

The complaint

Mrs H complains that Coutts & Company (Coutts) provided unaffordable and predatory lending to her and her late husband in 2017 and again in 2020. She's said Coutts didn't factor in the possibility of rising interest rates and that it aggressively pursued her for repayment of the mortgage after Mr H's death.

What happened

Mrs H and the late Mr H approached Coutts in around May 2017 as they wanted to borrow the necessary funds to repay Mr H's tax bill of around £3.6million. At that time, Mr H already had a buy-to-let mortgage of around £2.6m with Coutts secured on 'Property A'. Mrs and Mr H also owned an unencumbered property that they lived in, which I'll refer to as 'Property B'. They planned to sell both properties within two years alongside realising other assets, to repay the mortgage debt and to downsize.

After discussing Mrs and Mr H's needs with them, Coutts's recommended they take out an interest only mortgage of just over £6million. This was to repay the mortgage on Property A and was to be secured over both properties. A mortgage offer was issued by Coutts in August 2017. The mortgage had a term of two years three months. A variable interest rate applied to some of the borrowing with the remaining borrowing on a fixed rate.

Unfortunately, things didn't go to plan and Mrs and Mr H were unable to repay the mortgage by the end of the agreed term. In early 2020 Coutts agreed to extend the term so it would end in November 2020. This was to allow Mrs and Mr H more time to put things in place to repay the mortgage. The mortgage wasn't repaid by the end of the extended term either.

In April 2021, following the sale of Property B, Mrs and Mr H made a payment of around £3.4million to the mortgage. Around the same time, Coutts said that it couldn't formally renew the mortgage because the application didn't meet affordability requirements at that time. But it could provide additional time for them to repay the borrowing, potentially up to a maximum end date of November 2023.

In July 2021 Mrs and Mr H questioned why Coutts was still applying pressure to them regarding repayment of the mortgage. Coutts said that although Mrs and Mr H had reduced the mortgage following the sale of Property B, there was still around £2.6million remaining and the mortgage was due to be repaid in full by November 2020. It explained that it could allow up to three years following expiry of the mortgage to achieve full repayment. But to do so it would need to keep close to developments in relation to the repayment plan, and interest payments would need to continue to be made.

Mrs and Mr H made a further payment of around £317,000 to the mortgage in September 2021, reducing the outstanding debt to around £2.3million.

Correspondence continued between Mrs and Mr H and Coutts about marketing Property A for sale. They'd received advice from estate agents that it was a difficult time to sell and as they were keen to achieve the best sale price for the property, they felt it would be better to delay marketing the property. Coutts sought further information about this and suggested

alternative options, such as the property being marketed “offline” initially for a period of three months. Coutts also said that it wasn’t forcing Mrs and Mr H to sell Property A and that it was up to them to consider other options. But it needed to know how Mrs and Mr H were going to repay the mortgage.

In October 2021 Mrs and Mr H told Coutts they were exploring external refinancing options. Coutts agreed to allow them three months to look into this as a method to repay the mortgage. If insufficient progress had been made by January 2022, it would expect direct contact with Mrs and Mr H’s broker or for them to market Property A for sale.

Unfortunately, Mr H passed away in December 2021.

A face-to-face meeting was arranged between Mrs H and Coutts in March 2022. Two of Mrs H’s children also attended the meeting. Coutts agreed to allow Mrs H three months for matters to progress regarding Mr H’s estate and repayment of the mortgage. In July 2022 Mrs H told Coutts that the sale of Property A was her only way of repaying the mortgage. But this couldn’t be progressed until probate had been granted. Further face to face meetings took place following this and Mrs H continued to meet the quarterly contractual payments.

Property A was marketed for sale on 8 February 2023.

Mrs H was unable to make the quarterly payment of around £31,700 due in June 2023. She sought support from Coutts in relation to this and it agreed to a payment holiday. Mrs H was also unable to meet the September 2023 quarterly payment, but she did pay £2,000 towards it, following which Coutts agreed to hold action until 30 November 2023.

