DRN-4507386

The complaint

Mr A is unhappy that Lloyds Bank PLC wouldn't allow him to take a new fixed interest rate product. He also says that Lloyds hasn't treated him fairly when he's been in arrears, adding fees to the mortgage and taking legal action.

What happened

Mr A took out this mortgage in 2006, borrowing around £200,000 on a repayment basis over a 21-year term. A further advance was taken in 2008. At the same time a new fixed rate product was taken out, and the entire mortgage was moved to interest-only.

The last preferential interest rate product on the mortgage was fixed at 5.69% until 30 June 2011 and since then the mortgage has been on the standard variable rate ("SVR").

The mortgage went into arrears, and Lloyds took legal action with a suspended possession order being granted in May 2010 on the basis Mr A paid his contractual monthly payment ("CMP") plus £100 each month. The remaining arrears were then capitalised in March 2012.

Unfortunately the account went back into arrears in October 2012 and eviction dates were obtained in March 2013, January 2014 and May 2014, each being cancelled when Mr A made arrangements to pay.

A further court hearing took place in July 2014 with a new payment arrangement being set at CMP plus £350 a month. Further eviction dates were booked for October 2014 and September 2015, again both were withdrawn.

In 2015 a complaint was made by a claims management company on behalf of Mr A. Lloyds responded on 10 June 2015 and in that it summarised the complaint as:

- You sent a complaint regarding Default Charges on 14 January 2015 but have not had a response.
- You would like a response and for a full refund of the relevant charges applied to the mortgage account of your client.

Lloyds said it hadn't received the earlier letter and said that, whilst the fees were correctly charged, it would remove £516 of fees (plus £174.72 of interest) from the mortgage account. It also said it would pay £50 compensation directly to Mr A.

In September 2017 a further court order was obtained by Lloyds, with an eviction date booked for November 2017. That eviction was also cancelled and then Mr A cleared his arrears in April 2018.

The account transactions from August 2021 until September 2023 were as follows:

Date	Payment made	Payment due

August 2021	£508.97	£508.97
September	£408.97	£508.97
October	£608.97	£508.97
November	£308.97	£508.97
December	£506.17	£508.97
January 2022	£200	£508.97
February	£508.97	£546.20
March	£546.20	£607.57
April	£607.57	£607.57
May	£507.57	£668.47
June	£368.47	£729.22
July	£129.22	£729.22
August	£400	£791.40
September	£0	£915.09
October	£139.46	£915.09
November	£1,053.08	£1,041.74
December	£811.41	£1,228.90
January 2023	£717.99	£1,228.90
February	£1,928.40	£1,353.69
March	£1,442.24	£1,479.43
April	£2,100.24	£1,479.43
May	£588.33	£1,539.06
June	£0	£1,597.11
July	£0	£1,597.11
August	£0	£1,734.75
September	£404.70	£1,806.62

On 20 September 2022 Mr A called Lloyds in response to a letter he'd received in August which had asked him to make contact, but he said he'd been unable to get through on the number provided. He was told it was likely that Lloyds wanted to speak to him about the arrears on the account. As Mr A had just got back from work he said he couldn't provide detailed information about his income and expenditure at that time and it was left that he'd call back on 26 September. A complaint was raised about the problems getting through on the phone.

Lloyds responded to that complaint on 23 September. It apologised and explained that it had received very high call volumes at the time. Lloyds asked him to call again to complete the discussion and to set a plan to clear the arrears.

As there was no further contact from Mr A, and the payments weren't being maintained Lloyds instructed its solicitor on 2 November to recommence legal action.

Mr A called Lloyds on 9 November as he'd received a letter and wanted more information about the potential eviction. He was given up to date information about his arrears situation and he said he'd call the evictions team the following day (as their office was closed by the time of the call).

On 10 November Mr A called back as he wanted to get the eviction stopped and to put an arrangement in place. He said he was struggling because the payment was going up, but his income remained the same so asked if he could arrange a new fixed rate product. Lloyds said it was unlikely he would be able to get a rate whilst he was in arrears and no arrangement could be set as Lloyds required the full arrears to be cleared. It said that, other than the recent complaint, it hadn't received any contact from Mr A since 2020 despite writing to him about the arrears, and the arrears were worsening again so it had no option other than to enforce the possession order unless the arrears were cleared in full. Lloyds told Mr A that whilst it couldn't set a formal arrangement on the account, it would never stop him paying and he should pay as much as he could each month. It also said he should seek independent debt advice.

