DRN-4713542

The complaint

Mr W has complained about how he has been treated by Coutts & Company since he contacted it in January 2023 to discuss the options available to him on his mortgage account.

What happened

Mr W has held a mortgage with Coutts for many years.

In August 2021 a mortgage offer was issued showing that Mr W's mortgage would be just over £3m and was to be held on an interest only basis with a five-year term. The interest rate was noted as to be fixed at 1.84% until 19 October 2023, after which it would revert to the variable House Mortgage Rate ("HMR"), which it said was currently 3.10%.

The offer said Mr W '… will have to make 60 monthly payments of interest throughout the Term and the final repayment of the outstanding capital 5 years from the date of the Mortgage.' The monthly payments were shown as around £4,670 during the fixed interest rate period, and then around £7,900 thereafter (assuming the variable HMR remained at 3.10%). It said if the interest rate rose to 8.75% then the payments could increase to around £22,420 a month.

Section 11 of the mortgage offer said:

> 'We expect you to:
>
> (a) maintain the regular payments on your Mortgage
>
> (b) make and keep arrangements for repaying the capital outstanding at the end of any interest-only period of this Mortgage
>
> (c) look after the property and keep it in a good state of repair (you must not let out the property or use it as a place of business).
>
> Where you fail to meet these (or other) obligations under your Mortgage there may be additional costs where we have to carry out additional work as a result. In the event of breaches of your obligations the ultimate consequence may be action by us to take possession of your property.'

Throughout 2023 Mr W was in contact with Coutts as he was concerned about the impact of a substantial increase in the monthly payments when his fixed rate ended in October 2023.

Various options were discussed such as the sale of some of Mr W's assets, a bridging loan (with a different lender), interest roll up, an increase in the mortgage debt (using the new funds to meet the full monthly mortgage payments) and an overdraft (also to use to meet the full monthly mortgage payments). Mr W also asked Coutts what options there were under the Mortgage Charter to help him.

Coutts said none of the options were suitable, and so nothing was put in place.

On 27 October 2023 a rate change mortgage offer was issued to Mr W for a variable rate of 1.34% above base rate until 12 April 2026, giving a rate payable at that time of 6.59%. At that time the HMR was 7.75%. The offer said that if Mr W wanted to accept it he needed to sign and return the forms within 30 days.

Mr W didn't accept the offer so his mortgage remained on the HMR, and the first mortgage payment was missed in November 2023.

In the meantime, Coutts had treated Mr W's correspondence about the Mortgage Charter as an expression of dissatisfaction and issued a final response letter on 1 November 2023. It said the Mortgage Charter gives two options, either for a mortgage to be moved from capital repayment to interest only for six months, or for the mortgage term to be extended.

As Mr W already had an interest only mortgage neither of those options were 'in scope'. It said a term extension wouldn't reduce the monthly interest payments due, it would only reduce the monthly payments due on a capital repayment mortgage.

After some further correspondence between the parties the complaint was referred to the Financial Ombudsman Service.

Our Investigator didn't uphold the main thrust of the complaint, but he did feel that information Coutts gave about the Mortgage Charter was incorrect. He said that whilst the information was later corrected, he felt the misinformation and confusion around that point caused Mr W upset and inconvenience. For that he felt a payment of £150 should be made.

Mr W didn't accept our Investigator's findings and so the matter was passed to me to decide.

In April 2024 Mr W said that he wanted to make some further submissions. Various deadlines have since passed, the last being 14 October 2024, with no further response and the information has still not been provided by Mr W. We can't keep cases in abeyance indefinitely and so I'm now deciding the case based on what we already hold.

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 trust Mr W won't take it as a discourtesy that I've condensed his complaint in the way that I have. Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

It isn't in dispute that Coutts has caused confusion over whether or not Mr W's mortgage is eligible for the support offered under the Mortgage Charter[1] ("the Charter").

To be clear, the issue isn't that Mr W's mortgage isn't eligible, instead it is that whilst his mortgage is eligible, the headline financial support measures the Charter includes to reduce the monthly payments on a mortgage wouldn't have helped Mr W.

The Charter says the following:

'Signatories to this Charter have agreed:

[1] www.gov.uk/government/publications/mortgage-charter/mortgage-charter

- From 26th June, a borrower will not be forced to leave their home without their consent unless in exceptional circumstances, in less than a year from their first missed payment.
- With effect from 10th July customers approaching the end of a fixed rate deal will have the chance to lock in a deal up to six months ahead. They will also be able to manage their new deal and request a better like for like deal with their lender right up until their new term starts, if one is available.
- A new deal between lenders, the FCA and the government permitting customers who are up to date with their payments to:
  - Switch to interest-only payments for six months or
  - extend their mortgage term to reduce their monthly payments and give customers the option to revert to their original term within 6 months by contacting their lender

These options can be taken by customers who are up to date with their payments without a new affordability check or affecting their credit score. Customers who are currently in arrears should continue to work with their lender for the support that they need.'

