

## The complaint

This complaint is about a mortgage Mr H holds with Lloyds Bank PLC. There are three broad strands to the complaint, which I summarise in my own words as follows:

- Lloyds granted a further advance irresponsibly, by taking overtime payments recorded on three weekly pay slips and extrapolating them into an annualised figure that wasn't realistic or sustainable;
- Lloyds breached data protection by inadvertently sending information about complaints he'd made to a third party; and
- Lloyds changed the repayment term of the further advance, and the original mortgage, after Mr H has signed to confirm his agreement to how much he'd pay, both monthly and over the life of the mortgage.

## What happened

The basic background to this complaint is well known to both parties so I won't repeat all of the details here. Our decisions are published, and it's important that I don't include any information that might result in Mr H being identified. In my view, the risk of identification is higher than normal in this case, due to the uniqueness of Mr H's situation.

Instead I'll give a summary of the key events leading up to the complaint in my own words, and then focus on my decision and the reasons for it. No discourtesy or lack of care is intended by that. It's simply a reflection of the informal service we provide, and 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. This approach is consistent with what our enabling legislation requires of me.

It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome. I'm also mindful of the over-arching (and statutory) duty that I have to resolve complaints swiftly and with a minimum of formality.

Mr H took the mortgage to buy his current home after bereavement meant he had to move out of what had previously been his family home. Soon after, a further family bereavement left Mr H with significant bills, overdrawn on his current account, also with Lloyds, and behind with payments to his freeholder.

Over the summer of 2022, Mr H had several conversations with Lloyds about how best to deal with the financial stress he was under. More than one solution was discussed. A plan involving changes to the overdraft was put forward and then withdrawn. A possible further advance on the mortgage was considered and rejected and later approved after Mr H submitted three recent weekly payslips, each of which showed him earning significant sums in overtime. Lloyds agreed a further advance of £10,000.

Initially the term of the further advance was to be 11 years, alongside the existing mortgage's remaining term of 19 years. But Lloyds then told Mr H it preferred that the term

on both be harmonised. It proposed that the term on both be set at 17 years. Whilst this increased the total amount Mr H would pay each month by about £5 (compared with the split term figures) it reduced the forecast total amount to be repaid over the life of the borrowing from just over £88,800 to just under £87,300.

The further advance went ahead and the proceeds were paid into Mr H's current account, restoring it to a credit balance.

In due course Mr H would raise a number of complaints, initially by himself but later with the support of his then MP representing him. A complaint about how Lloyds offered and then withdrew the option of a payment plan on the overdraft was brought to us and decided by a fellow ombudsman in a final decision. Another complaint was made about delays in processing the further advance application; that too was referred to us and looked at. Neither of those complaints will be revisited here, but I may mention them for context purposes.

The current complaint came out of those earlier complaints and was brought with the assistance of Mr H's then MP, who had extensive dealings with Lloyds on Mr H's behalf. The gist of the current complaint is that having initially told Mr H a further advance would be unaffordable, Lloyds changed its mind and agreed to lend after Mr H submitted three recent weekly payslips. Each of these payslips showed Mr H having earned overtime over and above his basic wages.

Mr H believes that decision was irresponsible, because he says it was made by extrapolating the figures in those three weeks over a full year under the assumption that Mr H would work that level of overtime every week. Lloyds had rejected the complaint in a final response dated 18 September 2023.

Our investigator wasn't persuaded Lloyds had lent the further advance money to Mr H irresponsibly. Mr H disagreed and asked for the complaint to be reviewed. He also pointed out that two other issues had been raised with us; these were two additional bullet points I referenced in the introduction to this decision. The referral to an ombudsman was put on hold whilst the investigator looked into these points. The investigator issued his findings on the two additional points in a view dated 9 July 2025.

On the data breach, which Mr H told us had led to him receiving threatening phone calls from a third party, the investigator concluded that Lloyds had offered Mr H fair compensation of £350 for the distress caused by releasing Mr H's personal data to an unauthorised party.

On the change of the repayment term for the mortgage and further advance to 17 years, the investigator was persuaded Mr H was made aware of, and had agreed to, the change during a phone conversation on 2 August 2022. He also noted that the change meant that the forecast total amount payable over the life of the mortgage was less than it would have been if the terms hadn't been changed.

There was a caveat to this, however. In its final response of 18 September 2023 addressing the complaint of irresponsible lending, Lloyds had referenced another total amount repayable; just under £87,600. This was still less than the figure quoted in the offer for split terms, but more than that quoted in the offer for harmonised 17-year terms.

