

The complaint

Mr and Mrs A's complaint is about an application for a buy-to-let mortgage they made to Clydesdale Bank Plc trading as Virgin Money. They are unhappy the application was declined because Clydesdale concluded the property would be considered a home of multiple occupancy (HMO), which was outside its lending criteria. Mr and Mrs A are unhappy that Clydesdale didn't make them aware they couldn't rent the property out on that basis.

What happened

In 2006 Mr and Mrs A took advice from an independent mortgage broker regarding re-mortgaging the property they had originally bought as their home, to a buy-to-let (BTL) basis. They were recommended a mortgage with Clydesdale on a repayment basis over a term of 17 years, ending in August 2023. The documentation from the time indicated the property would be rented out as a single residence under six-month assured shorthold tenancy agreements.

In 2014 Mr and Mrs A decided they wanted to release some equity from the property. The mortgage offer issued on 10 June 2014 confirmed that a mortgage of around £222,000 had been granted. The amount of the original borrowing was converted to an interest-only basis and the new borrowing was on that basis too. The existing interest rate product was ported from the 2006 mortgage and the amount of the mortgage it covered continued to have the same expiry date – the term was detailed as 108 months. A second interest rate product was taken for the increased borrowing amount and that borrowing was over a term of 180 months.

The valuation completed in 2014 included a question about the type of letting expected. Examples of types of letting were given as single residence, student/short-term, bedsit and HMO. The valuer recorded the property as 'single residence', indicating it would be or was rented to one family unit.

In 2019 the second interest rate product expired. Mr and Mrs A replaced the product with one that would expire in April 2024. An early repayment charge (ERC) was payable during the five-year term.

In February 2023, knowing that the term of the original borrowing was approaching its end date, Mr and Mrs A met with Clydesdale to discuss extending the term. The tenancy agreement that was provided to support the application showed that Mr and Mrs A had changed the basis of the rental arrangement to one that would be considered a HMO – they were renting the property to multiple unrelated individuals. As Clydesdale didn't lend on HMOs Mr and Mrs A were told it would not extend the mortgage.

Mr and Mrs A were unhappy with this decision and complained. They said the property had been rented to multiple individuals in 2014 when the additional lending had been granted. They said they were not aware of any terms of the mortgage they had contravened and confirmed the property was not registered as a HMO. They complained about Clydesdale's decision.

Clydesdale responded to the complaint in a letter of 17 July 2023. It highlighted that Mr and Mrs A had changed the type of rental arrangement they used the property for after the mortgage and further advance had been agreed. It said that it was under no obligation to inform borrowers of changes to its lending policies and as it didn't lend on HMOs, the decision not to extend the term was correct.

Mr and Mrs A were not satisfied with the response they received and referred the complaint to this Service. One of our Investigators considered the complaint, but he didn't recommend it be upheld.

Mr and Mrs A didn't accept the Investigator's view of the complaint. They reiterated that the property had been rented out on the same basis in 2014 as it was in 2023. It was Clydesdale's fault if it hadn't asked to see the tenancy agreement in 2014. They didn't consider Clydesdale had treated them fairly. Mr and Mrs A provide a tenancy agreement from 2010 that evidenced there had been four separate tenants in the property at that time. Further correspondence was exchanged, but the Investigator was not persuaded to change his conclusions. Mr and Mrs A asked that the complaint be referred to an Ombudsman.

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.

This is a BTL mortgage taken out to enable Mr and Mrs A to keep their former residential property for rental purposes while buying a new home. It is unregulated, and so Clydesdale is not required to provide Mr and Mrs A with advice or manage the mortgage for them. As this is considered a commercial mortgage, it's up to them to manage it, including being aware of the date they need to have funds available to repay the capital balance.

Whilst the mortgage isn't subject to the regulatory protections available to residential mortgage customers, Clydesdale is still required to treat Mr and Mrs A fairly and reasonably. The crux of this complaint is that Mr and Mrs A don't think Clydesdale made it clear to them certain types of rental arrangements were not acceptable to it, and so would affect any request for further borrowing.

I would firstly point out that Mr and Mrs A were recommended their mortgage by an independent broker. This means that the broker was responsible for ensuring that the mortgage was suitable for the purposes they had in mind for the property and that they understood it. This would include exploring what type of rental arrangement they intended to use the property for.

Furthermore, while Mr and Mrs A applied for a term extension, this was a request for new borrowing. An applicant is not entitled to borrowing, even if they have been granted a mortgage before. Any new application will always be subject to assessment and for it to be accepted, will need to fit within the lenders' criteria as it stands at the time of the application.

A lender is entitled to set its own criteria for granting borrowing, which will include things like affordability and the nature of properties that are acceptable security. Some aspects of lending criteria are commercially sensitive and so we would not expect them to be published. In addition, a lender's criteria will change from time to time to reflect changes to the mortgage and property markets, and the lender's approach to risk. It would be for a borrower that wanted to change how they used a mortgaged property, to ensure that change was acceptable to the lender.

Clydesdale has provided evidence that it doesn't provide mortgages on HMO properties. It is clear that by 2023 Mr and Mrs A were renting it out to multiple unrelated individuals, and so the property would be considered an HMO, even if the local council didn't require them to have an HMO licence. As such, the nature of the property didn't fall within Clydesdale's lending criteria, and it was not inappropriate for Clydesdale to decline Mr and Mrs A's application for borrowing.

I note that Mr and Mrs A have said that the property was rented out on the same basis in 2014 when the additional borrowing was granted. They have provided evidence that the property was rented out in 2010 on an HMO basis, but not that it was when Clydesdale had the property valued before agreeing the additional borrowing in 2014. At that time Clydesdale hired an appropriately qualified expert to value the property, which concluded it was suitable security, i.e. it fell within Clydesdale's lending criteria. Clydesdale was entitled to rely on that opinion when deciding whether to lend. I can't find that Clydesdale did anything wrong when it decided to accept Mr and Mrs A's application in 2014.

Mr and Mrs A are unhappy they had to pay the ERC on the interest rate product attached to the second part of the mortgage because of Clydesdale's decision not to give them further lending in the form of an extension to the mortgage term. I can understand this, but as the mortgage was redeemed before the end of the product, Clydesdale was not wrong to apply the ERC. When taking that product, Mr and Mrs A would have been aware of whether they would have the funds to repay the initial borrowing and that the term of the new product went beyond the date that was due to happen, so they would reasonably have known this was a possibility.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs A to accept or reject my decision before 24 April 2024.

Derry Baxter

Ombudsman