A short time later Mrs H raised a complaint with Coutts about the provision of the mortgage in 2017 and 2020. Coutts didn’t uphold the complaint. It said, in summary, that it had carefully considered affordability and Mrs and Mr H’s repayment strategy in 2017 and had no reason to believe the properties wouldn’t sell as planned. It said it tried to assist Mrs and Mr H at a time when they had limited options due to an unexpected tax bill. It had agreed, in 2020, to give them more time to sell the properties and repay the mortgage. And it said that it’d explored every feasible option with Mrs H, including holding several face-to-face meetings with her. But due to the position of the account, it needed to move the account to its recoveries department. Mrs H has since sold Property A and repaid the mortgage.

Mrs H didn’t agree and asked the Financial Ombudsman Service to look into her complaint. Our Investigator didn’t recommend Mrs H’s case should be upheld. She didn’t think Coutts had acted unfairly or unreasonably by agreeing to provide this mortgage as an alternative to bankruptcy. She said that Mrs H was jointly and severally liable for the mortgage debt and she didn’t think Coutts had acted unfairly by continuing to apply interest after Mr H’s death. She also found that Coutts had offered reasonable forbearance to Mrs H.

Mrs H didn’t accept that and asked for an Ombudsman to decide on her complaint. So, the case has been passed to me to review. I reached the same overall outcome as the Investigator but for partly different reasons. So, I issued a provisional decision to give both parties the opportunity to make further submissions.

My provisional decision

I said:

“For completeness, I understand Mrs and Mr H raised a complaint with Coutts in 2020 and that it sent a final response to that complaint. Due to the time limits that apply to our Service, I would be unable to consider any aspect of that complaint as it

wasn't referred to us in time. However, as I'm satisfied those matters aren't being complained about in this case, I won't comment on them further. I will now focus on the issues brought under this complaint.

I was very sorry to hear of the difficulties Mrs H has faced over the years, particularly since Mr H sadly passed away. I know she feels strongly about this complaint, and I have very carefully considered everything she and her representative have told us about what's happened. However, I have to tell Mrs H that I've reached the same overall outcome as the Investigator, albeit for partly different reasons.

Coutts lending decision in 2017

When Mrs and Mr H approached Coutts in 2017, their objective at the time was to obtain sufficient lending so Mr H could settle his substantial tax bill as soon as possible. While between them Mrs and Mr H owned many assets (mostly in Mr H's name), they did not have sufficient liquidity to repay the tax bill. Mrs and Mr H wanted to keep their monthly payments as low as possible and their plan was to repay the borrowing in full within two years by sale of Property A and Property B. The potential sale of a relative's former property was also discussed, as the proceeds could be used to reduce the mortgage.

Mr H's income came from several sources and was not straightforward. He was a named director of several companies and held many assets including stocks and shares and held a 50% share of an overseas property – alongside owning Property A and part-owning Property B. While Mr H was in receipt of a "traditional" annual income as a company director, he also had accessible income from a Self-Invested Personal Pension and trust funds (with a value of around £700,000). I note he intended to sell his 50% share in the overseas property too and use those funds to provide further income to service and reduce the mortgage debt.

Due to the value of Mr H's assets being more than £3,000,000 he was a 'high net worth' individual. This was confirmed to Coutts within a statement from Mr H's accountant. Alongside this, I can see Mrs and Mr H received rental income of £30,000 between them which, as I understand it, was for a rental property within the grounds of Property B. I note that once Property B was sold that the rental income would stop.

Mrs and Mr H's application was not for a typical mortgage, it was a unique situation in which Mr H required a way to repay his substantial tax bill or, as suggested by Mrs H, he would have faced bankruptcy. They didn't have other options available to them at the time to raise the funds they needed, without selling assets which would take time they didn't have due to the tax bill being immediately due. The purpose of taking the borrowing was so Mr H could settle the tax bill quickly and then give them time to sell Property A and Property B to repay the mortgage, within the agreed term. Part of the plan was that this would leave them with funds available to downsize. I don't consider it was unsuitable for Coutts to recommend this mortgage based on the information available in 2017 to enable Mrs and Mr H to do that.

Both properties were valued in 2017 and although lower than Mrs and Mr H's anticipated values, would have left them with equity post-sale of around £2.5million after repayment of the mortgage, if sale prices in that region were achieved. I appreciate that sale of the properties didn't go to plan, but this – including factors such as the covid pandemic and impacts on property markets – isn't something I consider Coutts could reasonably have known would happen when it provided advice or agreed to lend.