The investigator concluded this was an error on the writer's part, and recommended Lloyds pay Mr H £150 for the confusion it caused. But he also said that if Mr H could demonstrate that the circa £87,600 was actually what he was on schedule to pay, he'd recommend

Lloyds rework the mortgage to reimburse Mr H. Mr H sent us screen shots of the payments he's currently making which he believes is the proof the investigator asked for.

The investigator considered that but wasn't persuaded by it. On further reflection, he explained to Mr H that the total amount payable quoted on a mortgage offer was an illustrative forecast, based on assumptions about the operation of the account during its life, including that that nothing would change over the life of a loan. He remained of the view that the figure given in the final response had been an error and didn't reflect what Mr H would eventually end up paying over the life of his mortgage.

### **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 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. Whilst statutory, our scheme is intended to provide swift outcomes to disputes between business and the customers, with a minimum of formality. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service.

We operate a two-stage process whereby a case will be considered by an investigator first, and only referred for review by an ombudsman if either party (or sometimes both) is dissatisfied with the investigator's findings. But the investigator has a responsibility to ensure that all of the points he or she considers relevant to the outcome have been addressed *before* that happens. So it doesn't automatically follow that because one party has requested a case be referred to an ombudsman, that will always be the next thing that happens.

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

Where the evidence is conflicting and contradictory, as is the case at times here, I reach my conclusions 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.

Regarding the evidence in this specific case, it is immensely detailed and there's a great deal of it – over 3,000 pages of documents and audio recordings. That said, there also a significant degree of duplication and repetition.

In reaching my decision, I will have regard for the law and good industry practice where relevant, but my overarching responsibility is to decide what is fair and reasonable in the circumstances. That can sometime mean reaching a different outcome from what might prevail in court. I've taken all of that into account. Having done so, here are my findings on the three elements of the complaint as summarised at the start of this decision.

Any new issues that Mr H might wish to raise would have to be in a separate complaint. We can't investigate complaints 'on the fly' so to speak, with parties adding new points and arguments along the way whilst our investigation is ongoing. Otherwise we risk a complaint becoming a continuously moving target that can never be concluded.

Lloyds granted a further advance irresponsibly, by taking overtime payments recorded on three weekly pay slips and extrapolating them into an annualised figure that wasn't realistic or sustainable

Having no regulatory power means it's not open to me to direct Lloyds on what its affordability criteria should be or how it should treat overtime payments when making an affordability assessment. I'm aware of what the Mortgage and Home Finance Conduct of Business sourcebook (MCOB) says on the topic, but that only takes me so far.

My brief here is not necessarily to establish if there has been a regulatory breach as such. Rather, it is to establish if Lloyds has treated Mr H unfairly. The two don't necessarily go together. The distinction I make there is substantive and real. It's quite possible for a financial business to observe all of its regulatory obligations but still end up providing an experience that is unfair to its customer. Conversely, the opposite is also true. Lastly, complying with MCOB treating consumers fairly doesn't simply mean doing what the consumer wants. It's much more complex and considered than that.

So, whilst Mr H has focussed on the identification, in the extensive correspondence he and his then MP exchanged with Lloyds, of what he sees as procedural failings, inconsistencies and contradictions, what I'm concentrating on is whether, the decision to grant Mr H the further advance was irresponsible. To put it another way, I'm more interested in the outcome than I am the process by which it was reached.

Having listened to all of the available call recordings (some have been provided by Lloyds, others by Mr H himself) the first conclusion I have reached is that I'm persuaded Mr H needed the new borrowing. I'll explain why.

Prior to the events complained about, Mr H's underlying financial situation looks to me to have been fundamentally stable, but recent events had left him with unexpected bills that he could not avoid and could not afford. These bills arose from terrible family events that I'm sure were hugely distressing for Mr H in their own right, even before their financial impact is taken into account. For that, he has my sincere sympathy.

From being otherwise reasonably financially sound, Mr H now had debts that he needed to clear, one of which was the overdraft on his current account, also with Lloyds. He'd initially hoped for a restructuring plan to be put in place for the overdraft, but once that was taken "off the table" by Lloyds (and as I said earlier, I'm not revisiting that because we've already dealt with a complaint about it) Mr H's only realistic option for restoring his financial stability was a further advance on the mortgage.

Having explained that I'm satisfied Mr H *needed* the further advance, I would also add that I'm satisfied he *wanted* it too. That desire for the further advance (alongside and separate from the need for it) is evidenced by the complaint Mr H made about the delay in providing the extra money. Again, we've looked at that already and I won't be looking at it again, but the fact the complaint was made is a pretty clear indication of how important it had become to Mr H to have the further borrowing.

