

The complaint

The complaint is about a secured loan taken out in 2005 originally with a lender I'll call "W". In 2018, W ceased trading and the debt was transferred to a new lender, which I'll call "C". The administration of the debt is carried out by Target Servicing Limited on behalf of C. Ms R is unhappy that Target is reporting the debt as being in default on her credit file and pursuing her for the debt.

What happened

The facts of this complaint are well known to both parties so I won't repeat them in detail here. Instead I'll give a brief summary (in my own words and rounding the figures) and then focus on giving the reasons for my decision. 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.

W had stopped reporting information about the loan status on Ms R's credit file in 2013. Then, in 2017, the mortgaged property was sold (Target says it was sold in possession) leaving a shortfall of around £29,000. That debt was transferred to C in May 2018. Ms R is unhappy that in 2019, Target resumed reporting information about the loan status; Ms R found out about this in early 2020 and complained. She believes the debt is statute-barred and says the adverse reporting put her employment at risk as it's preventing her from getting finance for a new car which Ms R says she needs for her job.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority. We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts. We're impartial, and we don't take either side's instructions on how we investigate a complaint, or when we have enough information on file to decide it.

It's for me to decide when I have enough information and evidence to determine a complaint, and it's for me to decide how much weight I should attach to the evidence I do have. We reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

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've reached broadly the same conclusions as the investigator, for the following reasons.

I'll begin with Ms R's assertion that the debt is statute-barred; it seems to me that's at the very centre of her argument and forms the crux of her case. In her email to us of 9 April 2021, Ms R refers to it as "the pertinent point". I agree with Ms R that the point is pertinent, but I don't agree that the debt is statute-barred: I'll explain why.

The statutory time limits for secured and unsecured debts aren't the same. The law allows six years for unsecured debts and twelve years for secured debt (albeit in the latter case, the regulator of mortgage business has adopted six years as good practice). So for practical purposes, when considering what is fair, this service applies a six-year limit to secured and unsecured debt alike.

The limitation period starts from the most recent incidence *after crystallisation of the debt* of one or other of the following:

- the last time the borrower wrote to the creditor acknowledging they owed the debt; or
- the last time the borrower made a payment to the debt.

The reason for the italics in the previous paragraph is that it's important to remember that the debt at the heart of this dispute is not the secured loan that Ms R took out with W in 2005. Rather, it's the unsecured shortfall debt that arose after the property had been repossessed and sold without realising enough money to repay the original secured loan.

That happened in 2017; that's when the debt crystallised, and fewer than six years have passed since that happened. So I'm not persuaded that Target, on behalf of C, is statute-barred from reporting the unsecured debt on Ms R's credit file.

Given that W hadn't been recording data on Ms R's credit file for several years, I'd expect Target, as a matter of courtesy and fair treatment, to have informed Ms R of its intention to resume credit file reporting. Target did do that, in August 2019, albeit it sent the letter to the mortgaged property address, and not Ms R's current address.

I don't think I can fairly criticise Target for doing that. Whilst it's possible W may have known Ms R's new address (she's told us W wrote to her at her new address about a refund of PPI) it doesn't appear that W passed the information on when the debt was transferred to C. That's borne out by the fact that the letter introducing C as Ms R's new creditor in May 2018 was sent to the former address too.

Such an omission on W's part is regrettable, but this complaint isn't about what W did or didn't do. W no longer exists and I have no power to consider its possible acts and omissions before ceasing trading; that also excludes how any PPI refund was handled. I can only consider what Target has done (or not done) on behalf of C since May 2018, and in that context, Target only became aware of Ms R's new address in 2020 when Ms R gave the details over the phone. That enabled Target to use her current address when it sent the final response on her complaint in April 2020.

Ms R says that during a phone conversation, Target's staff member read out a letter that W had sent C at the time of the transfer telling it not to pursue Ms R for the debt. There's no mention of such a letter in the call I've listened to; it's possible there's another call in which that happened, but in any event, Target wouldn't be bound by such an instruction from W, assuming it existed.

Target, on behalf of C, is fully entitled to exercise its own judgement about whether, and by what means, it pursues the outstanding debt. I said earlier that I wasn't persuaded Target, on behalf of C, is statute-barred from reporting the unsecured debt on Ms R's credit file. Similarly, I'm not persuaded it's statute-barred from seeking reasonable repayment proposals from her.

When you're as close to a difficult situation as Ms R is here, it's a natural subjective reaction to see things in a particular way. But I have a different remit. I have to be objective, and impartial, and sometimes that means stepping back from the fine detail and taking an overview. It also means that I'm not required to provide answers to every specific question that comes up, if I don't consider doing so will affect the overall outcome.

Looking at everything "in the round", it seems to me that the outstanding debt at the heart of this dispute is a valid debt that crystallised in 2017. I'm persuaded it is owed by Ms R, and that Target can fairly report its existence on her credit file and ask her for reasonable repayment proposals.

Ms R doesn't have to accept my conclusions, and if she doesn't, then neither she nor Target will be bound by my final decision. Subject to any time limits or other restrictions a court might impose, Ms R's right to take legal action against Target over the subject matter of this complaint won't have been prejudiced by our consideration of it.

My final decision

My final decision is that I don't uphold this complaint. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 2 June 2021.

Jeff Parrington
Ombudsman