

The complaint

Mrs C has complained about how Elderbridge Limited has dealt with her secured loan account. She says Elderbridge's recent actions were contrary to how her account should have been handled due to her bankruptcy in 2013. Mrs C is also unhappy with how Elderbridge handled a data subject access request ("DSAR").

What happened

Mrs C took this secured loan out in May 2007 with a lender I'll refer to as M. She borrowed £10,000 (plus fees) over an 84-month term on a repayment basis. The loan agreement indicated the interest rate was 14.3% variable, which gave a monthly payment of £208.82.

The account went into arrears in July 2008, and remained so with no payments made from February 2009. Lender M took legal action which led to a decree being granted in 2009, but a decision was made not to pursue it to eviction at that time.

In June 2012 the account transferred from lender M to lender A, and then in November 2022 it transferred from lender A to Elderbridge. Lender A had instructed a third-party company to administer the mortgage on its behalf, and that same company remained the administrator once the loan passed to Elderbridge.

In the meantime, in November 2013 Mrs C was adjudged bankrupt, and then the loan term ended in May 2014 with a balance remaining outstanding. Following a request from the Accountant in Bankruptcy, Lender A provided details about the secured loan account in February 2016. In that it said that the loan balance outstanding was around £27,700 and the last payment had been made in January 2009.

Lender A obtained a further decree in August 2018, but following some reviews it was decided – after Elderbridge managed to speak to Mrs C in March 2019 - not to pursue things to eviction at that time.

Elderbridge made the decision to stop charging interest on the debt in November 2019, and Mrs C then made some ad-hoc payments between February 2020 and August 2022, with 15 payments which varied between £75 and £150 made in that period.

From January 2023 Mrs C raised some complaints with Elderbridge which it responded to across various final response letters. On the whole it didn't uphold the complaint, although it did offer to pay £60 for some misinformation contained within the January 2023 final response letter.

Whilst the complaints were being dealt with Mrs C made a DSAR, and on 31 January 2023 Elderbridge wrote to Mrs C saying she needed to provide one form of ID before her request could be dealt with.

I understand, following receipt of the ID, the DSAR was then sent to Mrs C on 20 June 2023.

The complaint was referred to our service on 15 January 2024, and it was looked at by one of our Investigators who didn't think we could look at all of the complaint. As Mrs C didn't agree the case was passed to one of my Ombudsman colleagues to decide on that point. He issued a decision about our jurisdiction in July 2024 in which he said that we can't consider the following points:

- Elderbridge had not sent the statements Mrs C asked for.
- Elderbridge is recording incorrect information on Mrs C's credit file – up to 10 March 2023.
- The January final response was inaccurate.
- Elderbridge had not complied with the DSAR.

And he said that we can consider the following complaint points:

- Elderbridge is recording incorrect information on Mrs C's credit file – from 10 March 2023.
- Elderbridge had not properly taken account of the fact Mrs C had been made bankrupt or the evidence she provided to support that.
- When Elderbridge did reply to Mrs C's DSAR, it was incomplete.'

The case was returned to the Investigator to look into the points my Ombudsman colleague had decided we could consider. After working through the arguments raised by both sides, her final assessment was that:

- The credit file entries reflect the legal position and cannot be considered incorrect.
- Whilst Elderbridge was notified of Mrs C's bankruptcy and still took action such as issuing default notices, the Decree granted in 2018 overrides these actions, confirming that the debt remains owed to Elderbridge. She said, that meant the business has acted in line with its legal rights and obligations.
- Elderbridge had provided the requested DSAR documents, and whilst some records were not in chronological order, the DSAR included all relevant information.

Mrs C didn't agree and so the case was passed to me to decide.

What I've decided – and why

In February 2025 I issued a provisional decision, the findings of which said:

'Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

I think it's necessary to distinguish between a lender's right to enforce its security over a property, eg by exercising a power of sale, and a lender's right to require a borrower to repay the debt. The right to enforce the security in the event of discharge from bankruptcy is preserved by the Bankruptcy (Scotland) Act 1985. However, it also says that where a bankrupt is discharged, the discharge releases the borrower from all the bankruptcy debts.

The Bankruptcy (Scotland) Act covers secured as well as unsecured debts. The main difference being that most unsecured debts will be written-off as there's no asset the creditor can take into possession to recover the debt. With a mortgage (or indeed a loan secured against any asset, such as a car for example) the lender can repossess the item the loan was secured against – in this case a property – to repay some, or all, of the debt. This doesn't mean secured debts don't fall within the Bankruptcy (Scotland) Act, just that the lender has an additional level of security as there is an item it can take possession of so it doesn't just write-off the debt. This is the difference between the right to enforce its security over a property, and the right to require a borrower to repay the debt.

Elderbridge (and the previous lender) didn't have the power to chase Mrs C for the loan as under the terms of her bankruptcy the lenders no longer had the right to require her to repay it. But the consequence of not making payments to any secured debt – even in bankruptcy – is that the lender may decide to take possession of the asset (in this case the property). That means Elderbridge can consider whether it wants to enforce its security by taking possession of – and selling – the property the loan is secured against if Mrs C doesn't make her payments. It also means it doesn't need to release its charge at the Land Registry.