A lot has been said about Mr H apparently changing his mind about what he needed the borrowing for. Lloyds has said he offered up a number of different reasons for the borrowing, something which Mr H disputes. The call recordings certainly reveal more than

one potential reason for borrowing being discussed in the early stages; in particular the call on 27 June 2022, when Mr H mentions applying for funds to buying a car or making home improvements as alternatives to refinancing when the call handler says, mistakenly as it later turns out, that a further advance for that purpose wasn't possible. In another call the following day, when asked why he wanted a further advance, Mr H replied that it was for a car and home improvements. Also, in the video mortgage interview on 8 July 2022, when asked about ten minutes in if the proposed further advance is for a car purchase, Mr H replied that it was. But other than one caveat which I'll cover in the next section, this is not something on which my decision turns.

Having explained why I consider Mr H both needed and wanted the further advance, I now turn to the very crux of this complaint; that is, the reasonableness or otherwise of the affordability assessment Lloyds carried out before agreeing to lend. Before I set out my findings, there's something I need to make clear. Mr H has repeatedly argued, as did his MP when representing him, that Lloyds must provide full disclosure of its lending criteria to him. Lloyds has shared the relevant information with this service, but Mr H believes that fairness requires that he see it too. I appreciate his strength of feeling, but it won't be happening. Our rules allow us to receive information from either party in confidence; it is then our judgement whether we should treat that evidence as confidential, and where we do, whether the circumstances are such that it is fair still to rely on it.

In my view, that test is met here. Lloyds' lending policy on affordability assessment is highly commercially sensitive, but it's also essential to my decision. It's therefore both fair and reasonable that I treat it as confidential but still rely on it in reaching my decision.

In straightforward terms, there are two strands to an affordability assessment; the amount of money coming in on a regular basis and the amount going out. Mr H is unhappy with Lloyds on both. His greater source of dissatisfaction is with the income side of things, and I will get to that, but first I'll address what Mr H sees as the flaws in the assessment of his outgoings.

Lenders typically capture information about an applicant's regular outgoings. They are also allowed by the FCA to use information from accredited sources such as the Office for National Statistics about the likely spending patterns of typical customer profiles. In Mr H's case, that was a sole occupier with no dependents. Lloyds did both in Mr H's case. Also, as his current account provider, Lloyds already had access to information about his regular spending patterns.

Mr H has questioned the way data about his commitments was captured and recorded. One example he has cited is that Lloyds recorded his overdraft as costing him £1 a month when in fact the true cost was much higher. Lloyds has explained that where an overdraft is being used as revolving credit, its system simply requires a nominal figure to be recorded, in order to trigger a notional amount that is then used in the affordability assessment as going towards reducing the overdraft each month.

That's seems sensible and reasonable to me. It also, in my view, demonstrates that in lenders' underwriting processes generally, there is a big difference between what is visible, "to the naked eye", so to speak, and what goes on behind the scenes, which is far more complex and nuanced. It's another reason why, in my view, such procedures and policies should remain confidential, as they're easily misunderstood and taken out of context, especially by a lay person. To be clear, in saying that I imply no criticism of Mr H, and none should be inferred.

All of that aside, however, it's important to remember that Lloyds' final decision to lend was based on the assumption that Mr H's overdraft and other bills would all be repaid from the

proceeds of the further advance, and other than the increased monthly mortgage payment, his finances should revert to some degree of stability. I've noted that when the funds were released, the money was paid into Mr H's current account, restoring it to a healthy credit balance.

I mentioned earlier that other possible uses of the funds were discussed but with one caveat, this had no bearing on my decision. The caveat is that any affordability assessment made where something other than repaying the overdraft and/or other bills was the planned use of the funds (as I've indicated, car purchase was still the premise on which the 8 July 2022 interview was conducted) would almost certainly have produced a less favourable outcome on affordability. And this is still on just the outgoings side of the affordability assessment, before even considering the income side, which is where I go next.

This is the real core of Mr H's complaint, where his sense of grievance is at its strongest. He's seen that after Lloyds received three payslips all of which showed him earning significant overtime, it then recorded an annualised overtime figure that he says was unrealistic, unsustainable and led to an irresponsible lending decision. I can see why Mr H might draw that inference, but it's actually another example of what is seen on the surface not fully reflecting what goes on in the background.

Lloyds did take Mr H's overtime into account, but it didn't take *all* of his overtime into account. The annualised figure to which Mr h has taken such exception is merely how data has been *captured*; what matters is how it has been *used*.

