

The complaint

This complaint is about a residential mortgage Mr M and Miss M hold with Clydesdale Bank Plc trading as Virgin Money (VM). Mr M and Miss M complain that they lost out on a new fixed rate when their online application was stalled by a website crash.

It's a joint mortgage and both borrowers have joined the complaint. But all of our dealings have been with Miss M. On the occasions I refer solely to Miss M, it can be inferred that I mean both of them.

What happened

The broad circumstances of this complaint are known to Mr M, Miss M and VM. I'm also aware that the investigator issued a response to the complaint, which has been shared with all parties, and so I don't need to repeat the details here. Our investigator didn't think VM had done anything wrong so didn't recommend it be upheld.

Our decisions are published, and it's important that I don't include any information that might result in Mr M and Miss M being identified. Instead I'll give a brief summary of what led to the complaint, and then focus on giving the reasons for my decision. 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.

VM wrote to Mr M and Miss M on 1 July 2022, inviting them to apply for a new rate in advance of their existing deal expiring in November 2022. Miss M went online, intending to book a five-year deal at 2.83%; unfortunately, when she clicked to confirm the request, the web page returned an error message leaving her unsure about whether the application had been registered. Miss M says she waited a week or so but received no further acknowledgement

A personal tragedy then pushed the issue to the back of Miss M's mind, and when she came back to try again at the beginning of August 2022, the rate she and Mr M had wanted was no longer available. The available options were now around £100 a month more expensive. When Miss M complained, VM rejected the complaint and referred her to this service.

Our investigator wasn't persuaded VM had done anything wrong, so didn't recommend the complaint be upheld. Miss M have asked for a review by an ombudsman. Regrettably, the demand for complaints to be determined by an ombudsman is high, and I'm conscious that Mr M and Miss M have waited a long time for their case to be reviewed.

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.

Having done so, what follows are my conclusions and the reasons for them.

When a lender contacts borrowers whose rate product is nearing its expiry date with details of new products, the primary objective is business retention; lenders would prefer their borrowers to stay with them on a new deal rather than move to a different lender.

It was just such a letter that VM sent Mr M and Miss M on 1 July 2022, which resulted in Miss M applying for the new five-year product online. Miss M is particularly unhappy that our investigator didn't press VM more deeply about the issue of the online error message, but as I said earlier, we're not directed in our investigations by either party to a dispute. It's for us to identify the key issue(s) on which the outcome of a complaint will turn, and in the case before me here, the online error message is not what the outcome turns on. I'll explain why.

VM has said there's no evidence to indicate the error message that Miss M experienced was the result of a system failure at its end. Equally, Miss M's service provider has said much the same thing. If I were to insist on more evidence from VM, as Miss M has said I should, fairness would require that I ask her to obtain the same degree of evidence from her service provider in support of its statement.

But this isn't a binary equation; the internet is a complex place, and a connection can fail for any one of a myriad of reasons that are nothing to do with either the host or the user. Miss M says that the online service isn't fool-proof, but no communication channel ever is; phone connections can fail, letters get lost in the post. So the outcome of this case isn't dependent on the error message Miss M encountered; rather, it turns on what happened next.

Miss M has told us that, unsure whether the application had registered, she did nothing initially. I don't mean to be unkind, but I'm not sure that was the right thing to do. I think the prudent course of action to take would, to eliminate any uncertainty, have been to call VM on the number given in the 1 July 2022 letter.

I take Miss M's point that phone calls can go unanswered for a long time, or sometimes get cut off; I come back to the point about no communication channel ever being fool-proof. Clearly that's a frustration in itself, but it's not a reason to not call. When something as important as this is involved, I consider that making a call was a better option than not doing so, especially because the letter explained, more than once, that the deals on offer were only guaranteed to be available up to 22 July 2022.

On that point, I'm afraid I don't share Miss M's view that the relevance of that date was unclear or mis-represented. This was a time when interest rates generally were increasing at regular intervals. It should have been possible to infer that any new rates that superseded those set out in the 1 July 2022 letter were more likely to be higher than lower.

Miss M has spoken with remarkable frankness about the family tragedy which then took her attention away from the application for a new rate. I won't repeat the details here out of respect for her privacy, but it was a truly shocking event that I have no doubt affected her mental health and wellbeing deeply. So I have to assess whether and what extent to which it impacted on the application for the new rate,

In her phone conversation of 9 December 2022 with our investigator, Miss M's recollection was that the event occurred on 18 July 2022. If so, this would be six days after the application was stalled by the error message, leaving only a few days before the guarantee period for the available rates would end. This corresponds with what Miss M told us about having not pursued the matter with VM initially. However, I've already explained why I consider that was a missed opportunity on her part.

Miss M told us the event in question was well-publicised at the time, such was the shocking nature of it. I've looked at the news reports, and they indicate the event actually occurred later than Miss M has recalled, on 26 July 2022. I don't in any way infer from this that Miss M's recollection was anything other than genuine and sincere; the available evidence suggests an honest mistake on her part. What it does mean, though, is that the window for applying for the five-year fixed rate of 2.83% had already closed, four days before.

Miss M could never have known that a horrible event was about to happen, that would distract her completely from the mortgage. Equally, however, this wasn't something VM could possibly have foreseen either. Given that it happened after the rate Miss M wanted had already been withdrawn, and bearing in mind I've not found VM to have made a mistake or treated its borrowers unfairly up to this point, I can't then say that VM should be required to provide the rate Miss M was trying to apply for in mid-July 2022.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see from their submissions how important this is to Miss M. That's a natural reaction, and entirely understandable when you're as close to a situation as he has been here.

But I have to be objective, and impartial, and sometimes that means stepping back from the fine detail, taking an overview and deciding what is fair, reasonable and pragmatic in all the overall circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome.

My final decision

I don't uphold this complaint. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Miss M to accept or reject my decision before 19 September 2023.

Jeff Parrington
Ombudsman