DRN-6026048

The complaint

This complaint is about an interest-only mortgage Mr and Mrs B held until recently with Lloyds Bank PLC. Mr and Mrs B complain that Lloyds failed to honour a verbal promise, which they say was made in a phone call, to extend the mortgage until Mr B reached age 80. It's one of several complaints they've asked us to look at about Lloyds' conduct of the mortgage up to the point they redeemed it, earlier this year.

What happened

The broad circumstances of this complaint are known to the parties. I'm also aware that the investigator issued a response to the complaint, a copy of which has been sent to both parties, and so I don't need to repeat the details here. Our decisions are published, and it's very important that I don't include any information that might result in Mr and Mrs B being identified.

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. For the avoidance of any doubt or ambiguity, this decision deals solely with the complaint about the alleged failure to honour a verbal agreement to extend the 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 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.

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Where there's a dispute about what happened, and the available evidence is contradictory and/or incomplete, we reach our conclusions on what is most likely to have happened on the balance of probabilities. That's broadly consistent with the test used by the courts in civil cases.

Clearly, it would be preferable if recordings of Mr and Mrs B's conversations with Lloyds were available, but they are not. There's nothing sinister in that; businesses aren't required to retain recordings indefinitely, and Mr and Mrs B's evidence on when the call may have taken place is inconsistent. The decision on whether we have enough evidence to reach a fair determination on a complaint is mine to make, and I'm satisfied that is the case here. I'll explain why.

There are regulations in place that have flowed from the Mortgage Market Review (MMR) carried out by the Financial Conduct Authority (FCA) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aimed at protecting consumers and encouraging mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB). MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability.

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;
- there's been no further borrowing (with some exceptions) since 26 April 2014; and
- the proposed transaction is in the borrower's best interests.

So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

This means there are two routes that an application for an existing borrower can go down. If there's no change to the terms of the mortgage contract material to affordability, there's no obligation to carry out an affordability assessment at all. And if there is a change to the terms of the mortgage contract material to affordability, a lender could still decide to allow an application without an affordability assessment if doing so would otherwise be in the borrower's best interests.

A term extension is a material change to the mortgage, and so would be reasonable for Lloyds to want to carry out an affordability assessment, and to assess whether the application met its general lending criteria, including the borrower's age, income and repayment strategy. And whilst the regulations provide that Lloyds could, if it wished to, dispense with an affordability assessment, it wouldn't be obliged to, and here I don't think the wider circumstances were such that it's likely that Lloyds would have done.

My reasons for setting out the above is that, by its very nature, it is an administration-heavy and bureaucratic process, where a lot of information is collated and recorded, before a decision is made. A regulated lender is very unlikely to extend the term of a regulated mortgage without going through that process *and* capturing all the information it relied on when doing so, in order that it could demonstrate to the regulator, if required, that it had done what was expected of it. It seems very unlikely to me that a decision such as this would be made, and communicated, in a phone call.

Lloyds has told us that its records show a phone conversation taking place in 2022 with another lender in the wider Lloyds business group, with whom Mr and Mrs B also have an unregulated buy-to-let mortgage. I don't know what the content of that conversation was, but it is possible that this was the call Mr and Mrs B are thinking of. I'm not saying that was the case, but given that the detailed process I outlined above isn't relevant to unregulated mortgages, it's a more likely explanation of what Mr and Mrs B recall than that Lloyds agreed verbally to extend the term of their regulated mortgage.

My final decision

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

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 and Mrs B to accept or reject my decision before 2 February 2026.
Jeff Parrington
Ombudsman