Lloyds has told us is that once a figure has been captured, an algorithm (Lloyds describes it as a "modifier") is applied in the background to ensure that only a portion of the captured figure is fed into the assessment. Lloyds has also pointed out that the information taken from those three payslips wasn't the only source of data it had access to about Mr H's overtime earning pattern. It also had his current account statements, which show that in 32 out of 40 weeks leading up to the affordability assessment being made, Mr H had earned varying amounts of overtime. It argues that this was sufficiently regular to rely on, and I agree.

Ultimately, Lloyds' decision resulted in total borrowing of around £69,000 secured on a property worth around £170,000, with a monthly cost of around £413, being provided to an individual with income (*before* overtime) of around £20,800, no dependents, the living expenses associated with sole occupation, and in anticipation that all recent debts would be cleared. That corresponds to a loan of around 3.4 x annual income with a monthly payment of around 24% of monthly income, before overtime. Taking into account current regulation and what is considered standard industry practice, that is a lending decision that most lenders would feel comfortable making.

Putting all of the above together, I'm not persuaded that the affordability assessment Lloyds carried out before agreeing to the further advance was irresponsible, such that it led to it treating Mr H unfairly by granting an unaffordable loan.

#### Lloyds breached data protection by inadvertently sending information about complaints he'd made to a third party

This isn't an issue where I need to make a finding on whether Lloyds did or didn't breach Mr H's data security. It's not disputed that it happened on two occasions, and Lloyds has admitted that. So, what that leaves me to decide is what fair redress should be for the effect the breach had on Mr H. He's told us that shortly after the breach, he received phone

calls from a third party claiming to be in possession of his personal data and making threats against him.

Mr H's testimony that he received these calls isn't corroborated, but taking him on face value, I've no doubt that will have been a horrible and distressing experience. That said, I think Lloyds did the right thing in apologising and paying him compensation for the stress it caused him. As to the amount of compensation, this is very much a subjective area; everyone reacts to and perceives things differently, especially "in the moment", when subject to the stresses that are inherent in dealing with a problem. It's not easy to say that one party's reaction is any more or less valid than another's.

Lloyds has offered Mr H a total of £350 compensation for distress and inconvenience caused by the data breaches. In all the circumstances, I consider that to be fair and proportionate; it's broadly in line with what I would have awarded if no offer had been made.

Lloyds changed the repayment term of the further advance, and the original mortgage, after Mr H has signed to confirm his agreement to how much he'd pay, both monthly and over the life of the mortgage

Again, this isn't something that's in dispute; the initial offer for the further advance was for an 11-year term, with the remaining term of the existing main advance being 19 years. But I'm satisfied that Mr H was made aware of and, critically, consented to, the term of both accounts being harmonised at 17 years. This happened during a phone conversation on 2 August 2022. I've next considered whether the harmonisation of the terms (which, as I've said, Mr H consented to) caused him detriment. But first, some context is needed.

The setting of a repayment period is subject to two financial pressures, that conflict with each other. A shorter term increases the amount a borrower must pay each month, but reduces the total amount payable over the lifetime of the loan, *all other things being equal*. The opposite is true in the case of a longer term; the monthly payment is lower but the lifetime cost of the debt is higher.

My use of italics in the previous paragraph was deliberate; it takes me to a comment Mr H has made in response to the investigator explaining to him that the total amount payable quoted in a mortgage offer is a forecast based on certain assumptions made at the time the offer is produced. Mr H has described that as shocking; in fact it's anything but. It's not just completely normal; it's actually a regulatory necessity that all lenders must adhere to. I'll explain why.

Taking Mr H's various further advances offers as examples, each document is made up of a combination of information that is known, and information that is not known and therefore must be assumed. The known information includes the amount being borrowed, the intended repayment term and the initial interest rate. The unknown information includes such things as whether all of the future monthly payments will be made in full and on time, and what interest rate will be charged after the initial rate ends.

The calculation of the total amount payable has to rely on assumptions about these factors. So, it (the calculation) assumes all payments will be made in full and on time (which may or may not happen). It also assumes that when the initial rate (a ten-year fixed rate in Mr H's case) ends, the mortgage will revert to the lender's standard variable rate (SVR).

The latter might not happen; it's always possible, maybe even likely, that Mr H will take out a new interest rate product, but the calculation can't forecast that. And even if Mr H doesn't take a new deal when his fixed rate ends in 2031 and instead allows the mortgage to revert

to SVR (a subject Mr H discussed with Lloyds on the phone on 27 July 2022) the calculation can't forecast what that SVR will be in ten years' time. All it can do is use the SVR that is prevailing at the time of the offer.

