

The complaint

Mr B's complaint is about the interest rate on the buy-to-let (BTL) mortgage he holds with Lloyds Bank PLC.

Mr B's complaint is that after arrears on his BTL mortgage were consolidated, Lloyds should have offered him a new fixed rate, but didn't. Mr B believes Lloyds owed him a duty of care to have offered him a new interest rate product.

To settle the complaint Mr B wants his mortgage to be put onto the rate that would have been available in April 2022, and backdate the mortgage to that date. Mr B says that the complaints manager at Lloyds told him she would do this for him.

What happened

The evidence in the case is detailed, running to several hundred pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and 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. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

Mr B has a BTL mortgage with Lloyds, taken out in 2007 through Cheltenham & Gloucester. For ease of reference I will refer to Lloyds throughout. Mr B is a BTL landlord and Lloyds records show that he has seven BTL properties in total.

As a result of the Pandemic, Mr B's mortgage fell into arrears. He spoke to Lloyds on 24 March 2022 when it was agreed the arrears would be consolidated. During the call, Mr B was advised that, after consolidation, he could have a mortgage review. In a later call on 31 March 2022, Mr B was told that, as the account was now up-to-date, he could look at new interest rates. Mr B says that he wasn't clear from this that this would involve him taking out a new fixed rate, and so he was unaware that he could have applied for a new fixed rate at that time.

It wasn't until March 2023, after interest rates had risen, that Mr B says Lloyds made him aware that he could have applied for a new fixed rate. Mr B complained, but Lloyds didn't uphold the complaint. Lloyds said that it had told Mr B he could have a mortgage review in March 2022.

Unhappy with Lloyds' response, Mr B referred his complaint to our service. In his initial call to our service when he logged his complaint, Mr B insisted that Lloyds should have made him aware in March 2022 that he could have applied for a new rate. Mr B says Lloyds

breached its duty of care to him to tell him this, but didn't make him aware of the position until a year later, by which time interest rates had risen.

An investigator looked at the complaint. She asked Mr B why he hadn't asked for a fixed rate at the time, but he said that he felt it was something Lloyds should have done at the time of consolidation of the arrears. But Mr B also told her that he had, in fact, written to Lloyds "a week before consolidation" asking the bank if it would consider offering him a fixed rate, but the bank had ignored his request.

After listening to all the calls, the Investigator didn't think the complaint should be upheld. She was satisfied that Mr B had been advised he could have a mortgage review during the consolidation call, and had also specifically been told on 31 March 2022 that, now the capitalisation had taken place, Mr B could look at new interest rate products.

Mr B didn't agree with the Investigator's findings. He produced a letter that he said had been written on 3 May 2022 which he says proves he asked Lloyds for a new rate. Mr B said he never had any response to this letter.

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

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, I'm not upholding the complaint. These are my reasons.

The complaint made to Lloyds was that Lloyds hadn't made him aware that he could ask for a new interest rate. As a result, Mr B says he wasn't aware he could have done this.

I've listened to all the calls, and I'm satisfied that Mr B was made aware during the calls in March 2022 that he could have a mortgage review, and that, because the arrears had been consolidated, he could look at new interest rates. So I'm satisfied that Lloyds told Mr B that he could apply for a new rate. So on the face of it, that is quite clear.

However, what Mr B told Lloyds during the course of the bank's investigation into his complaint compared with what he later told our service during the course of our investigation is contradictory, and so I have to decide what weight to give to what the evidence shows and decide whether that changes the outcome.

In his initial complaint to Lloyds made on 2 March 2023 Mr B told Lloyds:

- after his arrears were capitalised in March 2022, Lloyds failed to make him aware that at that point he could review his interest rate;
- if he'd been made aware of this at the time, he would have taken out a new interest rate;
- he didn't know that the mortgage review offered by Lloyds would include a review of the interest rates as he is a "*layman*".

This is what Mr B also told us in his initial call to our service on 19 September 2023.

However, when Mr B discussed the complaint with our Investigator on 20 October 2023, he said:

- before consolidation took place, he'd written to Lloyds asking for a new interest rate product;

- this was about two weeks before the arrears were consolidated, which he said was in June 2022;
- as a layman, he didn't know if BTL mortgages could have fixed rates and so although he'd been into the branch several times to ask for a fixed rate, the bank hadn't helped him.

The Investigator had questioned Mr B further about this, explaining that consolidation had taken place in March 2022, not June 2022, but Mr B was insistent that he'd written to Lloyds two weeks before consolidation. Mr B said he'd send us a copy of the letter, and that he might have been confused about the date, because another lender on another of his BTL mortgages had consolidated arrears at about this time, which might have been in June 2022.

Mr B sent us a copy of the letter he referred to in his call with the Investigator. It appears to be a photograph of a handwritten letter. As noted above, Mr B told the Investigator that this had been sent about two weeks before consolidation of the arrears. But the letter is dated 3 May 2022, which is five weeks after the arrears were consolidated.

The letter is addressed to Lloyds' head office in Gloucester, quoting the mortgage account number, and says:

*"I have requested a fixed rate at Lloyds Bank and awaiting a call back on my mobile number. [number given]
I await your call and ask what fixed rates are available at this juncture.
I look forward to hearing from you."*

If I am to accept what Mr B told our Investigator – which is that he wrote to Lloyds two weeks before the arrears were consolidated asking for a new fixed rate – then it follows that Mr B knew that he could have asked for a fixed rate after consolidation, but didn't do so.

However, there is no evidence that Mr B ever wrote to Lloyds two weeks before consolidation (which would have been in early March 2022) asking about a new fixed rate. Given this, I'm satisfied Mr B did not, as he claims, write to Lloyds two weeks before the arrears were consolidated asking for a new rate.

