complaint

This complaint is about a Yorkshire Bank-branded mortgage and secured loan Mr and Mrs M hold with Clydesdale Bank PLC. Mr and Mrs M are unhappy that the mortgage was switched to interest-only in 2009. There are two issues with the secured loan, which are, in summary:

- it consolidated about £60,000 of unsecured consumer debt that would instead have been dealt with in a subsequent Individual Voluntary Arrangement (IVA); and
- it was rescheduled in 2013 on an interest-only basis, leaving a balloon payment to be settled when the term ended.

background

In what follows, I have summarised events in rather less detail than they've been presented, using my own words to do so, and rounding the numbers involved. No discourtesy's intended by that. It's 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. Another reason I have left out a lot of the detail is to avoid the risk of identifying Mr and Mrs M when my decision is published.

The mortgage Mr and Mrs M are complaining about was originally capital repayment with a starting balance in 2004 of around £335,000. In January 2009, Yorkshire arranged a £60,000 secured loan, the purpose of which was to consolidate and secure various unsecured debts owed to the bank through other credit facilities. Monthly payments of around £1330 were required on the new loan. In September of the same year, the first mortgage was switched to interest-only.

These changes had been prompted by a significant reduction in household income following a change in Mr M's employment situation. They say they'd already been talking to debt advisors about how to manage additional unsecured debts owed to other creditors. Unfortunately, Mr and Mr M continued to struggle with their finances, and eventually entered into IVAs in respect of those other debts.

In 2013, Yorkshire refinanced the secured loan (which at that stage had a balance of about £54,000) to make the monthly payments more affordable for Mr and Mrs M. It did this, by, in essence, switching the loan to interest-only. At the end of the term, Mr and Mrs M would have to make a balloon payment to settle it in full. Their payments were revised periodically, according to what they could afford, and by the time the due date for the balloon payment was approaching, they still owed over £30,000.

Mr and Mrs M started their complaint in 2017, and referred it to us in January 2018. In the initial phone call to us, they said, in summary:

- they'd been forced to take out the consolidation loan, as a pre-condition for the bank agreeing to switch the mortgage to interest-only;
- the consolidated debts could have been dealt with in the IVAs if Yorkshire hadn't insisted on them taking the loan; and

- they'd only recently realised there was a balloon payment due on the secured loan.

For the most part, our investigator didn't think Yorkshire had done anything wrong in 2009. Given that the consolidation loan was arranged several months before the mortgage switched to interest-only, she wasn't persuaded the one was a condition of the other. And there's was nothing in the notes from the time that indicated Mr and Mrs M were about to go into IVAs.

But she didn't think it was right for Yorkshire to restructure the loan in 2013 with a balloon payment. She thought Yorkshire should have set the loan up on a repayment basis, with a term that corresponded with a monthly payment of £600, which, according to the contemporaneous notes, had been assessed as affordable at the time.

Yorkshire agreed to do this, but Mr and Mrs M didn't think it went far enough; they asked for the complaint to be reviewed by an ombudsman.

my findings

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. 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. 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, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As I said earlier, if I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".

I'll deal first with the 2013 restructure. I agree with the investigator that it would have been more appropriate to refinance the loan on a repayment basis with a term that corresponded to monthly payments of £600.

If that had happened, there'd still be a significant outstanding balance just now, but the bank wouldn't be expecting Mr and Mrs M to pay it all in a lump sum. Instead, they'd simply be expected to continue to pay £600 a month going forward until they repaid the full amount. They should be put in that position now, and my award will reflect that. But I don't share Mr and Mrs M's views that Yorkshire was wrong to arrange the consolidation loan in the first place.

It's important here to remember that the money Yorkshire lent on the consolidation loan didn't create new debt that didn't already exist. It replaced an aggregate debt Mr and Mrs M already owed Yorkshire. I appreciate with hindsight, Mr and Mrs M would have preferred the debt to stay unsecured so that it could be managed through the IVAs, resulting in partial settlement. I make two observations on that point.

Firstly, the legal charge for Mr and Mrs M's mortgage is an all-monies charge, which allows the bank to rely on the charge to recover any money it has lent Mr and Mrs M, not just the mortgage debt itself. Secondly, and I don't mean this unkindly, I don't think it's unreasonable that Mr and Mrs M will end up paying back all of the money they'd borrowed from Yorkshire - and presumably enjoyed the benefit of. It's certainly not a reason for finding that Yorkshire treated them unfairly in consolidating their unsecured debts into the secured loan.

Lastly, I agree with the investigator that it's unlikely that consolidating the debt was a pre-condition of switching the mortgage to interest-only, given the eight-month gap between the two. But even if it was, I'd have no problem with that. I would consider it quite reasonable that a bank insist on its customers getting their lower priority consumer debt under control before it will consider offering forbearance on the mortgage.

my final decision

For the reasons set out above, my final decision is that I uphold this complaint in part only. In full and final settlement, I direct Clydesdale Bank PLC to reconstruct Mr and Mrs M's secured loan from 2013 to the present day, to reflect how it would have behaved if:

- it had been set up on a repayment basis with a term that corresponded to a monthly instalment of £600 a month; and
- Mr and Mrs M had paid the same payments that they have actually made during that period.

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 and Mrs M to accept or reject my decision before 13 January 2020.

Jeff Parrington
ombudsman