

The complaint

Mr and Mrs D's complaint is about the length of time taken by Lloyds Bank PLC and its solicitors (who I will call OL) in completing a mortgage.

Mr D, who has dealt with the complaint throughout, says he no longer needs the mortgage and is unhappy about the early repayment charge (ERC) Lloyds intends to charge. Mr D is also unhappy about the way his complaint has been dealt with.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs D being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Briefly, Mr and Mrs D wanted to take out a mortgage on their unencumbered property in order to carry out home improvements. The mortgage offer was issued on 20 July 2022.

Mr and Mrs D wanted to complete the mortgage by 30 September 2022. However, completion didn't take place until 12 October 2022, while Mr and Mrs D were on holiday.

Mr D has told us that he had to pay his builders £20,000 by 30 September 2022, and that if he hadn't done so, they'd have gone onto another job, he'd have had to wait many months for them to start, and the building costs would have increased. Because he didn't have the mortgage funds in time, on 6 October 2022 Mr D closed a £170,000 savings bond, as a result of which he lost interest on those funds.

Mr D said he hadn't been aware the mortgage had completed, but thought there was a 10-day or 14-day cooling off period for the mortgage and so he tried to cancel it. However, Lloyds said he could only close the account if the ERC was paid. The mortgage was redeemed in January 2023. After reviewing the matter, Lloyds said that if Mr D could show that he'd not used any of the mortgage funds, the bank would consider reimbursing the ERC and any payments Mr D had made.

Mr and Mrs D weren't happy about this and brought their complaint to our service. An Investigator looked at what had happened. He thought Lloyds' offer was reasonable, and asked Mr D if he could provide evidence that the funds hadn't been used. Mr D was unwilling to do so and asked for an Ombudsman to review the complaint.

Mr D says that he was charged interest and an ERC because OL failed to complete the mortgage “on time” and didn’t react to his request to return the funds. Because he couldn’t see an end to the matter, Mr D says he had to draw down his own funds to pay the builders.

Mr D also says that it took Lloyds nearly three months to reply to the complaint, and charged him interest during this period and an ERC at the end. He wants these payments refunded.

Because the matter is unresolved, it falls to me to issue a decision on the 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.

The issue in this complaint is simpler than has been presented. This is because, notwithstanding whether or not completion could have taken place before it actually did on 12 October 2022, Lloyds has offered to resolve the complaint by reimbursing the ERC and the interest payments made by Mr and Mrs D following between the date of completion and the date of redemption in January 2023 if they can show they didn’t use any of the funds during that period.

This would put Mr and Mrs D back in the position they’d have been in if the mortgage had never completed at all, and would provide Mr D with the solution he wants – a refund of the ERC and interest payments.

The timeline provided by OL shows that between 8 August 2022 and 21 September 2022 OL tried to contact Mr and Mrs D seven times asking when they wanted to complete. On 16 August 2022 OL received a message through its portal from Mr and Mrs D that they were not in a position to complete. It wasn’t until 21 September 2022 that Mr and Mrs D said they wanted completion to take place on 30 September 2022. It’s arguable whether or not completion could have taken place by that date. There are final searches to carry out, and funds have to be requested, and these things take time.

However, there is nothing in the file to persuade me that OL was made aware that time was of the essence and that, if completion didn’t take place by 30 September 2022, Mr and Mrs D were in danger of losing their builders. I’m not persuaded, therefore, that it was reasonably foreseeable by OL that Mr and Mrs D would incur the loss of interest by cashing in the bond.

The mortgage offer dated 20 July 2022 confirms that there was a 10-day period from that date to consider the offer, and that Mr and Mrs D could take longer if they wanted to. But once the funds had been released, there was no right to withdraw from the mortgage. There was a right to repay it, subject to paying the ERC. I’m satisfied, therefore, that there was no cooling-off period after completion, as Mr D claims.

Mr D says that Lloyds has never denied the existence of a cooling-off period. However, I’m satisfied that the bank made it clear that, if Mr and Mrs D wanted to repay the mortgage, they’d have to pay the ERC.

After reviewing the matter, Lloyds confirmed that if Mr and Mrs D can provide evidence to show they didn’t use any of the mortgage funds between completion and redemption, it will consider refunding the ERC and any interest they paid. I think this is fair and reasonable in all the circumstances.

Mr D says that the funds weren't used, but doesn't believe he should have to provide any evidence of this, and says that Lloyds should accept his word for it. He's explained that the mortgage funds were split between several financial institutions so that the maximum amount protected by the Financial Services Compensation Scheme of £85,000 wasn't exceeded. Lloyds has acknowledged this, but still requires evidence of where the funds were deposited and that they weren't used before redemption. I think this is reasonable.

I've noted that Mr D says that he would have to disclose "*many bank accounts*" and wants Lloyds simply to agree to take Mr D's word that he didn't use any of the funds. But I'm not persuaded that Lloyds' request is unduly onerous or unfair.

Mr D says he had to pay interest because Lloyds took so long to respond to his complaint. Complaint-handling as a stand-alone activity isn't something we can look at. But where it is intrinsically linked to the events giving rise to the complaint (as it is here), we can consider whether the way Lloyds handled the complaint resulted in any loss or detriment to Mr and Mrs D.

Lloyds is allowed eight weeks to respond to a complaint. The complaint was first raised with Lloyds on 27 October 2022 and the final response letter was issued on 22 December 2022, the day the eight-week period expired. After Mr D didn't accept this, a second final response letter was issued on 18 January 2023, in which Lloyds offered to resolve the matter as outlined above.

Overall, I'm not persuaded Lloyds' handling of the complaint caused Mr and Mrs D to incur any financial loss. The bank's initial response was within the required timescale. Furthermore, the bank has offered to refund the monthly payments and ERC, if Mr and Mrs D provide the evidence that the funds were unused.

I appreciate Mr D considers this to be intrusive and doesn't wish to provide details of his and Mrs D's bank accounts. However, generally we would expect consumers to take steps to mitigate their loss. If Mr and Mrs D aren't prepared to provide Lloyds with evidence that they didn't use any of the mortgage funds before the mortgage was redeemed, then that is their decision to make. However, the consequence of that choice is that I don't think it would be fair or reasonable to expect Lloyds to refund the repayments or ERC in the absence of such evidence.

In the circumstances, I'm not going to order Lloyds to make any refund of interest or to reimburse the ERC paid on redemption. If Mr and Mrs D ultimately decide they want to comply with Lloyds' reasonable request, they should contact the bank about this.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 13 February 2024.

Jan O'Leary

Ombudsman