue.

I think that this is a fair way to resolve the complaint. It gives Mr S and Miss W more than three months to reach the point of an exchange of contracts on the sale of the property, which will concentrate the minds of all parties involved in the transaction to progress the sale.

On the other hand, it is also fair to Clydesdale, because the forbearance the bank is expected to provide has an end date. It wouldn't be fair to expect the bank to allow matters to drag on indefinitely, particularly where the arrears are substantial, as they are here.

I appreciate this isn't the outcome Mr S and Miss W were hoping for. They wanted Clydesdale to put them on the seven-year fixed rate product they'd asked about in July 2023, but as I've explained this wasn't a viable proposition given they had no earned income.

Mr S and Miss W are under no obligation to accept my decision. I must make it clear, however, that if they don't do so, it will not be legally binding. Mr S has said that he's been advised to pursue the matter in court by way of a judicial review. That's entirely Mr S's prerogative, but I would suggest he takes advice from a solicitor specialising in this area of the law before embarking on this course of action.

### **My final decision**

For the reasons given above, I don't think Clydesdale Bank Plc trading as Virgin Money has acted unfairly in relation to the interest rate, so I'm not upholding the complaint about this.

I have decided that the resolution to the complaint which I set out in my informal response of 8 April 2025 is a fair way to resolve the matter. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Miss W to accept or reject my decision before 14 May 2025.

Jan O'Leary

**Ombudsman**