Mr A called Lloyds again on 15 November. He said he'd been out of work in July and had started working again in August. He said he didn't make the full mortgage payments as he was clearing other bills, and having spoken to a debt advice service he wanted to set an arrangement to repay the arrears. Mr A was told the legal action would only be cancelled if the full arrears were repaid.

As there was no further contact from Mr A Lloyds, on 10 February 2023, instructed a third-party agent to carry out a pre-eviction visit to the property.

On 17 February Mr A called Lloyds as he'd received a letter from the third-party agent about the visit. Mr A provided information about his income and current situation. A further complaint was raised in that call. The notes indicate the complaint was that Mr A:

- was unhappy with the amount of letters and what they entailed, and
- felt that if he had been able to set an arrangement in November 2022 then he wouldn't be in this situation.

The notes indicate the complaint was resolved over the phone with Lloyds explaining why the letters needed to be sent, and why an arrangement couldn't be put in place in November 2022.

The income and expenditure information from February 2023 indicated Mr A had £1,900 a month available to pay to this mortgage.

On 2 March 2023 Mr A referred the complaint to our service. In our complaint form he summarised his complaint as:

- *"I called the bank to fix my interest rates. They refused to come back to me or agree on an arrangement to settle my arrears. They have threatened to bring in bailiffs to reposess* [sic] *my house."*
- *"I am in arrears and struggling very hard to settle the arrears, which has worsened because they refused to act."*

- *“I want them to return the interest to where it was and pay me back all the charges and fees they keep adding to my account.”*

Lloyds looked at the points it hadn’t previously considered and issued a new complaint response on 31 March 2023. It didn’t uphold the additional points and so Mr A wanted to progress his complaint with our service.

When Lloyds provided its file to our service it said its policy had changed since its response to the complaint had been issued in March. It said it could now offer a mortgage review to customers in arrears to see if there is a suitable new product for them. Lloyds said there were still other criteria that had to be met and a full review was required to go through an application, but if Mr A contacted it and made a successful application then it would backdate that new rate to 1 May 2023.

Our Investigator considered the complaint and said she didn’t think Lloyds had treated Mr A fairly. She said Lloyds had an opportunity to look at Mr A’s circumstances, and had it done so she thought a new fixed rate should have been offered to Mr A in March 2023 as a forbearance measure. She also said she didn’t think the most recent legal action was fair. To put things right she said Lloyds should rework the account as if a fixed interest rate product was in force from March 2023, refund the recent legal fees charged and pay £350 compensation to Mr A.

Lloyds didn’t agree and so the case was passed to me to decide.

In November 2023 I issued a decision about our jurisdiction to consider this complaint. In that I said:

> *“For the reasons I’ve explained, our service only has the power to consider the fees and charges part of this complaint in respect of any fees and charges incurred since 3 March 2017.*
>
> *In respect of the other parts of this complaint, we can consider all of those as they all took place within the six years leading up to this complaint being made.”*

I then considered those points and issued a provisional decision to set out my thoughts on them.

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 issued my provisional decision in November 2023, the findings of which said:

“<u>New preferential rate product</u>

As the mortgage is on the SVR, it means Mr A must pay more each month than if a preferential interest rate was available. I accept that it’s not as easy for him to pay a higher payment, and he’d rather pay less.

I’ve carefully considered all the circumstances of this case and the issues Mr A has faced. It’s clear things have been very difficult for him for a long time – the suspended possession order in May 2010 noted arrears at that time of around £18,000 - and the account has been in arrears on and off over the term.

Mr A cleared the arrears in April 2018 and, whilst his payments weren’t regular set amounts, his account remained broadly up to date.

I’ve not seen any evidence to show that Mr A asked for a new preferential interest rate product at any point before November 2022 so that is the date I’m considering this part of the complaint from.

In general, Lloyds’s criteria at that time was that a borrower in arrears isn’t eligible for a new fixed rate. And there were good reasons for that – a borrower in arrears is more likely to end up selling the property or even have it repossessed, which would add an early repayment charge.

