

The complaint

Ms W complains that Lloyds Bank PLC defaulted her commercial mortgage and appointed Law of Property Act receivers to manage the property on her behalf, including collecting rent.

What happened

Ms W has a loan with Lloyds secured over one building divided into several separate units, including Ms W's home, commercial premises, and other units let to residential tenants. Although sub-divided, it appears the property is registered under one title entry at the Land Registry. Ms W is a sole trader, qualifying as a micro-enterprise under our rules.

The loan was taken out in December 2014. Ms W borrowed around £152,000 over 15 years at an interest rate of 4.21% above base rate. In December 2015 she borrowed around a further £59,000, again over a term of 15 years, at 4.25% above Bank of England base rate, from. Both loans were taken out on a capital repayment basis.

There have been a series of problems with the loans over the years. Lloyds has issued defaults on at least two occasions following periods of arrears, and Ms W has made a series of complaints about how Lloyds has treated her.

Another ombudsman issued a final decision on Ms W's earlier complaint, in October 2020. He said complaints about how Lloyds had treated Ms W before May 2020 couldn't be considered, because Ms W hadn't referred those complaints to us in time. And he said Lloyds's decision to refuse to allow Ms W to switch from a commercial mortgage to a buy to let mortgage was reasonable. That was because the property includes commercial elements as well as residential elements, so isn't suitable for a buy to let mortgage, and if the property title were to be split the commercial element on its own doesn't generate enough income to support a commercial mortgage that could be split off from the residential element. The ombudsman said Lloyds had given fair consideration to her application but had acted reasonably in declining it.

In this complaint, I won't be revisiting anything that was considered by the previous ombudsman – or that he said we couldn't look at. Instead I'll focus on what has happened more recently, leading up to Lloyds' decision to default the loans and appoint receivers in 2023.

During the coronavirus pandemic, Lloyds agreed to convert the loans to interest only to assist Ms W. The interest only arrangement came to an end in January 2021. Ms W then missed the payments due in February 2021. Lloyds agreed a further period of interest only until September 2021.

Ms W again missed payments in October and November 2021, when the loans converted back to repayment terms. Lloyds then agreed a further three months on interest only terms, until February 2022.

During 2022, Ms W mostly made the payments expected, though not always on time. However, the loans remained three months in arrears because of the missed payments in

February October and November 2021.

Lloyds asked Ms W to bring the loan up to date. It said it was willing to consider further arrangements. Ms W made various proposals, but Lloyds didn't agree to them. She asked for the loans to be converted to interest only, she asked about splitting the property title and re-financing, and she asked about taking further borrowing to develop the property and sell off parts of it. She also asked about taking a smaller amount of further borrowing to consolidate other debts and give her funds to make payments to these loans.

Lloyds didn't agree to those proposals. It said it had already given Ms W over 18 months of interest only concessions – which was substantially more than it would usually give – and extending that wouldn't help bring the debt back under control. It didn't think splitting the property title was a viable option, and it wasn't prepared to consider lending Ms W further money while these loans were not up to date.

When no agreement could be reached, Lloyds issued final demands and defaulted the loans. This means that it brought both loan agreements to an end, and it no longer expected Ms W to make monthly payments – instead it now wanted the entire loan balances repaid. It also stopped charging interest to prevent the capital balances growing further in the meantime.

Over the next few months, Ms W made further complaints about Lloyds. She also made additional payments, which she said meant the loan was no longer in arrears.

In May 2023 Lloyds appointed receivers to manage the property and collect the rent. It said it was entitled to do so under the loan terms and conditions, because the entire balances were outstanding, and Ms W hadn't made proposals to repay.

Ms W complained. She said it wasn't fair that Lloyds appointed receivers. It hadn't followed proper procedures, and in any case the loans were no longer in arrears. The receivers were requiring her tenants to pay all rent to them, which left her with no income and no ability to service her other debts. She wanted the property returned to her and the loans reinstated.

Lloyds said that it had acted properly and fairly. It said that while Ms W had made additional payments since the loans had defaulted, that was too late – now that the entire sum was due, it was no longer a question of making up missed monthly payments. The extra she had paid was used to reduce the outstanding balance, but it would still require Ms W to repay the rest.

Our investigator didn't think Lloyds had acted unfairly, so Ms W asked for an ombudsman to review her complaint.

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.

I'm sorry to hear of the difficulties Ms W has experienced. Among other things, she's explained that she experienced a family bereavement in February this year, and I hope she'll accept my condolences on her loss.

However, I'm afraid I don't think I can fairly uphold her complaint. When Lloyds issued the default notices and called in the loans (in January 2023, before her bereavement), Ms W was in around three months' arrears. She'd been experiencing difficulties with the loans for some years – since well before the coronavirus pandemic – and I think it was reasonable for

Lloyds to conclude that it had reached the point where there was no more forbearance it could offer that didn't risk making things worse.

I appreciate Ms W doesn't agree that the loan was in arrears at this point. But she had missed payments in 2021 and 2022, at the end of interest only concessions. And while she'd kept up with the payments since, payments hadn't always been made on time and the missing payments hadn't been made.

There's been some confusion about the arrears. That's because Lloyds has at times suggested Ms W's arrears stemmed from missed payments in late 2022. And, as she's pointed out, she did in fact make those payments.

That confusion arose because on occasions where Ms W did make her monthly payment but made it after the due date, Lloyds treated the payment as missed and added it to the arrears at the due date, and then used the payment when it was made to offset the oldest missed payment.

