

Complaint

Mr and Mrs B's complaint is about problems they've had with how Cheltenham & Gloucester Plc (C&G - who are part of the Lloyds Banking Group) has administered a buy to let (BTL) mortgage on a property they own. There are several elements to the complaint but the crux of the concerns stem from two main issues.

Mr and Mrs B say:

- The correspondence address on their mortgage account was changed in error by C&G and this led to personal information being sent to a third party causing them distress and financial loss.
- C&G changed their mortgage product in July 2007 and added a product fee to their account without their agreement.

Background

In July 2005, Mr and Mrs B took out a BTL mortgage with C&G on a property Mr B already owned. The property was mortgaged but it was changing from a residential basis to a BTL basis and Mrs B was being added to the mortgage. The mortgage was taken out on a two year fixed deal that ran to July 2007.

In November 2017, Mr B telephoned C&G to get some information about the property. During these conversations, an issue was discovered with the correspondence address held by C&G. C&G's records showed the correspondence address as the BTL property address but Mr B said this was incorrect. He provided details of his home address, as he understood this to be the correct correspondence address. The address was updated on C&G's systems.

In March 2018, Mr B contacted C&G to raise concerns about a data breach. He explained he hadn't received all of the annual mortgage statements. He said he had found out in 2017 that C&G had reverted to sending the statements to the BTL property rather than his home address. He said that he hadn't authorised for the address to be changed. He explained that sending the statements and other correspondence to the BTL property had caused problems because the tenants had opened the mail, gaining access to personal financial information. He says this led to the tenants leaving the property and Mr and Mrs B losing out financially.

Lloyds Bank responded on C&G's behalf. It explained that its records show the mortgage is on a BTL basis but it wasn't until November 2017 that the correspondence address was recorded as Mr and Mrs B's home address. Prior to that, correspondence would have been sent to the BTL property. It also couldn't find any records (prior to November 2017) of correspondence being sent to Mr and Mrs B's home address. It invited Mr and Mrs B to provide evidence to show they had received letters at their home address for the BTL mortgage. It offered to pay Mr and Mrs B £200 in compensation but they rejected this.

Lloyds also responded to a query raised by Mr and Mrs B about why the balance of the mortgage is higher than the original amount they borrowed on an interest only basis. It explained this was because a product fee of £699 was added to the mortgage in July 2007.

Following this, Mr and Mrs B raised a new complaint about the product fee being added to the mortgage. They say that they didn't agree to it, want it removed and a refund of any

interest charged. They also queried how a credit check could be carried out for Mrs B on the BTL property, as she has never lived there.

Lloyds responded to the new complaint. It said its records show in July 2007 C&G provided quotes over the telephone for a new fixed rate and a switch was processed a couple of days later. It says a letter of confirmation was sent to the BTL property address, as this was the address it held at that time. It also explained that it was not a requirement to sign any documents in relation to the product transfer. Neither was it a requirement to carry out a credit search on either Mr or Mrs B. It provided Mr and Mrs B with referral rights to this service but explained that it believes they were out of time to raise this complaint.

I issued a provisional decision in June 2019. My provisional findings were as follows:

“Firstly, I’ve considered the complaint points Mr and Mrs B have raised about the correspondence address on their BTL property. I acknowledge that Mr and Mrs B are sure the correspondence address has been changed from their home address. So I’ve looked at the available evidence to decide whether C&G has made any errors.

When the BTL mortgage was first taken out Mr and Mrs B hadn’t yet moved to their current address. According to the mortgage application they were looking to sell another property, so it seems they had plans to move. C&G says that the land registry shows they purchased their current home in November 2005. This means that when the BTL mortgage was taken out in July 2005, the correspondence address couldn’t have been set up as their current address. So I need to consider if the address was changed at a later date.

Mr and Mrs B say they have other products held with the Lloyds banking group and their address was correctly updated in 2005 when they moved. C&G has provided a copy of its change notes held for the BTL mortgage account. I have looked at the notes and they don’t show a record of the correspondence address changing to Mr and Mrs B’s home address. There are notes from 2008 to show a bank account update and a minor update to the BTL property address. I acknowledge that Mr and Mrs B believe they updated all of their accounts at the same time, but I don’t think the weight of evidence supports that the correspondence address for the BTL mortgage was requested to be changed to their home address.

Mr and Mrs B say they have received correspondence relating to the BTL mortgage at their home address. They have provided some evidence to show this. I’ve looked at the pictures of letters they have sent but this is partial information and doesn’t show the full details of the letters – for example, a date is missing on one letter. Our investigator has asked them to provide full copies of the letters but I can’t see that this information has been sent. If Mr and Mrs B send full copies of the letters, I will be happy to review this information. But based on what I’ve currently seen, I can’t say that this evidence supports that correspondence about the BTL mortgage was sent to Mr and Mrs B’s home address before 2017.