If mortgage / secured loan payments aren't made a lender can look to take possession of a property, even if the borrower has been made bankrupt. It can also contact the borrower at that time if it's required for the purpose of enforcing that security. What it can't do is contact a borrower to chase the payments and record any missed payments on their credit file.

The account should have been marked as in default at the point Mrs C went bankrupt, and it seems possible that had happened based on what the parties have said about the previous reporting. The credit industry in collaboration with the Information Commissioner's Office drew up some broad principles and these are published in the following document www.scoronline.co.uk/wp-content/uploads/2024/06/Principles-for-the-Reporting-of-arrears-Arrangements-and-Defaults-at-Credit-Reference-Agencies-vesrion-2a-final.pdf. One of the circumstances it says may lead to the recording of a default is 'The account is or has been included in a bankruptcy...' Having considered everything I see no reason to move away from that principle here and so I'm satisfied Elderbridge should be reporting to Mrs C's credit file that the account was in default on the date she went bankrupt. It should then be reporting that the account was "part satisfied/part settled" on the date Mrs C was discharged from bankruptcy. It shouldn't have been reporting that there were any late / missed payments on the account.

I can only consider the period since 10 March 2023 in respect of the information reported to Mrs C's credit file, so I can't consider the impact on Mrs C for how the account was reported before then. But Elderbridge should have reported the account in the way I've set out from 10 March 2023, which means the account will no longer show on Mrs C's credit file if she was discharged from bankruptcy more than six years ago.

As I've explained above, this doesn't mean Elderbridge needs to remove its charge from the Land Registry, nor does it mean that it can't seek to take possession of the property if it wants to enforce its security.

Mrs C hasn't shown us that the misreporting since 10 March 2023 has caused her any quantifiable financial loss, but I do think it has caused her some distress and inconvenience. The award of compensation for inconvenience is fairly subjective – there's no exact scale as it were. We have some fairly broad bandings, which we publish on our website at www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience. Having considered everything very carefully, including awards

we've made in other cases, I'm minded to award £200 compensation to Mrs C for the distress and inconvenience caused by the misreporting of the account to the credit file agencies since 10 March 2023.

Finally, Mrs C has said that when she received the DSAR from Elderbridge it was incomplete. Elderbridge has sent us a copy of what it says it enclosed in the DSAR it provided to Mrs C and whilst I have no way of knowing for sure that the information is identical, I'm satisfied what Elderbridge has provided to this service isn't missing all the years Mrs C has said. I've no reason to believe Elderbridge has withheld any information from Mrs C's DSAR and so I don't uphold this part of the complaint.'

Mrs C responded to say that if the account was marked as paid and closed in 2016 then Elderbridge should honour that error. She thought Elderbridge should take responsibility and accept this has caused serious damage. She said, if Elderbridge should not have been accepting the ad hoc payments, then these should be returned. In summary, Mrs C said the debt should be written off and all ad hoc payments returned.

Elderbridge accepted my provisional decision and said it had no further submissions to make.

As I said, I can't comment on what happened before 10 March 2023 in terms of what was reported to Mrs C's credit file as that doesn't fall within our jurisdiction. All I can do is make findings on what has happened since then. At no point was this debt written off, irrespective of what may or may not have shown on Mrs C's credit file since 2016; all that happened is that Mrs C couldn't be chased for the monthly payments. But, as I've said, the consequences of non-payment for Mrs C would be that the lender could seek to take possession of the property as the debt is secured against it. Having considered everything very carefully there are no grounds for me to direct Elderbridge to write off the debt.

It also isn't the case that Elderbridge shouldn't have accepted Mrs C's ad hoc payments, it was right to accept any payments Mrs C made as if she didn't make payment towards the debt then Elderbridge could consider taking legal action to take possession of the underlying security, Mrs C's property. What Elderbridge couldn't do was report to the credit reference agencies whether or not Mrs C was making monthly payments. For that reason there are no grounds for me to direct Elderbridge to return any payments Mrs C has made.

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 see no reason to depart from my provisional findings.

Putting things right

I direct Elderbridge Limited to do the following to put things right:

- Report Mrs C's secured loan account to the credit reference agencies to show it as:
 - In default on the date of her bankruptcy.
 - Part satisfied / part settled on the date she was discharged from bankruptcy.
 - No further credit reporting should be made about the account, whether that is positive or negative.

I understand the date of discharge is over six years ago. If that is the case Mrs C's secured loan account should now not show on her credit reference file when a search is made by a potential new lender.

- Elderbridge should not contact Mrs C regarding the secured loan except insofar as this is necessary for the purpose of enforcing its security.
- Elderbridge should also pay Mrs C £200 compensation for the distress and inconvenience caused to her by the misreporting since 10 March 2023.

My final decision

I uphold this complaint and direct Elderbridge Limited to settle it in the way that I've laid out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 3 April 2025.

Julia Meadows
Ombudsman