

## **The complaint**

Mr D is unhappy that Lloyds Bank PLC defaulted his credit card account and sold it to a debt recovery agency.

## **What happened**

To briefly summarise: Mr D had a Lloyds credit account that was in arrears. In September 2022, Mr D contacted Lloyds and agreed a three-month nil-payment plan with them. This plan meant that Lloyds accepted that Mr D might not make any payments towards the account for three-months and wouldn't chase him for not doing so.

A few months later, in November 2022, Mr D received a default notice from Lloyds which explained that they were considering defaulting his account. Mr D contacted Lloyds and was told he didn't need to worry about the default notice because he was on the nil-payment plan. And, when Mr D contacted Lloyds in December 2022, at the end of the plan, he agreed a new ten-month payment plan with them. However, shortly afterwards, Mr D discovered that Lloyds had defaulted his account and sold the debt to a debt recovery agency ("DRA"). Mr D wasn't happy about this, so he raised a complaint.

Lloyds responded to Mr D and explained that the default notice issued in November 2022 had been issued correctly. And Lloyds further explained that they had made a mistake when agreeing to the ten-month payment plan with Mr D in December 2022, because the default notice had already been issued to him at that time.

As such, Lloyds didn't feel they'd acted unfairly by defaulting the account as they had, but they did accept that they'd mistakenly led Mr D to believe that he could enter into the ten-month payment plan with them. Lloyds apologised to Mr D for this and made a payment of £100 to him as compensation for any trouble and upset he may have incurred. Mr D wasn't satisfied with Lloyds' response, so he referred his complaint to this service.

One of our investigators looked at this complaint. But while they felt that Lloyds had mistakes in how they'd administered Mr D's account, they felt that the default notice had been issued by Lloyds correctly and that Mr D's financial position appeared to be such at that time that there was no way he could have avoided the defaulting of his account in line with that default notice. So, they didn't uphold the complaint. Mr D remained dissatisfied, so the matter was escalated to an ombudsman for a final decision.

## **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 issued a provisional decision on this complaint on 16 October 2023 as follows:

*I note that Mr D has provided several detailed submissions to this service regarding his complaint. I'd like to thank Mr D for these submissions, and I hope he doesn't consider it a discourtesy that I won't be responding in similar detail here. Instead, I've focussed on what I*

*consider to be the key aspects of this complaint, in line with this service's role as an informal dispute resolution service.*

*This means that if Mr D notes that I haven't addressed a specific point he's raised, it shouldn't be taken from this that I haven't considered that point – I can confirm that I've read and considered all the submissions provided by both Mr D and Lloyds. Rather, it should be taken that I have considered that point but that I don't feel it necessary to address it directly in this letter to arrive at what I consider to be a fair resolution to this complaint.*

*Mr D has explained that the three-month nil-payment arrangement he agreed with Lloyds in September 2022 meant that Lloyds shouldn't have issued the default notice on his account in November 2022, regardless of the account arrears. And Mr D feels this is because the nil-payment plan meant that he was under no obligation to make a payment during that plan.*

*But Mr D's understanding of the nil-payment plan isn't correct in this regard. And while the nil-payment plan did mean that Mr D wouldn't be chased by Lloyds if he didn't make a payment during the plan, it didn't absolve him of his contractual requirement to make monthly payments. And it also didn't mean that Lloyds wouldn't consider defaulting his account if he didn't make monthly payments while the plan was in place.*

*This was explained to Mr D in the letter which confirmed the nil-payment plan, sent by Lloyds dated 7 September 2022, which included the following statements:*

*"This temporary plan will not clear the amount you are behind by, and your normal monthly payments are still due each month."*

*"You aren't bound to this plan by contract. But you are still bound to make the monthly payments set out in your credit card agreement."*

*"This means that we may exercise our rights under your credit card agreement if you can't make some of your future monthly payments".*

*Mr D didn't make the contractually required monthly payments during the time he was in the nil-payment plan. And this meant that the arrears that were present on the account continued to grow during that time.*

*When an account is in a position of prolonged arrears, as Mr D's account was, it's generally considered to be good industry practice for businesses such as Lloyds to begin proceedings to default that account when the account is more than three months but less than six months in arrears. This is in line with guidance issued by the Information Commissioner's Office about the defaulting of accounts in arrears and is designed to protect consumers from falling into an unsustainable position of account arrears wherein they would incur unfair charges and interest.*

*So, in consideration of the above, I'm satisfied that it was fair for Lloyds to have issued the default notice to Mr D in November 2022. And this default notice explained that Mr D needed to pay the arrears that had accrued on the account at that time - £1,436.39 – by 30 November 2022.*

