

The complaint

Mr and Mrs G complain that Lloyds Bank Plc want to enforce a possession order. They believe that goes against the Mortgage Charter

What happened

In 2008, Mr and Mrs G took out an interest only mortgage with Lloyds over a term of 13 years.

When the mortgage term ended in 2021, Mr and Mrs G were unable to repay the mortgage balance as agreed. In April 2024, Mr and Mrs G said that Lloyds obtained a possession order against them – Mr and Mrs G said they did not have any complaint about the possession order. They consider that the Mortgage Charter means that Lloyds can't enforce the order.

The investigator said that the Mortgage Charter did not apply in the circumstances here.

Mr and Mrs G did not accept what the investigator said. They made a number of points, including:

- Their mortgage was active and will continue to be so until the mortgage is repaid.
- Their monthly payments do not cover the interest applied each month. So technically they are in arrears and have been since 2022.
- In April 2022, Lloyds' solicitors referred to the mortgage being in arrears.

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.

Mr and Mrs G have made several complaints to Lloyds. But they have only referred a very specific point to us. Their complaint form states:

"I have no complaint about the possession order being granted on 16/04/2024. According to the guidance notes on the Mortgage Charter, last revised on 25/03/2024, Lloyds Bank cannot enforce this. Is this correct? Correspondence with Lloyds Bank suggests otherwise, as the mortgage is an "end of term" mortgage."

So that is the complaint I will be addressing.

The Mortgage Charter says, as relevant:

"From 26th June [2023], 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.[3]"

It refers to a footnote:

“[3] No further action will be taken if a Possession Order is granted from 26 June 2023.”

Under our rules I must determine what is fair and reasonable by reference to what is, in my opinion fair and reasonable in all the circumstances of this case. In considering what is fair and reasonable I must *take into account* a number of things including codes of practice and what I consider to have been good industry practice at the time in question. I am deciding what is fair and reasonable overall in the circumstances of this complaint

Mr and Mrs G accept they missed payments from 2022. And they did not repay the capital balance that was due to be repaid in 2021. So, whichever way I look at it, it was more than a year since they first missed payments when Lloyds obtained a possession order. Even if the Mortgage Charter did apply it is not clear in the individual circumstances of this complaint that it would prevent Lloyds enforcing the possession order.

In saying that, I have not been made aware that Lloyds intends to enforce the possession order. In its submission to us it said that it would need to apply to the court for an eviction order should it decide to enforce the possession order – and that it would encourage Mr and Mrs G to remain in contact with its end of term team so it can consider whether there is any further forbearance it can offer.

As things stand Lloyds has not enforced the order and it is prepared to enter into a dialogue with Mr and Mrs G about their options. That seems reasonable to me and is in line with the steps a lender should take in these circumstances. Repossession should be a last resort and Lloyds has not indicated that there is nothing it can do to help Mr and Mrs G, even if it won't agree what they want. And if Lloyds did enforce the order, Mr and Mrs G would have the opportunity to defend that in court.

Like the investigator, I don't consider the Mortgage Charter was intended to apply in the circumstances here. As I see it, the Charter is intended to help borrowers with "live" mortgages by offering various types of support. Lloyds has told us the reason it obtained the possession order was because Mr and Mrs G's mortgage term ended in 2021 and it hasn't been repaid. The types of support automatically available under the Charter would not usually be suitable for borrowers like Mr and Mrs G with an interest only mortgage whose term has ended and where they are unable to repay the balance due.

Technically Mr and Mrs G's mortgage has ended and is overdue to be repaid. They are in breach of contract. I don't consider the fact Mr and Mrs G are still making payments and incurring interest or the language used by Lloyds or its solicitors changes that or means that the Charter was intended to apply to borrowers in their circumstances.

Lloyds is still required to treat Mr and Mrs G fairly and explore whether there is any further forbearance that it could offer them. That will depend on their overall circumstances. I'd encourage Mr and Mrs G to engage with Lloyds to see if any mutually acceptable way forward could be agreed that would avoid the need for Lloyds to enforce the possession order.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 27 September 2024.

Ken Rose
Ombudsman