

complaint

Ms A1 and Ms A2 have complained about the administration and arrears handling on their mortgage account by Clydesdale Bank Plc. The complaint has been conducted throughout by Ms A1.

background

Ms A1 and Ms A2 own a property which is mortgaged to Clydesdale. The mortgage is described in the offer dated 3 August 2007 as a Fixed Buy To Let Capital & Interest Mortgage. It's secured on a property a few doors away from Ms A1 and Ms A2's residential address. Their sister lives in the property, paying rent to them. The amount borrowed was £197,600 plus £999 for fees that were added to the loan. It is on a repayment basis, over 20 years, with the first five years at a fixed rate. The mortgage is now on Clydesdale's Standard Variable Rate.

The mortgage fell into arrears, but by 2012 the full repayment was being made. Nothing was being paid towards the arrears. In July 2012 Ms A1 spoke to Clydesdale on the telephone. She offered to pay £1,500 towards the arrears. Clydesdale said this wasn't sufficient to stop any action by it. By that time the arrears were about £39,000.

No further action was taken by Clydesdale for a year. But it wrote to Ms A1 in September 2013 asking her to contact it. It wrote again a month later asking for proposals to repay the arrears, with evidence in support of income and expenditure. A further letter was sent in November 2013 against asking for this information. The letter explained that failure to provide it may result in possession proceedings.

Ms A1 complained to Clydesdale, saying it was harassing her. She disputed discussing repayment of the arrears in July 2012 and says that she believed the arrears to have been "consolidated".

In 2012 Ms A1 also complained about earlier issues with Clydesdale in 2010.

Clydesdale didn't uphold Ms A1's complaint. It was satisfied the arrears had been discussed in July 2012. It also explained that it had issued a final response on the 2010 issues in December 2010, and so it didn't intend to respond further to those matters. Clydesdale noted it could have responded more quickly to the complaint, and it offered Ms A1 £50 as a gesture of goodwill.

Ms A1 brought the complaint to us. Our adjudicator didn't think Clydesdale was acting unreasonably. It had agreed to take no action for a year, on the assurance from Ms A1 that she hoped to clear the arrears by then.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

This is a buy-to-let mortgage on a property in which the borrowers do not reside. I understand a family member lives in the property, and so whilst it is occupied in this way, it falls within the scope of mortgage regulation.

Ms A1 has set out in an email to us sent in April 2015 the main points of her complaint:

- Clydesdale misinterpreted the conversation she had with it in July 2012, by saying she had agreed to pay the mortgage arrears by the following year.
- When this payment wasn't made, Clydesdale sent receivers to the property.
- Clydesdale didn't respond to the complaint until July 2014, but still expected her to pay the arrears.
- Clydesdale failed to provide her with a copy of the call recording.
- She never would have agreed to make such a large repayment over the phone.
- She now has the call recording, and at no point does she make a firm commitment to pay the arrears over the following year.
- During the call, Clydesdale badgers her to stop paying unsecured loans, but ignoring that she'd offered to pay Clydesdale £400 on top of £1,400 each month from October 2010 – before her mortgage had been sent to the recoveries department.
- The mortgage was mis-sold because the broker, who was paid by Clydesdale, assessed it on a lower amount of borrowing. The higher amount of borrowing wasn't assessed. The rental figure, accepted on the higher amount of borrowing, was for an interest-only mortgage, not a repayment mortgage.

With regard to the sale of the mortgage, this was through a broker. Ms A1 and Ms A2 would need to address any concerns about the sale to the broker. I will make no further comment on this part of the complaint here.

I'm satisfied arrears haven't been added to the mortgage balance. My reasons for saying this lie in events that took place in 2010. Following court proceedings, where a claim made by Ms A1 and Ms A2 against Clydesdale was dismissed, Ms A1 made proposals to Clydesdale in January 2010 and April 2010. These were that the arrears and legal costs be added to the remaining mortgage and the term increased to 25 or 30 years. Ms A1 also asked Clydesdale to clear her and Ms A2's credit reports. The reporting of arrears by Clydesdale had, Ms A1 said, caused her and MsA2 "*untold hardship*".

Clydesdale responded in August 2010. It explained that the arrears figure was correct, it was unable to alter the credit file and that the arrears remained owing. With regard to extending the term of the mortgage, Clydesdale said Ms A1 and Ms A2 would need to discuss this with a mortgage adviser to explore any available options.