Mr W already had an interest only mortgage so the option to switch to an interest only mortgage for six months wasn't applicable. And the option to extend the mortgage term wouldn't have reduced his monthly payments. A term extension would only reduce the monthly payments if a mortgage is held on a capital repayment basis. That's because the interest remains the same each month irrespective of the length of the term (as the balance remains the same).

If Mr W wanted to pay less each month then his only option under the Charter was to take a new lower preferential interest rate product. The Charter states that customers have the chance to lock in a new deal up to six months ahead and swap up until the point the new deal starts. Coutts offered Mr W a new preferential interest rate product, but Mr W didn't accept the offer.

The other point the signatories to the Charter agreed to was that 'a borrower will not be forced to leave their home without their consent unless in exceptional circumstances, in less than a year from their first missed payment.' I understand Mr W missed his first payment in November 2023 and he hasn't been forced to leave his home in the year since then, so I'm satisfied Coutts has acted in line with the Mortgage Charter in that respect. The Charter doesn't state that a lender can't commence action within that time, simply that they will not be forced to leave their home in that period; that is, the property won't be taken into possession and an eviction enforced.

All that said, there are other forbearance measures a lender should consider outside of the Charter. Those would be bespoke options that would be considered based on a borrower's individual circumstances once an affordability assessment had been completed. For a borrower with an interest only mortgage this would generally be an agreement to accept reduced, or even nil, payments for a period of time. But these forbearance measures would be reported to a borrower's credit file, unlike anything offered under the Charter.

Mr W has said he first raised his concerns about the upcoming increase in his monthly payments (due when his fixed rate ended in October 2023) in January 2023, but Coutts did nothing until July. Looking at Coutts' contact notes it seems a meeting was held at Mr W's home at the start of June 2023. The notes from that indicate that Mr W was concerned about the impact the increase in his interest rate would have, and that he provided an update on some of his business projects. The notes say he was loathe to sell some of his assets but it may be the only way forward, with an increase in the mortgage not being viable without the income to support the payments, and a short term overdraft only being a potential option if there was a defined exit from asset sales. It was left that Mr W would provide an update once he'd had a meeting with a third party about one of the projects the following week, and then a proposal could be put forward to Coutts' Specialist Lending team.

Throughout June and July there was correspondence between the parties, mainly being Mr W keeping Coutts informed of his business projects. And on 20 July there was a phone call in which Coutts' notes indicate Mr W was again told that whilst there was equity in the mortgaged property, without an income to support any increased debt it would be difficult to get it agreed. It seems Coutts suggested Mr W look at seeking commercial funding against some of his assets.

The parties stayed in contact and at the start of September they explored whether a further advance of £300,000 could be granted with the raised funds being used to maintain the mortgage payments over the next year. By the end of the month Mr W had filled in a proforma setting out his income, expenditure, assets and liabilities so Coutts could consider his position.

Coutts summarised Mr W's proposal as a request for a £300,000 loan over a 12-month period secured over his residential property. The exit strategy was noted as the sale of one of two listed commercial assets. Coutts noted the challenges as being that it would be a regulated mortgage contract, but Mr W could only service his overall debt using the increased debt and that whilst assets had been identified there were no formal sale agreements in place for them.

On 26 September Coutts confirmed it had no appetite to increase its debt exposure to support Mr W's cashflow. It said an unsecured facility wasn't viable, and the mortgage was a regulated mortgage contract so it had to be able to evidence serviceability from the outset. It also said that the sale of the assets couldn't be relied upon within the 12-month term, and it had explored the possibility of raising funds against a commercial asset but that wasn't viable. An alternative route of bridging finance with another lender was suggested to allow Mr W the breathing space to complete the sale of an asset.

Having looked at the history of the correspondence I'm not persuaded that if the first conversation had taken place in January rather than June 2023 then the overall position would have been notably different. In the early stages Coutts was content to 'wait and see' whilst Mr W was working on his business projects and there was nothing Coutts was in a position to do at that time. On balance, I think it more likely than not, that had the first conversation been in January then all we would have seen was more correspondence along the same terms as was seen in June and July; that is, Mr W providing updates on his business projects and Coutts waiting to see if any of those would come into fruition.

Coutts considered whether it was willing to increase its debt exposure by £300,000, either on an unsecured or secured basis to give Mr W the funds to use to meet his mortgage payments once the interest rate increased. The option of an interest roll-up mortgage was also raised.

Having looked at the reasons given by Coutts for not being willing to increase its debt exposure I find them compelling. Mr W, by his own admission, wouldn't be able to meet the monthly interest payments on the debt he already held once his fixed rate came to an end in October 2023. By increasing his level of debt that affordability issue would only be compounded. Whilst Mr W intended to use the sum raised to meet his monthly payments, there was no guarantee of how long that sum would last as his mortgage was moving onto a variable interest rate, and Mr W had no guaranteed way to repay the extra amount at the end of the 12-month term.

