DRN-3744870

The complaint

Miss M complains that Lloyds Bank PLC (Lloyds) defaulted her loan account.

What happened

Miss M took out a loan for £5,000 from Lloyds in March 2019. Payments were £175.72 per month. These were made until May 2020 when Miss M's income was affected by the pandemic. The payments for May, June and July 2020 weren't made. On 31 July 2020, Miss M called Lloyds who agreed to a payment plan of £50 for two months. Interest was zero. One payment of £50 was made. On 22 September 2020 and 23 September 2020, she spoke to Lloyds again and they agreed a three-month payment plan – whereby no interest was charged and no payments were needed. The plan was to end on 22 December 2020. On 13 October 2020, Lloyds sent a Notice of Default showing arrears of £467.16 – which had to be paid by 31 October 2020. On 25 November 2020, Lloyds defaulted the loan with the arrears at £642.88. The debt was sold to a debt collection agency with the balance £3,491.38.

Miss M complained. She said she was on an agreed payment plan. And she had been told on the phone by Lloyds to ignore the letters they sent about arrears and default. So, she said the default was a surprise and was unfair. She said that had she known there would be a default added to her credit file, she would've asked her family to help her out. She is now having trouble getting a mortgage because of the default on her credit file.

Lloyds said Miss M hadn't made the contractual payments to her loan and therefore it fell into arrears. These were reported to the credit refence agencies as true information. They agreed that Miss M was told to ignore the letters sent to her – and paid compensation of £75 for that error. But Lloyds said that Miss M's income and expenditure information showed she couldn't make the payments, and so her loan would've defaulted regardless. The loan had been sold to a debt collection agency (DCA) and she should arrange affordable payments to the loan through them.

Miss M brought her complaint to us. Our investigator said Lloyds acted reasonably. Miss M had negative income and couldn't afford the payments. He thought the loan was in arrears by seven months, and so it was reasonable of Lloyds to default the loan – this was in line with the ICO's guidance which said an account may be defaulted after three months of arrears, and certainly it should be defaulted if there were six months arrears. Lloyds acted in accordance with the letters that they'd sent to Miss M. He agreed that Miss M had been given the wrong information on the phone, but Lloyds' payment of compensation of £75 was right for that error. So - he said Lloyds didn't need to do anything more.

Miss M didn't agree, she asked that an ombudsman look at her complaint.

<u>I issued a provisional decision where I said:</u>

In looking at Miss M's complaint, I considered whether she should've been given a payment holiday under the pandemic support scheme. If she qualified for that, then there likely wouldn't have been a default or advices to the credit reference agencies. In April 2020, the Financial Conduct Authority (FCA) announced guidance to lenders in response to the effects on customers of the COVID-19 pandemic. All lenders, including Lloyds, had to put in place 'payment holidays' on many credit agreements, including loans – to help customers who were affected. Customers could ask for a total of two payment holidays each of three months – whereby payments could be suspended. Missed payments would not be reported to credit reference agencies, although interest would still be debited to the accounts. This support was provided by firms up to the end of October 2020.

The intention was to provide short term support – usually in cases where customers would be returning to work within a short period of time. And so – where a customer's situation was that they were in longer term difficult - or where there were already arrears - then payment holidays under this scheme weren't normally agreed.

Looking at Miss M's situation, she had already missed two payments to her loan when she called Lloyds in July 2020 – so she was in arrears by then. So that would mean she didn't qualify for the scheme. So – that can be set aside.

When Miss M called Lloyds on 31 July 2020, she said she intended to return to work after a period of furlough. Lloyds agreed a two-month payment plan with payments of £50 to be made in August 2020 and September 2020. But I can see that only one payment was made – on 4 September 2020 – so the plan was broken. But Lloyds agreed there had been a confusion over whether there should've been a manual payment made, or a direct debit payment – and agreed to remove the late payment marker for that month from Miss M's credit file.

Miss M then called Lloyds again on 22 September 2020 and Lloyds returned her call on 23 September 2020. On those calls, it was established that she hadn't returned to work – but hoped to in three months' time. Lloyds went through her income and expenditure and worked out her outgoings exceeded income by £401 each month. On the call on 23 September 2020, Lloyds agreed a three-month payment plan – with no payments needed and no interest to be charged. The plan was to run until 22 December 2020. The letter sent on 23 September 2020 confirmed the arrangement and said "*you won't need to pay anything into your account during this plan…this temporary plan will not clear the amount you are behind by and your normal monthly payments are still due each month…being behind with your payments can affect your credit score…".* And so – Lloyds did confirm in writing what the terms of the plan were – and said that Miss M was still behind with her payments. But equally - the letter also said nothing needed to be paid until the plan ended in December 2020.