A point of contention for Mrs H is that the lending provided was equal to more than 4.5 times Mrs and Mr H's income. And that it was therefore outside of Coutts's standard limit. But, while income multiples may be used by lenders to help them decide how much they might be willing to lend, it is not the only factor to be considered. It isn't automatically the case that the lending would be unaffordable or irresponsible where a lender's usual maximum income multiples were exceeded.

Because Mr H was a high net worth individual, Coutts was able to apply different lending rules in place of those applicable to typical mortgage customers. These, at the time of the lending in 2017, were set out within the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB) sections 11.6.33 R to 11.6.39 R¹. They required Coutts to consider, among other things, Mrs and Mr H's income or net assets (or both) and expenditure, alongside whether factors such as interest rates and income were likely to change within the agreed mortgage term. I'm satisfied that Coutts fairly took the relevant factors into account when assessing if Mrs and Mr H would be able to pay the sums due, including considering potential increases to interest rates within the agreed term. And, therefore, I cannot fairly conclude that Coutts provided unaffordable lending.

Overall, I'm not persuaded Coutts acted unfairly or unreasonably when agreeing to lend to Mrs and Mr H in 2017. I'm not persuaded the lending proposition was unaffordable over the agreed term. Mrs and Mr H asked for the mortgage to solve Mr H's tax liability issue and that's what they were able to achieve. Coutts's role was to decide which mortgage it could offer that would be suitable to meet their requirements. And I'm not persuaded its advice was unsuitable or that its lending decision was irresponsible in helping Mrs and Mr H to achieve what they'd requested.

In considering if Coutts has acted fairly, I note that all the borrowing was to be used to repay Mr H's sole debts and liabilities. By taking out a joint mortgage, Mrs H would also (and did) become legally required to repay the debt. I've considered the principles set out in the case of *Royal Bank of Scotland plc v Etridge (No 2)* [2001] UKHL 44². In summary, Coutts ought to have required Mrs H to have sought independent legal advice, to ensure she was aware of the implications of entering into the mortgage contract and that she was not subject to any undue influence. I'm not satisfied it did that.

However, if Coutts had done what it was supposed to do, I consider it's unlikely that Mrs H wouldn't have gone ahead with the mortgage, given the alternatives – bankruptcy and the real likelihood of losing their home. The impact of bankruptcy on Mr H would have been significant. He would no longer be able to act as a company director losing the associated income and his assets would have been seized – also losing his income from those. All of this would have in turn significantly impacted Mrs H and her lifestyle.

I appreciate Mrs H, and her representative, may now feel with the benefit of hindsight that bankruptcy would have been a more suitable option. But I cannot base my decision on hindsight; I must consider what is most likely to have happened at the time on the balance of probabilities. And, having done that, I find it unlikely that Mrs H would have chosen the alternatives to taking out this mortgage in 2017, had she been required to take legal advice.

¹ see <https://www.handbook.fca.org.uk/handbook/MCOB/11/6.html?date=2017-01-26&timeline=True>

² see <https://publications.parliament.uk/pa/ld200102/ldjudgmt/jd011011/etridg-1.htm>

Term extension in 2020

Mrs and Mr H had been unable to repay their mortgage by the end of the initially agreed term because things hadn't gone to plan. It's evident that an application for a new mortgage at this point may not have been approved by Coutts because Mrs and Mr H's income was, by that time, considered insufficient to support the mortgage when considering regulatory requirements. But as Mrs and Mr H were existing mortgage customers it agreed to extend the mortgage term on a more favourable interest rate as a form of forbearance, until November 2020. This was to allow them more time to seek advice and to ultimately repay the borrowing.

When the term extension was agreed, Mrs and Mr H had been maintaining the contractual payments and there wasn't anything to suggest they would be unable to continue to do so until the end of the extended term. They needed more time to take steps to repay the mortgage, and the term extension was intended to support them with that.

I find I cannot fairly conclude that Coutts acted unfairly or unreasonably when agreeing to extend the term of Mrs and Mr H's mortgage. As the initial term had ended the mortgage had also moved onto a higher variable interest rate. So, as part of the term extension, Coutts agreed to offer a lower interest rate too. I think these were appropriate forbearance measures for it to have offered, considering the circumstances at the time. Mrs and Mr H did not have the means to repay the mortgage in full at that point, and I consider it was appropriate for Coutts to give them time to consider their options, instead of taking alternative steps such as action to recover the debt.

