DRN-4179729

The complaint

Mrs H has complained to Lloyds Bank PLC about advice she and her late husband were given to take interest-only mortgage borrowing to fund the purchase of an overseas property. Mrs H says the mortgage was mis-sold and she was advised to purchase the property investment. In addition, Mrs S says that she received poor service from Lloyds when it repeatedly contacted her at the end of the mortgage term whilst her husband was in severe ill-health.

What happened

Mrs H and the late Mr H had existing interest-only borrowing with Lloyds secured against their home, which was due to be repaid in 2011. It appears that in 2005 a further advance of £110,000 was taken – also to be repaid in 2011. The additional mortgage borrowing, along with the proceeds of the sale from an existing overseas property, were then used to purchase another overseas property.

The mortgages were given short term extensions in 2011 and then 2013, and the outstanding amount was approximately £368,000. Around that time, it's recorded the overseas property was valued at £700,000 or more.

I note Mrs H says the advice to carry out these transactions was given in 2003 and was driven by the recommendation of their Lloyd's branch manager – whom they also had a social relationship with.

Mrs H has explained the intention was that the overseas property would be used as a means of generating funds to clear all the interest-only mortgage borrowing, but in reality, the value of the overseas property significantly fell, and was ultimately sold in 2021 for £167,000 at a loss from the £367,000 purchase price.

Mrs H made her complaint to Lloyds in 2021 when the overseas property was sold. She also raised concerns about its behaviour and excessive contact attempts it made when Mr H was severely unwell, and it was a stressful time.

Lloyds responded to Mrs H stating that the complaint about the sale of the mortgage had been made too late and was out of time – so didn't comment on its merits. In relation to the amount of contact it made at the end of the mortgage term, it didn't consider it had acted excessively.

Unhappy with Lloyds response, Mrs H referred the complaint to the Ombudsman Service. She said it wasn't until the overseas property was sold at a loss in 2021 that she knew she had cause for complaint about the mis-selling of the mortgage.

One of my ombudsman colleagues considered whether the complaint had been made in time and issued a decision in January 2023 concluding it was something we could deal with under our rules.

The complaint was passed back to one of our investigators to look at review the merits of the complaint. The investigator concluded that whilst Lloyds did make quite a few attempts to contact Mrs H and her late husband whilst he was unwell, it hadn't acted unreasonably as Mrs H had failed to pass identity verification checks on several occasions.

Having reviewed the suitability of the mortgage advice, the investigator referred to Lloyds' obligations under the Mortgage Conduct of Business ("MCOB") rules set out in the FCA Handbook. In summary, she said that when the mortgage was taken out it was reasonable for Lloyds to conclude the mortgage was affordable, and to accept the value of the overseas property would be sufficient to be reasonably used as a means of repaying the borrowing at the end of the mortgage term. The investigator also commented that had Mrs H sold the overseas property at the original end of the mortgage term it would have generated more than sufficient funds to repay the debt and generated a profit.

Mrs H disagreed with the investigator and provided a detailed response to each section of the investigator's assessment and asked for a fresh review by an ombudsman. For the sake of brevity, I have not repeated all the representations again here, but I have reviewed and considered them in full. But I have paraphrased some of the key points Mrs H made:

- The mis-selling took place in 2003, at which time she was already retired.
- Lloyds advised to buy the overseas property as an investment and the sale proceeds would repay the mortgage and leave a profit.
- The complaint is about mis-selling and negligent mortgage advice.
- She does not accept that there was a mortgage extension agreed, and it was not Lloyds' policy to provide extensions for customers at retirement age.
- The non-stop calls from Lloyds were very stressful due to personal circumstances – which were daily at some points.
- It was unknown to Mrs H that she had failed identification security checks and she uses online banking where notifications can be read.
- The mortgage application forms were completed by the Lloyds branch manager, who never discussed repayment or affordability, other than to the extent that the overseas property would be an excellent investment.
- The mortgage extensions were not requested but rather put in place by the manager who was also a close friend and completed all the forms.
- Lloyds acted in breach of MCOB, and this is analogous to other complaints considered by the Financial Ombudsman Service which have been upheld.

As no agreement could be reached, the complaint has been passed to me for a decision to be made.

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.

Firstly, I should acknowledge that I appreciate in addition to the financial impact of this complaint, it has been stressful for Mrs H to have to deal with. I thank her for her patience whilst I've fully reviewed everything and made my decision.

I've reached much the same conclusions as the investigator, and whilst I appreciate this will come as a disappointment to Mrs H – I'll explain why.

