

complaint

Mr N complains that Clydesdale Bank Plc (Clydesdale) has treated him unfairly in the way in which it has dealt with his buy-to-let mortgages.

background

Mr N has a number of buy-to-let mortgages through Clydesdale, which are all on a capital and interest repayment basis. From about 2009 Mr N has had difficulty in meeting his mortgage repayments and most of the mortgages fell into arrears.

Mr N asked Clydesdale for assistance. He wanted it to change the mortgages from capital and interest repayment onto interest-only. Clydesdale refused because it said there were certain criteria that needed to be met before it could do so, and Mr N's mortgages didn't meet those criteria.

In May 2011 Mr N made a large lump sum payment to clear most of the arrears. Mr N also paid valuation fees totalling approx. £2,500 on all the properties. In August 2011 Clydesdale issued new interest-only mortgage offers on all but one of the properties. But Clydesdale didn't clarify that arrears must be cleared before Mr N could proceed with those interest-only mortgages. Mr N didn't accept the May 2011 offers, and arrears began to increase again. By October 2011 the offers had lapsed.

Mr N complained to Clydesdale, and then to us, that he'd been treated unfairly. Clydesdale offered £200 compensation because it hadn't clarified that arrears needed to be discharged before Mr N could proceed with new interest-only mortgages. Clydesdale also offered to refund the valuation fee if it changed any of the existing capital and interest repayment mortgages to interest-only. But it has said it will do so only if the arrears are repaid. Our adjudicator considered this to be fair in all the circumstances.

Mr N didn't accept the adjudicator's findings. In summary he says:

- When he started the process to transfer his mortgages to interest-only, it was July 2009. It wasn't until two years later that he was told he'd need to clear the arrears.
- He's always maintained payments of interest.
- Because rents wouldn't cover the monthly repayments on a capital and interest basis, the mortgages should be converted to interest-only.
- None of his mortgages were outside Clydesdale's criteria for transfer to interest-only.
- All financial information requested by Clydesdale was provided by his accountants.
- He has no record either of making or cancelling an appointment with Clydesdale, or of not contacting the bank for eight months in 2010.
- If Clydesdale hadn't ignored him for two years, his properties would all be on interest-only mortgages with no arrears.
- He would like the mortgages to be transferred to interest-only and the arrears to be removed.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

It's not disputed that Mr N first experienced financial difficulties in 2009. Mr N's position is that Clydesdale has been unhelpful and that, if it had agreed to his request in 2009 to transfer his mortgages onto interest-only, there would be no arrears.

Clydesdale's position is that its decision on whether or not to change the mortgages to interest-only is one for its commercial judgement.

I'm not persuaded Clydesdale ignored Mr N for two years, as he says it did. Its records show that the first contact was in July 2009, but there were no firm proposals at that time. Between March and November 2010 Clydesdale was unable to contact Mr N, despite its efforts to do so. In December 2010 Mr N's broker contacted Clydesdale and requested the change to interest-only. This was because the broker said he had managed to find alternative deals, but these were too expensive.

I note that an appointment made in early January 2011 was re-scheduled so Mr N's accountant could attend. At this time, Clydesdale's interest-only criteria was that the loan-to-value (LTV) could not exceed 75%. Some of Mr N's mortgages exceeded that amount.

Clydesdale's records show that Mr N was asked to provide information about his income and outgoings, but this was not forthcoming. I also note that Mr N's broker told Clydesdale that Mr N was using rent as income. Although Mr N disputes his broker would have said this, I'm satisfied that the notes, made at the time, can be relied upon as accurate.

In March 2011 Mr N was told that the mortgages could not be changed to interest-only if they were in arrears. Mr N made a payment of approx. £16,000 in April 2011. This didn't clear all the arrears in full and Mr N told Clydesdale in May 2011 that he would look into this and contact Clydesdale within a week. There is no record Mr N did so.

In July and August 2011 Mr N paid valuation fees totalling approx. £2,500 on his eight properties, but he hadn't contacted Clydesdale about arrears, which had increased. Given this, it wasn't possible to transfer the mortgages to interest-only (with the exception of one mortgage, which wasn't in arrears).

Overall, I'm satisfied Clydesdale's account notes are reliable. They show what happened at the time of the events – when no complaint was anticipated. So I'm persuaded they are an accurate record of what happened at the time.

In all the circumstances, I'm satisfied Clydesdale did its best to assist Mr N, but this was not always easy due to the difficulty in maintaining contact with him and because information requested was not provided. I'm also satisfied that Clydesdale was under no obligation to switch the mortgages to interest-only if they didn't meet its criteria.

Clydesdale's acknowledged that it should have made it clear in the interest-only mortgage offers in August 2011 that arrears would need to be cleared before these could proceed – even though it had told Mr N in March 2011 that this was the case. It's offered £200 compensation for this, which I think is fair in all the circumstances.

Clydesdale has also offered to refund the valuation fee on any mortgage which is changed to interest-only. Again, I think this is fair.

Overall, I'm satisfied that Clydesdale has fairly exercised its commercial judgement in relation to its administration of Mr N's mortgage accounts. I fully appreciate that difficulties in the rental market affected Mr N's ability to service the mortgages. But this doesn't mean that Clydesdale is obliged to transfer the mortgages to interest-only where there are arrears or where the LTV doesn't meet its lending criteria. I'm satisfied Clydesdale fairly considered Mr N's requests for assistance and, having done so, was entitled to ask for further information (which wasn't always forthcoming) and to decline the requests, for legitimate commercial reasons.

Mr N is unhappy at the information registered with credit reference agencies by Clydesdale. But I'm satisfied Clydesdale is obliged to record accurately with those agencies the position on the account, including missed payments. If Mr N considers incorrect data has been recorded against him, this would be better referred to the Information Commissioner, who is responsible for the registration of data in the United Kingdom.

my final decision

My final decision is that I uphold this complaint in part. In settlement, Clydesdale Bank Plc must:

- pay Mr N £200 compensation for failing to clarify that he would need to clear arrears before the interest-only mortgages could proceed;
- refund the valuation fee paid in July and August 2011 on any property transferred onto interest-only.

Jan O'Leary
ombudsman