Mr and Mrs B have asked this service to consider a telephone call Mr B had with C&G in November 2017. They say that this is where C&G admitted a migration error had led to the address being changed. C&G say that Mr and Mrs B’s mortgage account has always been set up and administered on the same system, so while some accounts were migrated between 2013 and 2017 theirs was not one of them. Since reviewing the complaint file, I have been able to obtain recordings of the calls between C&G and Mr B in November 2017. The reason for the calls seems to be about Mr B wanting to get information to help with the sale of the property. During one of the calls, there is a discussion about the correspondence

address held on the system. Mr B is surprised to learn the records show it as the BTL property address. The call handler says that the reason for the discrepancy "...probably, might have been during migration". In my view, the tone of the conversation was that the call handler was trying to find an explanation and offering possible reasons for the difference in address. I don't think it would be right to say the handler was making a clear admission that migration had definitely caused the address to be incorrect. Having considered this, I don't think this is strong evidence that a migration error caused correspondence to be sent to an incorrect address.

I can appreciate Mr and Mrs B's frustration that this call wasn't made available sooner. I have seen an email that was sent by Lloyds to Mr B on the 27 March 2018 that explains the content of calls – including that migration was offered as a possible reason for confusion with the address held. It also offered to send Mr B a copy of the calls if he wanted them but it doesn't seem they were ever sent. So while it is unfortunate that these calls weren't made available to this service sooner, I don't think information was clearly withheld intentionally – as Mr B has suggested. In any case, I have now reviewed it and considered it as part of my provisional findings. I will arrange for the call recordings to be shared with Mr and Mrs B, so they can comment on them in response to my provisional decision.

C&G has also provided copies of the mortgage statements it holds. The date range of statements it has provided is from January 2011 to January 2017. On all of these, the correspondence was sent to the BTL address. So this indicates that the correspondence address on the account has remained at the BTL property since at least 2011 until it was changed later in 2017. This is further evidence to support that the correspondence address for the mortgage account has always remained as the BTL property and not changed due to a migration error.

Mr and Mrs B have also raised concerns about Lloyds sending credit card statements for another customer to their home address. They say they were sent another customer's post due to a system migration error and question whether this was the same error that meant their statements were sent to the BTL address. I haven't considered anything to do with actual error of sending someone else's statements. I have only considered this point in relation to how this affects the complaint that C&G incorrectly changed the correspondence address on Mr and Mrs B's mortgage account. I don't think it does. There is little I can see that directly links the two issues. I can appreciate why Mr and Mrs B are concerned about receiving another customer's post but I don't think this in itself means there must have been a mistake made with the address held for their BTL mortgage on C&G's systems.

In summary – I don't think there is sufficient evidence to say C&G has made an error. I know Mr and Mrs B feel very strongly about this point and are adamant that the address has been changed – and this caused them distress and financial loss. But I currently don't think the weight of evidence supports that C&G have done something wrong. If Mr and Mrs B have further evidence to show that prior to November 2017 correspondence for the BTL mortgage was sent to their home address, they should send this in response to my provisional decision for me to consider.

C&G did make Mr and Mrs B an offer of compensation of £200 in relation to the problems with their address. Although further investigation has now been completed, C&G has confirmed this offer is still open. If Mr and Mrs B would like to accept this offer, they should contact C&G directly to arrange payment.

The other issue that I need to consider relates to a change in mortgage product applied to Mr and Mrs B's BTL mortgage account in July 2007. I first need to decide whether this complaint has been made in time. Currently I don't think that it was and I'll explain why.

The rules applying to this service say that, where a business doesn't consent (as C&G doesn't here), I can't consider a complaint made more than six years after the event complained of, or if later, more than three years after the complainants were aware, or ought reasonably to have been aware, of cause for complaint. This is outlined in Dispute Resolution rule 2.8.2R, which can be found online in the DISP section of the Financial Conduct Authority's handbook.

The product on Mr and Mrs B's BTL mortgage account was changed in July 2007, but they didn't complain about this until March 2018. So I'm satisfied that this part of their complaint wasn't made within six years of the event complained of.

This means I need to consider whether Mr and Mrs B complained within three years of when they ought reasonably to have been aware of cause for complaint.

When a consumer ought to have been aware of cause for complaint will depend on what they're actually complaining about. Mr and Mrs B dispute that they agreed to their mortgage product changing (and the associated fee being added to their account). They have also raised concerns about credit checks (or lack of) at the time the mortgage was moved to a new product in 2007. So this second point fundamentally relates to the first point. For this reason, I consider their complaint to be that a change was made to their mortgage product without their authorisation.

