

complaint

Ms R complains about a personal loan she took out with Lloyds Bank PLC. She says it was mis-sold and that Lloyds didn't treat her fairly when she experienced financial difficulty.

background

In 2010, Ms R took out a personal loan with Lloyds. She later experienced financial difficulty and the loan was sold to a third party.

Ms R says that Lloyds mis-sold the loan because it knew that she suffered mental health problems. She also says it hasn't treated her fairly or properly taken account of her personal circumstances when she experienced financial difficulty – and in selling the loan to a third party.

Lloyds said that it was entitled to sell Ms R's debt and that it didn't know about her health issues. But it said it should have defaulted Ms R's account sooner and therefore interest would have stopped at an earlier point. So it offered to backdate the default to October 2013 and to refund interest from November 2013.

Our investigator thought:

- The complaint about the sale of the loan was brought out of time.
- It was reasonable for Lloyds to take steps to recover the debt – and the date of the default wouldn't have made any difference to the amount owed.
- It was reasonable for Lloyds to sell the debt to a third party.
- Ms R had told Lloyds about her health issues in August 2013. Lloyds ought reasonably to have taken account of that when contacting Ms R about the debt. It didn't do so. While Ms R would always have suffered some distress because of the debt and her financial difficulties, Lloyds' actions have caused her additional distress and inconvenience over a number of years. The investigator said that Lloyds should pay Ms R £750 to reflect that.

Ms R responded to make a number of points, including:

- If we accept that Lloyds should have identified she was vulnerable then it follows that it shouldn't have sold the loan, taking into account relevant guidance.
- If Lloyds had dealt with her reasonably she would have avoided legal action and the associated costs.
- The Standards of Lending Practice say that lenders should take into account customer's circumstances in considering whether it is fair to continue to pursue a debt. If Lloyds had dealt with her fairly, it wouldn't have pursued her for the debt.
- £750 doesn't properly reflect the distress Lloyds has caused to her.

Lloyds didn't accept what the investigator said. In summary, it said it wasn't aware of Ms R's health issues. It said that because Ms R's account wasn't in arrears when she wrote in August 2013, her letter wouldn't have been passed to its collection department.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

mis-sale

Our investigator didn't make any finding about whether Lloyds had acted fairly or unfairly when it sold the loan to Ms R. Rather he said Ms R's complaint about this point wasn't something we could consider. Having looked at this point I agree.

I don't have the power to look at every complaint that is referred to me. The loan was sold more than six years ago. And Ms R was aware of the cause of complaint more than three years ago. So it is out of time under our rules.

Ms R has also set out a detailed timeline of what happened. While I accept she was suffering health problems, I don't consider these were exceptional reasons why she couldn't pursue the complaint in time. So in view of that – and as Lloyds hasn't consented to us looking at the complaint – I don't have the power to consider it.

financial difficulty

Lloyds was obliged to treat Ms R positively and sympathetically when she experienced financial difficulty. It also should have taken account of any health issues and adjusted its approach accordingly.

Ms R has given us proof that she told Lloyds in August 2013 that because of her health problems she couldn't deal with Lloyds by phone.

I'm surprised by Lloyds position that it didn't take any steps to adapt its communication because Ms R's account wasn't in arrears at the point she wrote to it and therefore her letter wasn't passed to the right department. Ms R told Lloyds and that is enough. It is not reasonable to say that she should write separately to each department within Lloyds.

I'm satisfied that Lloyds was aware of Ms R's health issues in August 2013. From that point, it ought reasonably to have taken that into account when dealing with Ms R. I think that would have meant that it should not have attempted to contact Ms R by phone after that date.

I don't agree with Ms R that it would have meant that Lloyds would not have sold the debt and that any subsequent action would not have taken place. The debt was still due and payable. It is difficult to see how the overall position of the loan would have been different if Lloyds had stopped phone calls. I note that Lloyds has already backdated the default to October 2013 and offered to refund any interest applied since November 2013. The payments stopped in April 2013 – although there was a lump sum payment in relation to a PPI refund in June 2013. The guidance from the Information Commissioner's office is that as a default should be recorded when an account is between three and six months in arrears. So I think Lloyds offer is fair and reasonable.

Ms R has referred to the Standards of Lending Practice. That is something that I must take into account when deciding what is fair and reasonable in the circumstances of this

complaint. I'd note that these standards weren't introduced until 2016. Nevertheless, I agree that in some cases there are circumstances where a lender should not pursue a debt.

In this case, I don't think it would be reasonable to say that Lloyds should have ceased action to recover this debt from Ms R. I say this as Ms R had the benefit of the money that Lloyds lent to her. She has said that she is able to generate income to support herself. I think it was reasonable for Lloyds to consider there was a prospect this debt could be repaid – even if it is not within the term originally agreed. And while I don't doubt the seriousness of Ms R's health problems, looking at what she has said, I don't consider that alone would be reason for a lender to write off a debt or stop pursuing a borrower.

It follows that even if Lloyds had taken proper account of Ms R's health issues, the debt would still be in place and it could still have taken steps to recover it. So it is likely that Ms R would still have suffered some distress in relation to this debt even if Lloyds had treated her fairly.

I accept that the level of Ms R's upset was increased by Lloyds' failure to take into account Ms R's vulnerability. Looking at everything that happened including the length of time Lloyds ought to have been aware of Ms R's health issues, the level of contact and the effect Ms R says this had on her, I consider it would Lloyds has caused Ms R a substantial amount of trouble and upset. It would be fair for it to pay her £750 to reflect that.

Ms R has also obtained a letter from her doctor in support of her complaint that cost her £30. Lloyds should meet the cost of that.

sale of the debt to third party

Lloyds is entitled to sell the debt to a third party. I don't think it was unreasonable in the circumstances, even taking into account what Ms R has said about her health issues. It isn't responsible for the actions of any third party.

my final decision

My final decision is that, in addition to backdating the default on Ms R's loan to November 2013 and to refund any interest applied to the loan since that date, Lloyds Bank PLC should:

- Pay Ms R £750 for any trouble and upset she experienced as a result of this matter.
- Pay Ms R £30 for the cost of a doctor's letter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 26 July 2018.

Ken Rose
ombudsman