However, notwithstanding the eligibility criteria, there are circumstances in which it might be fair to expect a lender to offer a new fixed rate. For example, where the borrower’s circumstances are such that a reduction in the interest rate is enough to make the mortgage affordable and bring it back on track. Our Investigator thought this was one such case and recommended that Lloyds offer Mr A a new rate, backdated to 10 November 2022. In some cases I would agree with our Investigator, but having considered Mr A’s mortgage status, transaction history and contact notes very carefully I’m not persuaded Mr A should have been offered a new rate at that time.

Mr A has said he struggled due to the SVR increasing, leading to his contractual monthly payments going up. But looking back to September 2021 which was just over a year before Mr A requested a new rate and five months before the SVR started to increase, he underpaid three out of the five months (between September 2021 and January 2022). Although he overpaid in October 2021, that was only enough to cancel out the September 2021 underpayment. He then underpaid by £200 in November 2021, and by just over £300 in January 2022.

Even if Mr A’s contractual mortgage payment had remained at around £510 a month, he would still have significantly underpaid in June, July, August, September and October 2022 – paying around £370, £130, £400, £0 and £140 respectively.

So at the time he asked for a new rate in November 2022 Mr A wasn’t showing he was even able to sustain his previous lower payments, and the new rate Lloyds had available at that time would have led to his payments being around £1,470 a month – more than double the lower payment that he hadn’t been maintaining.

I think this shows that offering Mr A a new interest rate from November 2022 wouldn’t have resolved the underlying issue. It wouldn’t have made the mortgage affordable for him, and there was a serious risk that Mr A would have needed to sell the property (or that it would be repossessed). It was reasonable for Lloyds to take that risk into account.

I'm therefore satisfied that in refusing Mr A a new interest rate in November 2022 and thereafter, Lloyds didn't treat him unfairly in all the circumstances.

However, I'm pleased to note that more recently Lloyds has changed its policy, and it says it can now offer a mortgage review to customers in arrears to see if there is a suitable new product for them. Lloyds has said there is still other criteria that need to be met and a full review is required to go through an application, but if Mr A contacts it and makes a successful application then it will backdate that new rate to 1 May 2023. Lloyds has also said that, as part of the discussion, it would need a plan to be put in place to deal with the arrears to prevent further litigation. I leave it to Mr A to make contact with Lloyds to discuss this further.

I also don't think there were other measures Lloyds could have offered to help him get the mortgage back on track. It wouldn't have been appropriate to capitalise the arrears, since whilst the mortgage wasn't affordable and the arrears were rising, increasing the monthly payment through the addition of the arrears would have made the situation worse. The mortgage was already on interest only, so a term extension would make no difference. And a reduced payment arrangement wouldn't change the amount due.

I'm not persuaded that its attempts to understand Mr A's circumstances and to warn him about the risks of repossession (as it is required to do) were inappropriate or threatening – though, given his circumstances and the worry of losing his home, I understand why Mr A might have perceived them to be.

I've taken into account everything Mr A has said and I do understand the difficulties he's faced and the stresses he's been under. But the reality is that offering Mr A a new fixed rate from November 2022 in place of the SVR wouldn't have changed things or solved the underlying problem. In all the circumstances, I don't think I can fairly uphold this part of the complaint.

Fees and charges since 3 March 2017

I can see that four charges were added to the account in the period I'm able to consider:

- *October 2017 £390.60 legal fees*
- *December 2017 £146.40 professional fees for the eviction that was booked*
- *March 2018 £4,347.00 legal fees*
- *February 2023 £241.60 legal fees*

I've seen the invoices for those costs, and having reviewed the status of the account, along with the transaction history and contact notes I'm satisfied they were all fairly charged. The legal and other professional costs have been incurred by the lender due to the level of arrears on the account and the litigation that was undertaken. As Lloyds has had to pay a third-party for that additional work, it is only fair those costs are passed onto Mr A, and that is part of the terms of the mortgage agreement.

In all the circumstances, I don't think I can fairly uphold this part of the complaint."

Lloyds accepted my provisional decision. Mr A said he didn't agree with my provisional findings. He said, in summary:

- Lloyds wrote to apologise to him. He wants to know what Lloyds apologised for and why.

- Lloyds hurriedly instructed its solicitors to return to court with a possession order, adding fees and charges to an already spiralling debt, only to later withdraw the matter.

- Lloyds blocked all attempts by him to prevent an increase in arrears.