In June 2011 Ms A1 told us in an email that Clydesdale "*blankly refused to accept any of our proposals...*"

So in the circumstances, I don't think Ms A1 can be under any misapprehension that the arrears had been capitalised.

I confirm I've listened to the call from July 2012, and I've also read the transcript provided by Miss A1. I'm sorry Clydesdale didn't provide Ms A1 with this sooner, but it is now available and so what was discussed during that call is clear to all.

It seems Ms A1's reason for the call was to clarify the monthly repayment she had to make. But Clydesdale took the call as an opportunity to discuss the arrears. Although Ms A1 says she didn't say she'd repay the arrears within a year, the transcript says:

Clydesdale: As you know, that doesn't affect the fact that there are still outstanding arrears on your account and you're paying

Ms A1: Well I hope you will be lenient because I am saying we would like to pay this off, but I can't promise a date, I wish I could.

Clydesdale: Right, and where, where would you be getting the money from to be able to do that?

Ms A1: From family.

Clydesdale: Right, and you've no indication as to, you know, whether it's a, a two month period, a six month period or a twelve month period that ...

Ms A1: Well it could be up to, within a year, I hope.

To some extent I agree with Ms A1 that this wasn't a firm commitment by her to repay the arrears within a year. But Ms A1 did say to Clydesdale that she *hoped* to repay the arrears within a year. I'm satisfied Ms A1 was aware of the amount of the arrears – she was told during the telephone conversation they were almost £39,000, and didn't she dispute this figure during the call.

Clydesdale, it appears, misunderstood what Ms A1 had said and took it to be a payment proposal. Because of this, it took no further action for a year. I don't see how this can be considered detrimental to Ms A1. If Clydesdale hadn't misinterpreted what Ms A1 had said, it would, I think, have begun recovery action much sooner, given the level of the arrears.

After a year, when the arrears had in fact increased, Clydesdale wrote to Ms A1 asking for her proposals. Ms A1 has taken great exception to this and considers it to be harassment. I disagree. Clydesdale is entitled to ask how arrears are to be repaid. It had given Ms A1 a year where it didn't contact her about them, but the arrears had increased, not reduced.

I don't think it was inappropriate for Clydesdale to point out to Ms A1 the importance of prioritising secured debt over unsecured. This is something Ms A1 had complained about in 2010 – with the same response from Clydesdale about the importance of paying secured creditors first.

So Ms A1's known for some years of the need to prioritise her payments to Clydesdale – but chose to continue repayments to unsecured creditors. I don't criticise Clydesdale for pointing out the importance of paying the mortgage ahead of unsecured creditors. This is the same advice that the Money Advice Service, Shelter, Citizens Advice and StepChange give to people in similar circumstances to Ms A1.

Ms A1 and Ms A2 are in a difficult position – they have substantial arrears on the mortgage account and are in danger of the property being repossessed if they can't repay them. I would urge Ms A1 and Ms A2 to engage with Clydesdale to discuss how they are to repay these arrears. Although Ms A1 considers contact from Clydesdale to be harassment, it's entitled to contact Ms A1 and Ms A2 to ask them how they are to repay the money they owe.

So for the reasons I've given above, I'm satisfied Clydesdale has acted fairly and reasonably, and so I'm unable to uphold the complaint.

Ultimately complaints about the way in which Clydesdale has contacted Ms A1 and her objections to this deflect from the underlying problem Ms A1 and Ms A2 are faced with – the fact that they owe a substantial amount of arrears and don't appear to have any proposals to repay them. It is this core issue that Ms A1 and Ms A2 need to address. If they're experiencing financial hardship, Ms A1 and Ms A2 might want to take advice from the Money Advice Service, Shelter, Citizens Advice or StepChange. We can provide contact details for them, if they'd like us to.

Finally, I see that Clydesdale acknowledged it had taken too long to respond to the complaint. In its final response letter it offered £50 as a goodwill gesture. I'm satisfied this is fair and I don't require it to do anything further.

my final decision

My decision is that I don't uphold this complaint. I simply leave it to Ms A1 and Ms A2 to decide if they want to accept the £50 offered by Clydesdale Bank Plc for poor customer service in full and final settlement of their complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms A1 and Ms A2 to accept or reject my decision before 9 July 2015.

Jan O'Leary
ombudsman