*But the default notice that Lloyds issued to Mr D also explained as follows:*

*"We understand sometimes things change and we're here to support you. So, if you don't think you'll be able to pay off the full amount right now, we can help you find a plan that works for you."*

*Mr D contacted Lloyds soon after receiving the default notice, on 18 November 2022, which was before the 30 November 2022 deadline. I've listened to this call, and Mr D explains to Lloyds' agent that he's received a letter from Lloyds but that he already has a payment plan in place. Lloyds' agent then looks at Mr D's account and notes that Mr D is already on a payment plan. And the agent then takes details from Mr D to allow her to check the letter that Mr D was sent and then mistakenly informs Mr D that the letter is just a reminder and that the payment plan remains in place until it's scheduled end on 6 December 2022.*

*This was clearly an error on the part of Lloyds' agent. But it's also notable that Mr D referred only to a letter being received and that he didn't explain that the letter he'd received was a default notice, which may have alerted Lloyds' agent to the fact that they hadn't understood the account situation at that time. As such, I don't feel that either Lloyds' agent or Mr D communicated effectively on the call. Although I also feel that the onus was on Lloyds's agent to have understood the position of Mr D's account correctly.*

*A few weeks after this phone call, the 30 November 2022 deadline given on the default notice passed, without Mr D having contacted Lloyds or arranged an arrears repayment plan with them. And this ultimately led to the defaulting of the account for non-payment by Lloyds.*

*Mr D argues that he didn't act on the default notice because the agent he spoke with when he called about the default notice told him he didn't have to. But, as explained, while Lloyds' agent did make a mistake here, I don't feel that Mr D provided a clear explanation to the agent as to the nature of the letter he was calling about, and the terms of the three-month plan that Mr D was on – and which had been clearly explained to him by Lloyds in their letter – didn't prevent Lloyds from acting in response to continuing non-payment by Mr D.*

*However, given that Lloyds' agent did make a mistake here, I've considered whether Mr D could potentially have acted to meet the requirements of the default notice, had it been understood by the agent that action in accordance with that notice needed to be taken.*

*Having done so, while I don't feel it's likely that Mr D would have been able to clear the full balance of the arrears before 30 November 2022, I do feel that he would have been able to contact Lloyds and arrange a suitable repayment plan with them. Indeed, Mr D did contact Lloyds on 6 December 2022, when the three-month plan ended, and agreed a ten-month plan to clear the arrears with them. And Lloyds' notes regarding that plan include that it was understood that a default notice had been issued to Mr D at that time.*

*Lloyds say that because the 30 November 2022 deadline given in the default notice had passed, that they shouldn't have agreed that ten-month plan with Mr D. But given that the plan was agreed only six-days after that deadline, and that their agent with whom Mr D spoke with after receiving the default notice told him he didn't need to act on that notice, I feel that Mr D could, in all likelihood, have come to the same arrangement with Lloyds before the default notice expired, had it been confirmed to him that he needed to do so.*

*All of which means that I don't feel that Lloyds' have acted fairly by defaulting Mr D's account here in the manner that they have. And this is because I feel that if Mr D had received accurate information from their agent during the 18 November call that Mr D would have been able to agree an acceptable arrears payment plan with Lloyds before the 30 November deadline given on the default notice. And it also appears that Mr D has been making the £300 per month payments required by the ten-month plan he agreed to in December 2022.*

*Accordingly, my provisional instructions here are that Lloyds must recall the account from the DRA and reinstate it, removing the default and amending Mr D's credit file reporting as if the ten-month repayment plan agreed in December 2022 had remained in place.*

*It's my understanding that Mr D has now paid the ten payments of £300 as per the plan he agreed. As such, Lloyds should contact Mr D and discuss the current position of his account with him. I'd also encourage Mr D to continue making appropriate payments towards his account while this ongoing matter is resolved.*

*Finally, I feel that Lloyds actions have caused Mr D a degree of trouble and upset that he reasonably shouldn't have incurred here. Because of this, my provisional decision also includes that Lloyds must make a payment of £200 to Mr D, as compensation for the distress and inconvenience that he's incurred.*

*In arriving at this compensation amount, I've considered the trouble and upset that Mr D has incurred here as a result of the mistakes that Lloyds have made, but I've also considered that Mr D himself must bear some responsibility for the unclear communication that took place on the phone calls he was a party to. Lastly, I've also considered the general framework which this service uses when assessing compensation amounts – details of which are on this service's website. And, taking all these factors into account, I feel that £200 is a fair compensation amount.*

Both Mr D and Lloyds responded to my initial provisional decision, which led me to issue an updated provisional decision on 26 October 2023, as follows:

*Mr D responded to my provisional decision letter and said he didn't feel it was fair that I considered him to be partially to blame for what happened because I felt that he hadn't clearly communicated with Lloyds' agent when he spoke with them.*

*I don't agree with Mr D's objection here, and it remains my position, having listened to the call, that while an error was certainly made by Lloyds' agent, this was an error that I feel Mr D could have mitigated against by being more communicative on the call than he was.*

*Mr D also feels a greater award of compensation should be awarded here, beyond the £200 that I provisionally instructed, in part because he has been unable to re-mortgage his house while the default had been present on his credit file. However, it should be recognised that the award of £200 was compensation for upset and inconvenience, whereas Mr D not being able to re-mortgage his house would be an instance of a consequential loss – that is, a loss that he has occurred as a sole consequence of Lloyds' mistakes.*

*This service isn't a Court of Law and doesn't operate as such. And when considering claims for consequential loss, this service generally requires that it be demonstrated that the loss has been incurred solely as a result of the business' error.*

*But I'm not convinced this criteria can be met in this instance. Firstly, there can be many reasons why a re-mortgage application might not be successful, and so it would need to be shown that the sole factor was the default on Mr D's credit file. Secondly, the loss would need to be demonstrable and not speculative. That is to say that Mr D would need to be able to provide a mortgage application quote or rejection which would definitively crystallise any claimed loss amount.*

*Additionally, given that I continue to feel that Mr D does bear a partial responsibility for what happened here, as explained above, I'm not convinced that Lloyds fairly should be considered solely responsible for any consequential losses he may have incurred, even if the criteria outlined above could be met. And for all these reasons, as well as those previously outlined in my provisional decision letter, I continue to feel that £200 is a fair compensation amount.*

*Lloyds also responded to my provisional decision and confirmed that they accepted the general spirit of it. However, Lloyds indicated that they were no longer willing to provide ongoing credit to Mr D and so suggested that, besides removing the default from Mr D's credit file and paying the £200 compensation, that they recall the balance of Mr D's account from the DRA without reinstating the account and that Mr D should then come to an arrangement with them to clear the balance that remains outstanding.*

*When it's decided that a business has made a mistake, the remit of this service is to restore the affected complainant, as much as reasonably possible, to the position they should be in, had the mistake never occurred. And given this remit, instructing Lloyds to reinstate Mr D's account would appear to meet this remit most accurately.*

*However, it's for a credit provider such as Lloyds to decide whether they're willing to continue to provide credit to any specific individual. And if I did instruct Lloyds to reinstate Mr D's account, there would be nothing to fairly prevent Lloyds from giving Mr D notice that they intended to close his account in the near future, in line with their right to do so as stipulated in the account terms and conditions.*

*As such, I feel that Lloyds' suggestion here is a fair outcome to this complaint. And so, my amended provisional decision is that Lloyds must recall the balance of Mr D's account from the DRA and remove all adverse reporting relating to the account from Mr D's credit file.*

*Lloyds should then contact Mr D to arrange an affordable repayment plan with him to clear the outstanding balance that he owes. And given that the account would not be reinstated, meaning that Mr D would have no further usage of the credit account, the balance that Mr D owes should not be subject to any ongoing interest.*

*It would be expected that Mr D would be required to complete an income and affordability assessment with Lloyds to determine that amount he can reasonably afford to repay. It would also be expected that Lloyds would make credit file reports regarding that balance which would not include any adverse reporting so long as Mr D adheres to any repayment plan that is agreed.*

*Finally, Lloyds must make a payment of £200 to Mr D as compensation for the trouble and upset this matter has caused.*

Both Mr D and Lloyds confirmed that they were happy to accept my updated provisional decision. As such, I see no reason not to issue a final decision here whereby I uphold this complaint in Mr D's favour on the basis described above. And I therefore confirm that I do uphold this complaint on that basis accordingly.

### **Putting things right**

Lloyds must recall the balance of Mr D's account from the DRA and remove all adverse reporting relating to the account from Mr D's credit file.

Lloyds should then contact Mr D to arrange an affordable repayment plan with him to clear the outstanding balance that he owes – which should not be subject to any ongoing interest.

It would be expected that Mr D would be required to complete an income and affordability assessment with Lloyds to determine that amount he can reasonably afford to repay. It would also be expected that Lloyds would make credit file reports regarding that balance which would not include any adverse reporting so long as Mr D adheres to any repayment

plan that is agreed.

Finally, Lloyds must make a payment of £200 to Mr D as compensation for the trouble and upset this matter has caused.

### **My final decision**

My final decision is that I uphold this complaint against Lloyds Bank PLC on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 December 2023.

Paul Cooper  
**Ombudsman**