There is some evidence to support that Mr and Mrs B were aware that a new product had been applied to their mortgage and there was a charge – so ought to have cause for complaint.

Firstly, C & G have provided a copy of a letter dated 13 July 2007 addressed to Mr and Mrs B at the BTL property. This letter confirms the mortgage would be moving on to a special deal and also that there would be a charge added to the account. I think this information is sufficient for them to have been aware they had cause for complaint. I appreciate that Mr and Mrs B say that letters shouldn't have been sent to the BTL property because it wasn't the correspondence address. However, for the reasons I've explained above, my current view is that the correspondence address wasn't changed until November 2017. So I think it was reasonable for C&G to send this letter to Mr and Mrs B at this address. It is addressed correctly, so on balance I think it would have been received.

There is also other evidence that Mr and Mrs B were aware that there had been a product change and a fee would be charged. C&G has provided copies of its contact notes from around the time the new product was applied to the account. There is an entry for 11 July 2007 and the notes say "quotes to customer" and "advised cust non-refundable fee of 699". There is a further contact note for 13 July 2007, which states "CONV REQ, 6.23 FIXED FOR 2 YRS FEE 699". This information supports that Mr and Mrs B were aware a new product was being arranged and there would be a charge.

So based on this I think the three-year part of the rule started in July 2007. The contents of the letter and telephone notes ought reasonably to have made Mr and Mrs B aware of cause for complaint.

To summarise, I think Mr and Mrs B ought to have been aware they had cause for complaint in July 2007 – meaning they would need to complain by July 2010. As three years from July 2007 doesn't extend the six year time limit, Mr and Mrs B's overall time to complain expired in July 2013. Their complaint wasn't made until March 2018, outside of the time limits that apply.

Finally, I'm allowed to investigate complaints made outside the time limits where I'm satisfied the failure to comply with the time limits was as a result of exceptional circumstances. But Mr and Mrs B haven't told us about any potential exceptional circumstances explaining the delay. So based on what I've seen so far, I'm satisfied that exceptional circumstances don't apply in this case. If Mr and Mrs B do have any other information they would like me to consider, they should send it in response to this provisional decision.

So this means I can't consider this part of the complaint further. I do acknowledge Mr and Mrs B have made further comments about there not being a written acceptance of the product change. This includes the concerns they raised about C&G providing contradictory information about the availability of a signed acceptance. It also includes the problems they describe in trying to get information relating to a telephone call made in April 2018. As these concerns clearly stem from the complaint about the product change in July 2007, the same time limits apply. It isn't a case of ignoring what Mr and Mrs B have said, but instead that I don't have the power to comment or consider these complaint points because this part of the complaint is made of time.

Mr and Mrs B have also raised concerns about the way C&G have dealt with them whilst trying to get information and explanation of their complaint points. As I mentioned earlier, I can see that M and Mrs B were frustrated when they didn't receive information they asked for. I also acknowledge that C&G haven't answered every point Mr and Mrs B asked them to. But I don't think this means C&G has treated them unfairly. I am satisfied that C&G answered the crux of the complaint in its responses and Mr and Mrs B were given the opportunity to refer their complaint to service for an independent review. So I'm not currently persuaded C&G need to do anything more in this respect."

I invited both parties to respond. C&G made no further comments. Mr and Mrs B did respond and made further comments on my provisional decision. In summary, they said:

- They were told in a call in November 2017 that their address had been changed by a system migration. C&G not sending a copy of November 2017 call has caused a large and expensive waste of time. Even though C&G said the issue was due to migration the ombudsman is not taking that as an answer.
- They sent letters to C&G to show proof they had received correspondence at their home address but they have since been told these letters can't be found.
- They would like C&G to provide copies of mortgage statements from 2009, as they believe these will show correspondence coming to their home address.
- They didn't agree to a product switch in 2007. They were living at their current address and no quotes were provided. They don't understand why there is no signed documentation or credit search needed for the rate change. They question why a member of Lloyds' staff told them in a telephone call on the 6 April 2018 that there was a signed documentation from 2007.

- They didn't notice they had stopped receiving statements in 2011 from C&G due to exceptional circumstances. They said they would rather not provide all the details but said their daughter had been very ill. Because of this the buy to let property wasn't at the forefront of their minds.
- They raised a complaint about information they were given in a telephone conversation on 6th April 2018 – so this complaint has been made in time. They submitted a complaint form about the information discussed in this call and it hasn't been investigated by the ombudsman service.

Mr and Mrs B also provided further copies of correspondence they had previously sent to this service – these are:

- A complaint form relating to misinformation given by Lloyds during telephone call in April 2018.
- Emails from Mr B sent to this service on 21 February and 11 and 13 March 2019.

My findings

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

I've thought carefully about the points Mr and Mrs B made in response to my provisional decisions, but I'm not persuaded to change my findings. I'll explain why.