- He has sleepless nights about all this and the numerous letters Lloyds writes to him.

- He was hoping The Financial Ombudsman would be more critical in our deliberations and take all information into consideration.

Mr A didn't provide us with a copy of the letter of apology he was referring to so I can't be sure what this is. I can only suggest he contacts Lloyds directly if he is unsure about the content, and reason, for any letter it has sent to him. That said I can see an apology in two of the letters we hold on file, both of which seem fairly self-explanatory:

- 23 September 2022;

    - ***"You received a letter directing you to our website and asking you to call us, when you called no one answered***

      I would firstly like to sincerely apologise for the upset and concern this matter has caused you.

      Due to unforeseen circumstances, we are experiencing an exceptionally high volume of calls. This has driven up our call waiting times on some occasions. We are monitoring our call volumes on a daily basis and doing all we can to reduce call waiting times. I am sorry we weren't able to answer your call as quickly as we would have liked to."

- 31 March 2023;

    - *"Firstly, please accept my apologies for the time it has taken to respond to your concerns."*

    - "*We empathise with our customers who are experiencing financial difficulties. I'm sorry you feel that we're not doing more to help you and felt threatened when you contacted us. It's not our intention to cause you upset. We fully appreciate that customers being in arrears with their mortgage is not a position anybody places themselves in deliberately. Having said that, we do have a duty of care to inform you how important it is for you to keep in touch with us so we can try to help."*

Having considered the conduct of Mr A's account over the full term of the loan, and then more specifically the transactions since August 2021 that I've detailed previously I don't agree that Lloyds' instruction of its solicitor was hurried.

Having reviewed the contact history it doesn't seem Mr A was proactive in letting Lloyds know what was happening, and in providing his income and expenditure information. In fact, the only contact from Mr A seemed to be when he raised the complaints, and in response to letters from Lloyds saying it was going to progress to legal action.

Mr A has said that Lloyds later withdrew the legal action, but that was because he'd made this complaint and so Lloyds – quite reasonably – put the legal action on hold until we'd considered his complaint in full. That is good customer service, and what I would like to see.

As I explained in my provisional decision, any fees and charges Lloyds incurs when administering Mr A's mortgage account will be passed onto him. That's only fair, and is in line with the terms of his mortgage contract.

It isn't clear what Mr A means by his claim that Lloyds blocked all attempts by him to prevent an increase in arrears. Whilst Lloyds couldn't offer Mr A a new interest rate product (for all the reasons I set out in my provisional decision) I can't see it did anything to block Mr A from paying as much as he could. His February 2023 income and expenditure information showed he had £1,900 a month available to pay to this mortgage, yet in June, July and August 2023 he paid nothing, and he only paid £588 in May 2023 and £404 in September 2023.

As I explained in my provisional decision, Mr A's mortgage was already held on an interest only basis, so extending the term would make no difference to the monthly payments. Capitalising the arrears would put Mr A in a worse position as his contractual monthly payment would then increase further, and a reduced payment arrangement would still cause arrears to build up as any amount underpaid would be added to the arrears balance. In addition, this wasn't a short-term issue as Mr A had been in arrears on and off throughout the term of his mortgage. Previously the arrears had only been cleared after Lloyds had obtained an order for possession and an eviction date had been booked. I can't see there is anything I would expect Lloyds to have reasonably offered here that would have made a difference to Mr A's arrears balance increasing.

I appreciate this will likely come as a disappointment to Mr A. This decision doesn't intend to in anyway downplay or disregard his situation as I understand how distressing this must be for him. But he owes this money to Lloyds, and the debt is secured against his property. Lloyds has a regulatory responsibility to send certain letters to Mr A and so I can't say it is acting inappropriately in issuing those, and it has the right to take legal action if the arrears aren't cleared (or a reasonable plan isn't agreed to by the parties).

If Mr A is struggling with his payments and bringing the arrears down on his mortgage then he can speak to Lloyds to see if there are any other options, either directly or with the help of someone trained to give him free debt advice - such as StepChange or Citizens Advice. I'd encourage Mr A to contact Lloyds as a priority (either directly, or via an agency as I've explained above) and have an open and honest conversation about his circumstances and worries for both now and the future. But in terms of the complaint that was brought to us, I simply can't uphold it however much Mr A may want me to.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 9 January 2024.
Julia Meadows
Ombudsman