I listened to the call on 22 September 2020. On it, Miss M asked several times about the effect on her credit file. She was clearly concerned about that. Lloyds' call handler said "*..there will still be arrears accumulating on your account even on a payment plan".* But the call handler also said that *"…(I'm) not sure about what affect (there will be) on your credit file…".* And so, Miss M wasn't given a clear answer to her questions about her credit file.

Miss M called Lloyds on 23 September 2020 and I listened to the call. Miss M advised that she had a payment holiday agreed on her mortgage – the call handler said she would see how that affected the income & expenditure form. But she didn't do that – so I don't know if it would've shown that Miss M's financial situation was improved, or by how much. Miss M asked again about the effect on her credit file, and the call handler said it would show 'arrears' and that she was on a plan – but when she paid off the arrears, the credit file would show that. Miss M called Lloyds on 16 October 2020 – and the call handler checked the payment plan and said, "*get in touch with us at the end of the payment plan in three months' time".* So – for me, this meant nothing needed to be done until the plan expired on 22 December 2020.

I then considered again the letter Lloyds sent to Miss M on 23 September 2020 – this said *you won't need to pay anything into your account during this plan. Your plan will end on 22 December 2020".* So – following the call that took place on that day, I think Miss M was entitled to assume that nothing needed to be paid until the end of the plan. But – Lloyds sent Miss M a Notice of Default on 13 October 2020 requiring payment of arrears of £476.16 by 31 October 2020. So, while Lloyds could do that – because of the arrears – I can see why Miss M was confused.

I listened to the call on 27 October 2020. Miss M had by then received Lloyds' Notice of Default dated 13 October 2020 and was worried about it. She couldn't understand why that was happening as she said she was on an agreed payment plan, with no payments required. I heard her say *"..so why am I getting letters through the post threatening default and…arrears of £467 to be paid…".* Lloyds call handler clearly said *"…these letters are automatically generated even though you've got a payment plan on your account…"* and *"(the letters) do not mean you have to pay by 31 October (2020)…just keep the letters for future reference…there is no need to make any payment"*. Miss M asked again *"So if I get another letter – ignore it?".* Lloyds call handler replied, "*read it…keep it for future reference…but arrears are building up every month (and are now) £467.16 OK?"* . So, I think Lloyds gave the guidance to Miss M – that the letters could be ignored, and no payments were needed at all.

In December 2020. Miss M's loan was defaulted and sold to a DCA – with the balance then £3,491.38. The debt is still being managed by the DCA.

Lloyds argue that Miss M's income & expenditure form showed a negative position, and she would've defaulted away. But – against this they should've considered the effect of Miss M's payment holiday on her mortgage, but didn't. And – Miss M had said she would've got help from her family if she had known about the potential for default. I think we have to accept that to be the case.

On balance and in the circumstances of this complaint – I think it was reasonable for Miss M to think that a default wouldn't be registered on her credit file – as she was told to ignore the letters while on the payment plan, and was advised to do nothing until the end of the plan in December 2020. And the letters said nothing needed to be paid until the end of the plan.

I accept that Lloyds were clear on the calls that Miss M's credit file would show 'arrears', and that an 'arrangement' was in place – so those markers should remain. But the default in December 2020 should be removed from Miss M's credit file; and the debt brought back from the DCA and a mutually agreeable repayment schedule agreed for the outstanding balance. Because of what happened, Miss M hasn't been able to get a mortgage – and this must have caused her considerable stress and anxiety, and so Lloyds should also pay compensation of £200.

<u>*Responses to the provisional decision:*</u>

Miss M agreed with it and asked how any final decision would be implemented. Lloyds agreed with the payment of compensation and removing the default. But they also said that the original term of the loan had an end date of July 2022 and so the loan should now be paid off in full by Miss M in one payment.

I now need to consider these points.

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.

In considering the final decision, we asked Miss M to confirm she could make the original contractual payments of £175.72 each month. We wanted to ensure she wouldn't be creating further problems for herself and possibly defaulting at a future date. She confirmed she could make the payments. We also advised her that our final decision is binding on Lloyds.

I've considered what Lloyds have said. I don't know if Miss M has the means to pay off the loan in a lump sum. But in any case, it doesn't seem consistent with a final decision in her favour – to ask her to pay off the loan in a lump sum. If Miss M wishes to pay off the loan early, that is her choice. And so - I don't agree with Lloyds on that point and am therefore persuaded to not change my provisional decision. And because Miss M has said she can make the contractual repayments, it seems right that Lloyds take the loan back from the debt collection agency and put it back on a commercial basis. But that's a matter for Lloyds and Miss M to agree upon.

My final decision

I uphold this complaint. Lloyds Bank PLC must:

- Remove the default dated December 2020.
- Pay compensation of £200 for distress and inconvenience.
- Take back the loan debt from the debt collection agency and agree a mutually agreeable repayment plan with Miss M. She has said this can be with the original contractual payments.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 14 November 2022.

Martin Lord
Ombudsman