For completeness, I'd add that the mortgage illustrations Mr H received from Lloyds for the further advance included the following narrative, immediately below the total amount payable forecast.

**“These figures are only an illustration and would vary interest rate changes and if you do not keep the mortgage for the selected term”.**

That's a standard narrative, prescribed by the FCA, and used by all lenders in all mortgage illustrations and offers.

Put all of the above together, and it should be neither surprising nor shocking that the eventual cost of repaying the debt over its lifetime (assuming Mr H keeps the mortgage and runs it to term end) will most likely not correspond precisely to any of the figures he's been quoted from time to time, including the figure referenced in the final response of 18 September 2023. I'll come back to that particular figure in due course, but the overriding point is that any reliance on any such figures has to be tempered by the inevitable limitations inherent in them.

Getting back to the question of detriment in Mr H's case, harmonising the terms of the main mortgage and further advance resulted in a nominal increase in the amount he'd be paying each month. At the same, in accordance with the conflicting pressure I alluded to earlier, it reduced the forecast lifetime cost by around £1,500, when compared to the original plan to have 19- and 11-year terms.

There's something else I wish to reassure Mr H on. In one of his emails to us, Mr H has said that harmonising the terms of both parts of the mortgage at 17 years will keep him indebted for 34 years (17+17) instead of 30 (19+11). That's not the case; the mortgage terms run concurrently, not consecutively. The harmonisation means that, all other things being equal, Mr H will be mortgage-free two years earlier than he would otherwise have been.

All things considered, I'm not persuaded that harmonising the terms has been detrimental to Mr H thus far, or that it is likely to be disadvantageous to him over the remaining life of the mortgage.

That aside, I note that Lloyds has offered Mr H the option of extending his remaining term if he wishes to. That would reduce the monthly payment but increase the lifetime cost of repaying the debt. It's not up to me to advise Mr H on what he should do; it does seem as though he fluctuates from time to time about whether the monthly payment or lifetime cost is his greater concern. The important thing is that Mr H knows the choice is available to him.

That brings me finally to the lifetime cost figure that Lloyds mentioned in the final response of 18 September 2023. I don't know why the letter quoted a lifetime cost that differed from either of the figures quoted in the further advance offers. But I don't need to. For all the reasons I've set out, all I need is to be persuaded on the balance of probabilities, which I am, that the figure quoted in the letter need not be relied on as being representative of what Mr H is likely to pay if he keeps the mortgage for its lifetime.

It was, as the investigator said, most likely a simple, careless error, the effect of which was, it seems to me, needlessly to give Mr H something to worry about, when in reality, there

wasn't anything to worry about. But I do understand why he reacted as he did. Mr H's trust in Lloyds is diminished, and he finds fault in almost everything it does or says.

That's an understandable human reaction, especially when one is as close to a situation as Mr H is here. But I have to take a step back, remain professionally detached, and take an overview. Taking everything into account, I consider the investigator's recommended compensation of £150 for the confusion over the lifetime cost created by the 18 September 2023 letter to be fair and proportionate.

I would add, in conclusion, that I don't think the complaint correspondence between Lloyds and Mr H's former MP was as helpful as it could have been. I think it got bogged down too much in process and technicalities, and it resulted in contradictory statements being made, which of course only contributed to Mr H's sense of injustice and loss of trust. However, I make that point in passing only; I have no remit to include how Lloyds handled the complaint correspondence with Mr H and his former MP in my review of the underlying complaint about the lending decision

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 entirely understandable. Be that as it may, I have to take a different approach.

I'm impartial and I have to look at things objectively, sometimes taking a step back from the minutiae, focussing on the broader picture. That's what I've done. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome.

I will however make a further observation. There's more (and sometimes less) to complaint resolution than simply deciding who's right or who's wrong. It's not just about winning the argument or indeed pursuing the argument to its ultimate conclusion; sometimes it's about compromising to reach a fair conclusion which both parties can accept in a spirit of conciliation. I think I've done that here. More importantly, I very much hope that both parties can move on from here and resume a sensible dialogue going forward without recrimination over what has gone before.

### **My final decision**

My final decision is that I uphold this complaint in part. In full and final settlement, I direct Lloyds Bank PLC to pay Mr H £500 compensation, less any amount already paid as opposed to merely offered. I make no other order or award.

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 15 October 2025.

Jeff Parrington

**Ombudsman**