

The complaint

Mr H complains that Lloyds Bank PLC defaulted his commercial mortgages and refused to reinstate them or to remove any record of the default.

What happened

Mr H is a sole trader trading under the name of a business I'll call M. He has several commercial mortgages with Lloyds Bank PLC secured over a portfolio of rental property. Mr H was made bankrupt on the application of HM Revenue and Customs (HMRC) and this led Lloyds to default the mortgages. Mr H successfully applied to annul the bankruptcy and asked Lloyds to reinstate the mortgages and remove any record of the defaults from his credit file. When Lloyds initially refused to do so, Mr H complained.

Lloyds said that when Mr H was made bankrupt, he was in breach of the terms and conditions of the lending. It therefore issued a 14 day formal demand for full repayment of the outstanding debts in April 2023, on learning of the bankruptcy. It said that Mr H made it aware he was challenging the bankruptcy, so it allowed him additional time to find a solution. But by mid-May, when no progress had been made, it brought the loan agreements to an end and transferred management of the account to its recoveries department.

Lloyds accepted that it didn't always respond to Mr H's attempts to make the regular payments thereafter. But it said that didn't make any difference to the outcome, because it would not have accepted regular payments anyway. It had returned the payments Mr M did make. It required repayment of the outstanding sums in full.

Our investigator said that it was reasonable for Lloyds to have defaulted the accounts when the bankruptcy order was made. But when it was annulled, and it was clear Mr H was able to continue making the payments, it should have reinstated the loans rather than still seeking repayment in full. He said it should reinstate the loans, and pay Mr H £750 compensation, as well as reimburse any legal costs he may have incurred in connection with the refusal.

Lloyds accepted that. It said it couldn't reinstate the defaulted accounts, but it would agree to open new replacement accounts on the same terms provided either that Mr H makes up the payments that have not been made since the default, or that the term is extended to add on the period when no payments have been made. But that would be subject to its usual checks. Alternatively, it would allow Mr H up to six months to re-finance the loans elsewhere without taking further action on the final demands that had been issued. It would also agree to refund legal costs specifically in connection with the default and reinstatement.

Mr H said he would accept that too. But he wanted Lloyds to confirm that it would also remove any reference to the defaults from his credit file. Lloyds said it wasn't prepared to do that, because it had acted correctly in defaulting the loans when the bankruptcy order was made. As this element of the complaint remained unresolved, it came to me for a decision.

My provisional decision

I issued a provisional decision, in which I said:

"This complaint is now largely resolved. Lloyds has agreed to give Mr H the option of having the loans replaced by new accounts on the same terms, or having time to re-finance them elsewhere. And it has agreed to pay £750 compensation.

However, the remaining issue is whether Lloyds should remove any record of the default from Mr H's credit file.

I've not seen any evidence that it did report the default. I've seen a copy of Mr H's credit file and it doesn't include these loans at all – as the loans themselves are not on his credit file, it follows that the defaults aren't either.

It's possible that the loans have been reported under the name of Mr H's sole trader business, M, rather than in his own name. But Mr H has made enquiries of credit reference agencies and been told that there is no credit reference file in M's name.

Given that I've not seen any evidence that Lloyds' actions in defaulting the loans have had a detrimental impact on Mr H's credit file, there is nothing for me to direct Lloyds to do.

However, even if I had seen evidence that the defaults were showing on Mr H's credit file, I wouldn't direct Lloyds to remove them.

The terms and conditions of the loans define what are called "Events of Default". They say, at section 6.1:

As soon as an Event of Default happens or at any time thereafter, by giving notice to you, the Bank may cancel any obligations it has to lend money to you and may also make the loan become repayable on demand.

"Events of Default" include

A petition is presented or made for either an administration or a bankruptcy order against you or a judgment, decree or diligence is made or granted against you.

So it's not just the granting of a bankruptcy order – even the presentation of a bankruptcy petition, that doesn't result in an order, is an event of default.

It seems that in this case Mr H had had a past dispute with HMRC, which had resulted in a liability. Mr H says he wasn't aware of that, but HMRC issued a bankruptcy petition when it wasn't paid. The bankruptcy order was granted, and then Mr H successfully applied to have it annulled.

Annulment of bankruptcy means that Mr H is not and has never been bankrupt. He is treated as if the bankruptcy had never happened.

But the presentation of a petition – whether or not it resulted in a bankruptcy order – is enough for an event of default. Even though, following the annulment, there was no bankruptcy order, there's no dispute that there was a petition. And that was enough to trigger an event of default.

As I say, I've not seen any evidence that the defaults actually were reported to Mr H's credit file. But even if they were, for those reasons I wouldn't ask Lloyds to remove the record. It was entitled to default the account on presentation of the bankruptcy petition, whether or not a bankruptcy order followed. Given that Mr H later had the

order annulled, I think it's reasonable that Lloyds has now agreed to recreate the accounts, and compensate Mr H for the delay in agreeing to do so. But that doesn't mean it wasn't entitled to default them in the first place, or record that it had done so."

Lloyds confirmed that it accepted my provisional decision. Mr H didn't reply.

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.

Having done so, and having noted that neither party has provided any further evidence or argument, I see no reason to change my mind about the conclusions I reached in my provisional decision.

Putting things right

To put things right, Lloyds should:

- Give Mr H the option of having the loans recreated, subject to usual checks, or having up to six months to arrange alternative finance;
- Subject to evidence that of the costs incurred and evidence that they relate to the default and reinstatement, reimburse Mr H's legal costs, adding simple annual interest of 8% running from the date Mr H paid them to date of refund. Lloyds may deduct income tax from the 8% interest but should tell Mr H what it has deducted so he can reclaim the tax from HMRC if he is entitled to; and
- Pay Mr H £750 compensation.

My final decision

My final decision is that I direct Lloyds Bank PLC to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 22 April 2025.

Simon Pugh
Ombudsman