I've looked at Mr and Mrs B's comments about the November 2007 call where a data migration error was discussed. As I explained, this call was located and shared with Mr and Mrs B and they were given the opportunity to comment. During the call a migration error was suggested as a reason for the BTL address being held on the system. However, the context of the conversation is important to consider when deciding whether C&G has made an error in changing the address on the account. I think it's clear the call handler was offering Mr B a potential explanation for the address on the system being different to what he expected. I don't find that this conversation is a conclusive admission that a migration error caused the address to change on the system. Put simply, I think there is a difference between offering a suggestion and admitting a fault. For this reason, I don't think this call supports that C&G incorrectly changed the correspondence address on the account.

Mr and Mrs B say they sent a number of letters to C&G, dated from 2009, to show they had received correspondence relating to the BTL mortgage at their home address. They say C&G now says that the letters never existed. Unfortunately, Mr and Mrs B haven't been able to provide copies of the letters they sent. This means it is very difficult to know exactly what information was in these letters. I did ask Mr and Mrs B to send me anything else they had to show that they had received correspondence about their BTL mortgage at their home address before 2017. This would allow me to establish if there is evidence to support that the correspondence address has been changed. I haven't received anything further from them. I explained in my provisional decision that I wasn't persuaded that the previous pictures they had sent supported that the address had been changed. I have carefully considered the further points made by Mr and Mrs B on this subject but they don't change my thinking.

Mr and Mrs B have requested that C& G send them statements from 2009. Unfortunately, due to the time that has passed C&G says it no longer holds statements before January 2011. This means they cannot provide any further statements. I accept it would be beneficial to have the full statement history to see how they were all addressed. But the fact there aren't statements before 2011 isn't enough for me to say that C&G made an error and changed the correspondence address on the account. I understand Mr and Mrs B feel evidence is being withheld but I haven't seen anything to suggest this is the case. So again, I haven't found reason to change my thinking on this point.

Mr and Mrs B have reiterated that they didn't agree to the mortgage product switch in July 2007. They also raised concerns about the lack of a signed agreement despite being told in a conversation in April 2018 that there was a signed document. I explained in my provisional decision that this part of the complaint had been made outside of the time limit rules that apply to this service. I don't think Mr and Mrs B have raised anything new that would make me think the complaint was made in time.

I've considered the concerns Mr and Mrs B raised about the April 2018 and time limits. They say as the call happened within six years of them making their complaint, it was made in time. However, when considering the rules I need to be clear about the complaint event and the date of that event. I've looked at the complaint form Mr and Mrs B completed. This explains their concerns are about:

“Changing the product and adding a charge in July 2007: Lloyds bank have added a £699 charge to the mortgage account in 2007 saying we changed the product, and they have signed paperwork relating to this along with telephone calls of agreement to the change. It was a call on the 6th April 2018 in which Lloyds bank said they have signed paperwork.”

They also raise further concerns about getting a copy of the signed paperwork, a transcript of the April 2018 call and customer service relating to this. Having considered all of these points carefully, I'm satisfied that these concerns all result from the same event – that is the product change, which occurred in July 2007. So for the reasons explained in my provisional decision, any complaint points that result from the July 2007 product change aren't things I can look into as they've been made out of time.

I'm allowed to investigate complaints made outside the time limits if either C&G consents to this, which it hasn't, or if I'm satisfied they are as a result of exceptional circumstances. Mr and Mrs B have provided details about their daughter's health that meant the BTL mortgage wasn't at the forefront of their minds. I have a great deal of sympathy for them and I have no reason to doubt what they've said. But I'm also conscious that they've told us they were contacting Lloyds about other matters (for example when they received correspondence for another customer) during the time period they had to raise their complaint. So I'm satisfied that overall they could have made their complaint within the time limit had they intended to do so. As I'm not persuaded exceptional circumstances apply, I'm afraid this isn't a complaint we can consider.

I do understand Mr and Mrs B feel very strongly about this complaint. But as I've found this part of their complaint was made too late, it isn't something our rules allow us to investigate.

I've re-read the emails that Mr B sent to this service in February and March 2019. I can confirm I did consider these in reaching my provisional decision. I appreciate that Mr and Mrs B have requested answers to specific questions but I've concentrated on the crux of this

complaint. And for any points relating to the product change in 2007 – as I've explained - I'm unable to comment on these as this complaint falls outside of our time limits.

For the reason I've explained above and those in my provisional decision, I don't uphold Mr and Mrs B's complaint about the address held on their BTL mortgage account. I also think that their complaint about the product change on their BTL mortgage in 2007 was made out of time.

My final decision

I don't uphold Mr and Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 21 September 2019.

Daniel Little
Ombudsman