So what I am left with is the letter Mr B says he wrote to Lloyds on 3 May 2022 – five weeks after the arrears were consolidated – the details of which I have given above.

I've listened to the complaint calls and read through all the complaint notes, and I've also listened to the original call Mr B made to our service on 19 September 2023. At no point in any of these does Mr B ever mention that he wrote to Lloyds about a month after the arrears were consolidated asking for a new fixed rate. Rather, his complaint throughout, until he spoke to the Investigator on 20 October 2023, was that nobody had ever told him he could have asked for a new fixed rate, and that, as a layman, he remained unaware he could have asked for a new rate until March 2023.

Furthermore, the contents of the letter appear to show that Mr B knew that he could ask for a new fixed rate on the mortgage on the date Mr B says he wrote the letter – 3 May 2022.

Given this, it is surprising that in the contemporaneous notes of the calls Mr B had with Lloyds, and in his emails sent to the bank, there is no mention anywhere by Mr B of this letter. I would have expected, at the very least, that Mr B would have said to Lloyds that he'd asked for about a new fixed rate in May 2022, but the bank hadn't responded.

The letter of 3 May 2022 also directly conflicts with the complaint Mr B raised with Lloyds. The complaint summary in the final response letter dated 27 March 2023 says: *"You felt you*

needed to complain and raise concerns about not being informed you could review your interest rate, to help manage your payments”.

If, as Mr B claims, he'd written to Lloyds 10 months prior to this asking for a new fixed rate but had had no response, I'd have expected Mr B to have raised this with Lloyds during the course of the complaint. Or, after receiving the final response dated 27 March 2023, to say to Lloyds *“no, that's not correct, my complaint is that I wrote to Lloyds asking for a fixed rate, but the bank never responded”*. But he didn't do so during any of his contact with Lloyds after the final response.

Furthermore, in a call with Lloyds on 5 April 2023 Mr B says, when he was discussing the issue with a relative, she'd asked him if he'd been offered a fixed rate and he said no and *“this went over his head”*. Mr B said in that call that, as a layman, he didn't understand that Lloyds could offer him a new fixed rate.

But the letter Mr B says he sent to Lloyds on 3 May 2022 appears to suggest that Mr B did know that he could have asked for a new fixed rate.

I am therefore left with a dilemma in the evidence Mr B has put forward.

- The first position Mr B took is he didn't know because Lloyds didn't tell him, and because he's a layman who didn't understand the position, that after consolidation of the arrears in March 2022, he could have asked for a new fixed rate. This is the complaint Mr B raised with Lloyds, which the bank addressed in its final response letter, and which Mr B initially told us was his complaint when he first raised it with our service on 19 September 2023.
- The alternative position put forward by Mr B is that he knew he could have a new interest rate, he was aware of this at least two weeks before the arrears were consolidated, he wrote to Lloyds in May 2022 asking for a new rate, but Lloyds ignored this request. Mr B made no mention of this letter during the course of his complaint with Lloyds, or with us, until he told the Investigator about it on 20 October 2023, and said he'd written it before consolidation because he wanted to get the arrears consolidated and then get a new rate.

Where evidence in a case is contradictory, I have to decide, on the balance of probabilities, what I think is likely to have happened, based on consideration of all the available evidence. I'm satisfied I can rely on the contemporaneous records made by Lloyds, including contact notes and call recordings. I think records made at the time of the events complained of are likely to be accurate and reflect what was actually discussed. Therefore, given the conflict with the contemporaneous evidence on file, I attach minimal evidential weight to the letter Mr B says he sent Lloyds on 3 May 2022.

In the circumstances, I'm satisfied that Mr B was told in March 2022 that he could have a mortgage review, and on 31 March 2022 was specifically told by Lloyds that, now his arrears had been consolidated, he could look at new interest rates. I am not persuaded Mr B asked Lloyds for a new rate until March 2023, as this is not borne out by the other contemporaneous evidence.

Mr B says that Lloyds owed him a duty of care to inform him that he could have a new interest rate. As I've found, the bank did tell him this in March 2022. I'm also not persuaded that the complaint manager, LW, told Mr B that she wanted to uphold his complaint, but was constrained from doing so because she worked for Lloyds. The contemporaneous evidence does not support this contention.

Mr B is a professional landlord, not a “*layman*”. Lloyds’ role is to administer the mortgage account, that is, collect payments and apply them to the account, and to deal with administrative issues such as arrears-handling. It’s not Lloyds’ job to manage Mr B’s BTL business for him. As a professional landlord, it’s up to Mr B to manage the business, which includes reviewing the interest rates across his BTL portfolio in order to maximise the profit on his investments. Lloyds doesn’t owe Mr B any duty of care to do this for him in relation to the mortgage he holds with the bank. If, as Mr B says, he doesn’t understand how BTL mortgages operate, it would be up to him to appoint someone – such as a property manager or an accountant – to manage his BTL business for him.

In summary, after reviewing all the evidence, I’m unable to find Lloyds has done anything wrong.

I appreciate this isn’t the outcome Mr B was hoping for. I know Mr B feels very strongly about this matter, and has also raised concerns about the valuation of the property that took place in 2007. As that’s a new matter, Mr B will need to raise this with Lloyds as a fresh complaint. I understand the mortgage account is now in arrears and that Lloyds is considering taking recovery action. Mr B might find it helpful to speak to an independent financial adviser to discuss his options.

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 B to accept or reject my decision before 20 June 2024.

Jan O’Leary
Ombudsman