Whilst mortgage regulation gave the option for Coutts to apply certain responsible lending rules on a modified basis for Mr W (as a high net worth customer), it doesn't say it has to do so or on what basis. Coutts has demonstrated it considered Mr W's request under both its standard affordability assessment and under a modified high net worth customer assessment and having considered both it wasn't willing to lend Mr W an additional £300,000 to use to maintain his monthly payments. It also wasn't willing to consider an interest roll-up mortgage for the same reason, as Mr W had no guaranteed exit strategy and anything that would increase the debt (such as rolling up the interest) would only increase Coutts' debt exposure, which it wasn't willing to do.

It isn't unusual for a lender to not want to increase its debt exposure when a borrower has cashflow concerns, even if that borrower is a high net worth customer. That's a position I have sympathy with and I'm satisfied Coutts didn't act unreasonably when it wasn't willing to proceed with any of the options that would have increased its debt exposure.

That just leaves the forbearance options that I've previously mentioned. For the same reasons as I explained in relation to the Charter, a temporary change to interest only or a term extension wouldn't have helped Mr W as he held an interest only mortgage. It wouldn't have been appropriate for the interest payments to be formally deferred or rolled up for the reasons I explained above, in that Mr W had no guaranteed exit strategy so both could have just worsened the situation. I understand Mr W was actively working towards the business projects realising funds to repay his borrowing, but those had been ongoing for quite some time with no formal sale agreements in place so there was no guarantee they'd come into fruition in time to repay this mortgage debt.

That just leaves a reduced, or nil, payment arrangement which is what was put in place here. As payments weren't being made in line with the mortgage contract this meant the mortgage account went into arrears and Coutts had a responsibility to report Mr W's nil payment arrangement (and corresponding arrears situation) to the credit reference agencies. Although Coutts agreed to the nil payment arrangement that doesn't mean it wouldn't get reported as an account in arrears. I understand Mr W feels Coutts agreed to defer the reporting until he'd obtained a bridging loan with another lender. Having looked through the contact history I can't see Coutts made that promise to Mr W.

It is unfortunate timing that the reporting started at the time Mr W was looking at taking a bridging loan, but I can't hold Coutts liable for that. Coutts had been telling Mr W for a number of months ahead of the first missed payment in November 2023 (which wouldn't have been reported until December 2023) that he needed to find an alternative means of funding the monthly payments going forward as it wasn't willing to offer him any further lending. Coutts has a responsibility to report accurate information, and it wouldn't have been accurate for Coutts to report information that implied Mr W was meeting his contractual obligations under this mortgage.

Even if Mr W had been led to believe Coutts would be able to defer the credit file reporting this is what we call a misrepresentation. When we're looking at complaints about misrepresentation we consider the appropriate remedy is to place the consumer in the position they would be in if the incorrect information hadn't been given. We don't put them in the position they would be in if the misinformation had been correct.

Mr W is already in the position he would have been in, and it doesn't seem any alternative action was available to Mr W had he been aware sooner as he didn't have the funds available to meet his new contractual monthly payment. Mr W could never have been in the position where he could have a nil payment arrangement on his mortgage without that information being reported to the credit reference agencies as soon as his mortgage went one month into arrears. For that reason, even if I were to make a finding that Coutts had misled Mr W (and to be clear, that isn't a finding I've made) there would be no grounds for me to order Coutts to do anything further in respect of this issue.

Finally, Mr W has said that he no longer gets a notification from his personal banker about any issues on his bank account, such as payments due to be debited when there is an insufficient balance available to meet the debit. Coutts has explained that Mr W is able to set his account to send him automatic texts for such scenarios through his online banking set up as it no longer sends emails from its personal banking area. It has said that it can go through setting up that facility with Mr W if he wants help. That seems a reasonable way forward and so I make no order or award for this part of the complaint.

I'd like to thank Mr W for how open he has been with us about his health concerns and personal and business circumstances. It is clear from the file that his business projects have caused him difficulties, dealing with the third parties involved, and I hope matters are resolved for him soon. As I've explained in this decision the only issue I'm able to uphold is the information given about whether the Charter was applicable to Mr W's mortgage.

As I'm only upholding that one - relatively small - point, that means any consideration of compensation will be fairly modest. I acknowledge things were stressful for Mr W, and that with his health concerns matters were likely to affect him more than most, but equally I must keep in mind all I am upholding is about the information Coutts gave about the Charter. After very careful consideration I agree with our Investigator that an award of £150 compensation is appropriate for that.

I understand this decision will be a disappointment to Mr W and I give him my best wishes for both now and the future. But in terms of the complaint that was brought to us, I'm satisfied that a payment of £150 compensation is enough to resolve the only point I've upheld.

My final decision

I uphold this complaint in part and order Coutts & Company to pay £150 compensation to Mr W.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 December 2024.
Julia Meadows
Ombudsman