<u>Customer service – frequency of telephone calls</u>

It is entirely understandable that Mrs H would have found it distressing to repeatedly receive telephone calls from Lloyds at a time when both she and Mr H were dealing with serious health issues.

As a starting point, I think it's reasonable to expect Lloyds would have been trying to speak with Mrs H or Mr H about how the mortgage was going to be redeemed, given that the original term expired in 2011 and the initial extensions ran until 2016.

Whilst it would have been distressing to have to take calls in their personal circumstances, a mortgage is a significant financial commitment, and it is important that Lloyds could establish and agree what would be happening about repayment – also to provide certainty to Mrs H. From the contact notes Lloyds has provided, it appears that it wasn't aware of Mr H's ill-health until being told in December 2020.

The position was compounded by unsuccessful contact attempts – and Mrs H explaining it was important that the phone line be kept clear. Although Mrs H had asked for Lloyds not to continue calling, it would not have been able to act upon that request without having confirmed her identity first.

Overall, whilst I don't underestimate the distress the telephone calls created for Mrs H; I can't say that Lloyds acted unreasonably in its actions.

<u>Mortgage and investment advice</u>

The focus of this complaint has very much been upon the advice given to Mrs H and her late husband when the mortgage was taken out. But in her correspondence, it's clear that Mrs H also considers Lloyds to be responsible for the investment advice also. I've carefully considered this point.

Whilst I have no doubt that the Lloyds branch manager would have discussed the overseas property investment with Mrs H and her husband, I've not seen anything to persuade me that was in the form of formal investment advice.

The branch manager was a close friend, who had in fact used their previous overseas property for a holiday. So, I consider it likely he would have talked about the benefits of the new overseas property, and he would have needed to consider its viability to be used as a repayment vehicle for the interest-only mortgage borrowing. But, on balance, I don't think he would have been able to fully advise on the investment benefits of the property itself – which is a different thing.

I've focussed on the requirements placed upon Lloyds providing the mortgage which were in force at the time. MCOB 4.7.2.R states:

> *"A firm must take reasonable steps to ensure that it does not make a personal recommendation to a customer to enter into a regulated mortgage contract, or to vary an existing regulated mortgage contract, unless the regulated mortgage contract is, or after the variation will be, suitable for the customer".*

MCOB 4.7.4R goes on to state:

> *"(1) a regulated mortgage contract will be suitable if…*
>
> > *(a) the customer can afford to enter into the regulated mortgage contract;*

(b) the regulated mortgage contract is appropriate to the needs and circumstances of the customer…"

I note Mrs H has explained they were in retirement when the mortgage was taken, but I'm satisfied it was affordable on an interest-only basis – and this is supported by the fact the mortgage was maintained until ultimately being redeemed years after the initial mortgage term. So, the key consideration for me is whether there was a credible repayment vehicle in place.

When the further mortgage advance of £110,00 was taken in 2005, it was to raise funds to purchase the replacement overseas property for £367,000. As that was an investment property, and they weren't reliant upon it as their main residence, it could have been sold at any time. On the face of it, I think it's a reasonable assumption that it could have been used as a credible repayment vehicle for the mortgage.

I appreciate that unfortunately by the time the overseas property was eventually sold in 2021, it was at a substantial loss and didn't generate sufficient capital to repay the mortgage. However, that was over 15 years after the mortgage was taken out, and at the time the mortgage term initially expired in 2011, the valuation of the property was more than £700,000. So, even if it had been marketed at an undervalue for a quick sale, it should have generated more than sufficient sale proceeds to clear the borrowing at that point in time.

In any event, I'm required to consider what Lloyds knew and relied upon at the point the mortgage was taken, as we now know everything else with the benefit of hindsight. Given that the purchase price of the property at outset was £367,000 – I think it's reasonable for Lloyds to have considered it as a credible means of repayment even allowing for market fluctuations.

So overall, I'm satisfied the mortgage advice and lending was suitable and appropriate for Mrs H and Mrs H's needs and circumstances set out at the time – and I can't say that Lloyds did anything wrong.

Mrs H has referred to other published decisions issued by the Financial Ombudsman Service. Whilst I have reviewed those, we are required to consider each complaint individually and on its own facts. The conclusions I have reached are based upon what I consider to be fair and reasonable taking account of everything in the specific circumstances of Mrs H's complaint.

I realise that my decision will come as a disappointment to Mrs H. But I must assure her that I've reviewed everything in full and impartially. Whilst I appreciate this is not the outcome Mrs H was hoping for, I hope it brings her some closure to the matter and resolves any uncertainty.

My final decision

My final decision is that I don't uphold Mrs H's complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 2 October 2023.

Ross Hammond
Ombudsman