Repayment of the debt following Mr H's death

Several face-to-face meetings took place between Coutts and Mrs H (as I understand it, with some of her children present) from March 2022 onwards. I've considered the summary notes from these meetings which show that Coutts took steps to support Mrs H. It agreed, for example, to allow Mrs H more time to sell Property A when it was told this was her only way of repaying the mortgage and that probate would be needed – as the property was in the sole name of the late Mr H.

I note that Mrs H and her children requested other forbearance such as interest being capitalised to the mortgage pending the property being sold, instead of regular repayments being required. Coutts didn't agree to do this but said it would be able to consider other forbearance options. To do that, it would need further details of Mrs H's personal finances, but I understand that information wasn't provided at that point, and Mrs H continued to maintain the required payments – suggesting she had the means to do so. Therefore, I don't think it's unfair or unreasonable that Coutts didn't offer other forms of forbearance at this point.

I understand Property A was marketed for sale in February 2023 and Coutts asked Mrs H to keep it updated with progress. I note that Coutts agreed to a payment holiday when Mrs H was unable to meet the June 2023 quarterly payment, after she'd provided information to it about her financial position – in practice this meant she didn't need to make that payment at the time. I think that was reasonable forbearance.

When the September payment became due, Mrs H made a payment of £2,000 and Coutts agreed to hold matters until 30 November. The sale of Property A had not progressed as quickly as had been hoped by the start of November. So, during a

face-to-face meeting on 6 November, Coutts told Mrs H that due to the position of the account unless the property sale was progressing and evidence of this could be provided, it'd move her account to its recoveries department. Unfortunately, there wasn't much progress with the sale of Property A by the end of November 2023 and Coutts said it would be taking recovery steps.

However, Mrs H raised a complaint a short time later and Coutts agreed to put a hold on recovery action. And, on 22 December, Mrs H confirmed that she'd accepted an offer for the sale of Property A. In light of that, Coutts agreed to allow further time until March 2023 for the sale to complete – which it did, on 13 March 2023.

By the time the mortgage was redeemed, it was over three years past an already extended term. And the starting point is that Coutts was entitled to expect repayment of the debt, in line with the mortgage agreement. I would expect it to show reasonable forbearance if Mrs H was unable to repay the mortgage and I'm satisfied it's done so here. I'll explain why.

Due to Mrs H no longer being able to maintain payments from June 2023 onwards, arrears had built up to just over £100,000 by the time Property A was sold. I don't think it was unreasonable for Coutts to expect regular updates from Mrs H on what was happening with the sale of Property A and whether she could maintain the payments. The position was worsening and it needed to ensure there was a reasonable prospect of things being brought back on track.

I also don't consider it was unreasonable for Coutts to tell Mrs H that it intended to start recovery action if a sale of Property A wasn't meaningfully progressed. It wouldn't have been reasonable or in Mrs H's best interests for it to simply let things continue – with interest continuing to be charged, reducing the remaining equity in Property A. It needed to take reasonable steps to ensure there was a way forward. Ultimately, Coutts allowed more time and space for the sale to take place once it received notification of an offer having been accepted. I consider that was fair.

Overall, I'm satisfied Coutts acted fairly and sympathetically in all the circumstances of this complaint. And I'm not persuaded from the available evidence that Coutts aggressively pursued Mrs H for repayment of the mortgage after Mr H's death. While I appreciate Mrs H has faced some challenging circumstances Coutts was, as I have explained above, entitled to expect repayment of the mortgage. And it acted fairly by taking into account the individual circumstances allowing more time and by showing forbearance on multiple occasions.

Mrs H's representative has referred to interest rates rising drastically in 2022 and that Coutts didn't consider how the mortgage would be affordable in that scenario, or the scenario that Mrs H would become fully responsible for the debt following Mr H's death. They feel these matters are part of the cause of Mrs H's financial difficulties. But these are not matters Coutts could reasonably have known would happen at the time they provided this mortgage to Mrs and Mr H. Economic factors such as significant increases to interest rates in 2022, for example, were unexpected and couldn't have been predicted in 2017.

Mrs and Mr H's initial plan was to repay the mortgage within two years and unfortunately that didn't happen. Coutts wasn't required to consider how interest rate changes after the agreed term might impact affordability – the mortgage wasn't intended to last that long. Coutts wasn't required to stop charging interest on the money it had lent following Mr H's death either. Interest was due to be charged until repayment of the debt in full, in line with the terms and conditions.