For example, as at March 2022 Ms W was three months in arrears. She then missed the March 2022 due date, meaning Lloyds then treated the account as being four months in arrears. When Ms W made the March 2022 payment a short while after the due date, instead of treating it as the March 2022 payment Lloyds treated it as being a contribution to the arrears. The net effect was that Ms W's loans were in the same position – three months in arrears – but instead of saying she'd missed the February October and November 2021 payments, Lloyds now said she'd cleared the February 2021 arrears and missed the October 2021, November 2021, and March 2022 payments.

Overall, this didn't make any difference to the position of Ms W's accounts. She was consistently three payments in arrears. But this did lead Lloyds to tell Ms W she had missed payments in 2022 when she didn't believe she had – and led her to question whether she was in arrears at all.

Ms W also doesn't agree that she missed those payments. Her loan payments were taken from a business bank account used solely for servicing the loan – the loan servicing account. She says she paid sufficient to cover those payments into the servicing account. However, she only paid in enough to cover the interest only payments, but the interest only arrangement had come to an end at those times. Although it was later renewed from December 2021 to February 2022, at the time of those payments Ms W was required to pay the full amount including capital. So when Lloyds tried to take the loan repayments from the servicing account, because Ms W had only paid in the interest element, there wasn't enough in the account to cover the payments and the payments bounced.

Ms W doesn't think this was fair. She says Lloyds should have continued to treat her as being on interest only terms. But I'm afraid I don't agree. The interest only arrangement only ran up to September. After that it reverted to capital repayment. Lloyds did try to discuss next steps with Ms W but wasn't able to. Once it had done so it agreed a further short arrangement until February 2022.

I don't think Lloyds was required to extend the interest only arrangement. Ms W says coronavirus was still a wider issue at this time. But that doesn't mean Lloyds wasn't entitled to repayment. As it points out, Ms W's income for servicing this loan was from renting out the property, and that continued during the pandemic period. It had already offered a very substantial interest only arrangement, and it wasn't unreasonable to want to review Ms W's situation before agreeing to an extension, and to think about how the loan was going to get back on track in the long term.

Throughout 2022, Lloyds was in discussion with Ms W about her accounts and what could be done to bring them back on track. It explained she would need to make up the arrears and tried to agree plans for doing so. But Ms W wasn't able to do that, or didn't agree that she was in arrears. And her plans for getting things back on track either involved further borrowing – which Lloyds wasn't willing to agree – or a further period of interest only.

I think it was reasonable that Lloyds wouldn't agree further borrowing. I don't think increasing Ms W's debts, and the amounts she'd have to pay each month, would have helped her resolve her problems – especially as at one point she asked for further borrowing to give her funds to make the payments on this loan. She also asked for further borrowing to develop the property and sell off part of it to repay – but in the circumstances it was reasonable for Lloyds to be sceptical about offering substantial extra borrowing to finance a speculative plan when Ms W was already struggling to raise enough income from the property to service her existing debts.

I also think it was reasonable that Lloyds wouldn't agree to a further period on interest only terms. It had already offered around 18 months, a substantial period. By the end of 2022 there would only be seven years left on the term of one of the loans, and eight years on the other. Extending the period on interest only would mean that Ms W would have an ever shorter period to repay the remaining capital balance. This would mean higher payments once she did resume repaying the capital. So it was reasonable for Lloyds to be concerned about whether Ms W would be able to afford to do so once the loan converted back to repayment terms. Converting to interest only wasn't a long term solution if Ms W's income from the property simply wasn't enough to service the loans and also support her.

Ms W has referred to the regulator's consumer duty, but that doesn't apply here – both because these are commercial loans not regulated consumer products, and because in any case the consumer duty only applies to things that happened on or after 31 July 2023. And in the same way, the government's mortgage charter for residential mortgages doesn't apply either.

These are unregulated loans, so there aren't specific rules Lloyds had to follow. But I think Lloyds did offer Ms W fair and reasonable support. It offered her 18 months on interest only terms to give her some breathing space to explore getting things back on track or re-financing, and even after that engaged with her for a further year to try and resolve things. I can see Ms W did explore re-financing, but was unwilling to go ahead with applications because of the fees involved. Lloyds isn't responsible for advice and application fees charged by other brokers and lenders – such fees are typical in these types of lending, in my experience.

Under the loan terms and conditions, Lloyds was entitled to call in the loans if Ms W was in breach – which included missing payments. It was also entitled to appoint receivers, and didn't need a court order to do so.

Lloyds noted that Ms W had struggled with these loans for a number of years, and that the income from the property wasn't enough to allow her to comfortably service them. It had offered Ms W support over several years without her being able to get things back on track. I think it reasonably concluded that there weren't any further options it could offer, and that it needed to bring the loans to an end. And when, five months after it issued the defaults, Ms W hadn't made proposals to repay the balances, it reasonably appointed receivers to take over the properties and repay the loans.

Ms W points out that she had made the monthly payments between the default and the appointment of receivers. And she'd also paid extra to cover the earlier missed payments. But as the loans had by then been brought to an end, the monthly payments were no longer

due. Lloyds required her to repay the entire balances, and used the payments she did make to reduce the debt. It also stopped charging interest to ensure all payments she did make were used in that way. Lloyds had cancelled two previous defaults, most recently in 2019, when Ms W brought the loans up to date, but it wasn't prepared to do so again this time. I think that's fair in all the circumstances.

I can't consider the fairness of the actions the receivers have taken. Although appointed by Lloyds, they act as Ms W's agents in managing the property on her behalf. So any concerns she has about the actions of the receivers will need to be raised with them directly.

My final decision

For the reasons I've given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 2 November 2023.

Simon Pugh
Ombudsman