I appreciate Mrs H will be disappointed with the outcome of my decision and I am once again sorry to hear of the challenges she – and her family – have faced. But having carefully considered what's happened, I don't require Coutts to do anything differently."

Responses to my provisional decision

Coutts said it had nothing further to add.

Mrs H, being represented by a family member, didn't accept my provisional decision. She said, in summary:

- The role of the Ombudsman is to consider whether Coutts has acted fairly and reasonably, not to speculate on what she would have done – specifically if she'd taken legal advice in 2017.
- Coutts's own models showed the lending as being unaffordable. So, Mrs H questions how it can be justified by a high net worth "label" – particularly when considering the cost in interest to Mrs H.
- She questions what evidence Coutts has provided to show interest rate stress testing was conducted in 2017. This isn't a question of hindsight but one about what Coutts should have done at the time.
- Mrs H asks how I can make a finding that the lending in 2017 was affordable when Coutts decided it failed affordability requirements in 2020.
- She remains of the view that Coutts did not treat her fairly and sympathetically in line with the regulator's guidance after Mr H's death.

Broadly, Mrs H raises concerns that this mortgage left her with virtually nothing after being charged over £700,000 in interest. And she contends that they were not high net worth customers at all.

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.

Where I find something has gone wrong, I must consider what loss that has caused (if any) to the complainant. I can then direct a firm to put things right where I'm satisfied the complainant has suffered a loss because of the firm's actions. I explained in my provisional decision that Coutts ought to have required Mrs H to seek independent legal advice in 2017. But when considering the individual circumstances, I wasn't persuaded Mrs H would have done anything differently even if Coutts had done that. Because of this, I remain persuaded that Mrs H didn't incur a loss because of Coutts's actions.

I also remain satisfied that Mr H met the definition of a high net worth individual in 2017. Coutts was entitled to rely on the information provided to it in 2017 which supported this, including an accountant's certificate confirming Mr H was a high net worth individual. And it was fair and reasonable for Coutts to consider Mr and Mrs H's lending proposition on that basis.

At the time of lending in 2017, the borrowing was split into three parts. A variable interest rate of 1.84% applied to parts one and two, and a fixed rate of 1.89% applied to part three.

Looking at its underwriting notes, I can see Coutts took into account that two parts of the mortgage were on a variable rate, and it calculated that Mr and Mrs H would have sufficient disposable income to meet the increased payments if interest rates were to increase within the agreed mortgage term. Having considered this and what Mr and Mrs H's income was at the time of the 2017 application; I'm satisfied Coutts fairly considered the possibility of rising interest rates during the agreed term – a stress test – before it agreed to lend.

The affordability assessment conducted in 2017 was based on Mr and Mrs H's circumstances at that time. By 2020, Mr and Mrs H's circumstances had changed, and they were no longer receiving the same level of income. Put simply, two different sets of circumstances meant that on one occasion Coutts concluded the mortgage would be affordable as a new lending proposition, and on the other it wasn't. I don't consider that this is unfair or unreasonable. I would expect a lender to consider a borrower's circumstances at the time of the lending decision, and that is what Coutts did. And I don't agree that the inability to pass an affordability assessment in 2020 – at a time when the original mortgage term had ended – means the 2017 lending was unaffordable.

Ultimately, Mr and Mrs H had a plan to resolve a unique situation where Mr H needed to repay a significant tax bill, and quickly. They asked Coutts to lend them money over a short term to allow them to do that and to give them that time to realise their assets. Unfortunately, that didn't work out as Mr and Mrs H had planned and it led to more interest being charged. I know Mrs H feels this is unfair, but that is generally how a mortgage works – money is lent on the basis that interest will be charged until it is repaid in full – and I haven't seen anything to suggest interest has been charged incorrectly here. I'm sorry to hear of the difficulties Mrs H faced particularly after Mr H passed away. But as I explained in my provisional decision, Coutts was entitled to expect repayment of the debt. I consider it provided reasonable forbearance to her and I'm not persuaded it has treated her unfairly.

I appreciate Mrs H feels strongly about what's happened. But, having again considered my provisional findings following Mrs H's response, my decision remains unchanged. I don't require Coutts to do anything differently in this individual case.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 11 November 2025.

Keith Barnes
Ombudsman