

complaint

Mr B complains about the way Lloyds Bank PLC dealt with his loan. To settle matters he'd like his debt written off and any adverse entries on his credit file to be removed.

background

Mr B told us that he took out a personal loan with Lloyds at a high rate of interest in March 2017. He thinks the loan was misrepresented because he was told that with a history of repayments his credit score would improve and he'd been able to refinance the loan at a lower rate of interest. This turned out not to be the case and in December 2017 he contacted Lloyds to explain he was having problems paying.

He says Lloyds didn't offer him any options when he told them about his financial difficulties. And he feels Lloyds forced him into default when he was guaranteed this wouldn't happen.

He also complains that Lloyds didn't correctly issue statutory notices which he believes have led to the termination of his loan agreement and associated monies and that Lloyds' breached data protection laws when his debt was passed to a third party debt collector.

Mr B complained to Lloyds but it didn't uphold his complaint. When Mr B contacted Lloyds to explain he was in financial difficulties, Lloyds concluded that the loan was no longer affordable and that his loan would have to be transferred to their recoveries team. Lloyds said they'd correctly issued the required regulatory notices including the default letter and final demand.

Unhappy with Lloyds' response Mr B referred his complaint to our service.

Our adjudicator investigated Mr B's complaint but they thought Lloyds had acted reasonably.

They appreciated Mr B had received a formal demand shortly after being told about the recovery and collections process. But the recoveries process started straight away because Lloyds' notes showed that a short term plan wasn't affordable.

Our adjudicator couldn't see any evidence to suggest payments were made to the loan after the direct debit was cancelled or after the default notice asked for payment. Our adjudicator noted that the default notice was issued in February 2018 but Lloyds didn't default the account until June 2018. The adjudicator thought this was reasonable because we'd generally expect a bank to apply a default when the account is at least three months in arrears, but within six months.

In terms of Mr B's concerns that recovery of his loan was passed to a debt collector, our adjudicator noted that the formal demand letter explains that the bank may instruct a debt collection agency to recover the debt or take legal proceedings.

Our adjudicator explained that banks are obliged to treat customers who are in financial hardship positively and sympathetically and they thought Lloyds had done so because it stopped interest straight away and also discussed his options going forward. As a short term plan wasn't affordable, Lloyds started the recoveries process and they thought this was reasonable.

The adjudicator also explained that we couldn't comment on the legality of Lloyds' actions, we could only comment on whether we thought they had acted fairly and reasonably.

Mr B disagrees with the adjudicator's view. I've summarised his concerns using my own words below:-

- he says the terms and conditions that purport to allow Lloyds to transfer his loan account are unfair under Consumer Credit Act;
- the terms and conditions relating to privacy are non-compliant and make the contract unlawful;
- the loan was misrepresented and sold to him with the illusion that the rate would decrease after a short time of him taking out the loan;
- there's a lack of notes and the notes lack clarity and transparency;
- his overdraft was closed whilst issuing a default notice;
- he was forced into default status when he was guaranteed this wasn't going to happen;
- he says Lloyds hasn't issued statutory letters within the prescribed time frame;
- he thinks that Lloyds breached data protection laws when his debt was transferred to third party recovery agents in breach of data protection;
- he thinks the loan and debt should be terminated because Lloyds didn't challenge him after he'd written to say he was treating the loan as terminated due to their breach; and
- his complaint wasn't resolved within 8 weeks.

Another adjudicator responded to Mr B's concerns but they agreed with the conclusions reached by the first adjudicator. They also explained that this service can't make a determination about whether Lloyds breached data protection legislation because that is a question for the Information Commissioner's Office (ICO) to determine and we also couldn't comment on the terms Mr B thinks are unfair under the Consumer Credit Act.

my findings

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'm sorry to disappoint Mr B but I agree with the conclusions reached by our adjudicator and for broadly the same reasons.

I can see that Mr B feels strongly about the way he's been treated by Lloyds. I thank Mr B for the detailed comments he's provided which I've read and considered. I'd like to explain that I won't be responding in as much detail. If I don't mention something, it won't be because I've ignored it, it will be because I didn't think it was material to the outcome of the complaint.

There are some parts of Mr B's complaint that I'm unable to consider.

misrepresentation of the loan – I'm unable to look at Mr B's concerns that the loan was misrepresented. That's because I can only look into the complaint points that Mr B initially made to Lloyds when he complained. This is a new point so if Mr B remains concerned about this he will need to make a separate complaint to Lloyds and give it the opportunity to investigate and respond first.

privacy provisions in breach of data protection laws and collection of his loan referred to a third party agent in breach of data protection laws - unfortunately it's not the role of our service to decide if a business has breached data protection laws – that's the role of the ICO.

Lloyds' regulatory notices not issued correctly and provisions in breach of Consumer Credit Act – we're not a court of law and nor do we have the jurisdiction of one. This means that we can't make findings about whether or not regulatory notices have been issued correctly and nor can we make any finding about whether or not his loan agreement is enforceable. We also can't make any finding about whether the clauses Mr B has referred to are in breach of the Consumer Credit Act.

quality of Lloyds' internal notes and no response within 8 weeks– I appreciate Mr B is concerned about the quality of Lloyds' notes but I'm afraid I can't tell Lloyds how it should record these. That's because we don't regulate financial businesses and these issues would be for the Financial Conduct Authority, as regulator, to decide.

Although I've explained above the reasons why I'm not able to address certain parts of Mr B's complaint I'd like to reassure him that I can and have looked at whether or not Lloyds treated him fairly and reasonably. I think it did so I'll explain why.

Mr B had a number of different accounts with Lloyds at the time but for the purposes of this complaint I am only looking at the way he was treated by Lloyds in respect of his personal loan.

Lloyds' notes show that Mr B told Lloyds of his financial difficulties in December 2017. I can see that a refinancing at 9% was discussed. This wasn't acceptable to Mr B because he wanted a lower rate of interest and this wasn't something Lloyds could offer. The notes record that Lloyds stopped interest for 30 days to allow him to explore his options elsewhere.

Mr B contacted Lloyds again in January 2018. The notes record that Mr B's budget was updated and that no offer could be made. Although Lloyds couldn't offer a solution I don't think this was unfair because a short term solution wasn't possible based on his financial circumstances at the time. The notes also record that Mr B's direct debit for his loan was cancelled and his payment was rejected on 17 January 2018. From this point no further interest was applied to his loan.

Lloyds wrote to Mr B on 18 January 2018 to confirm that it would temporarily accept monthly payments of £60 from him. I'm sympathetic to Mr B's concerns that it was only shortly after this that Lloyds then issued a default notice. The default notice gave details of Mr B's arrears and gave a date for payment to be made.

I've thought carefully about Mr B's concerns but I think it was reasonable for Lloyds to issue the default notice when it did. I say this because the notes show that Mr B's budget was updated and that it wasn't possible for Lloyds to offer a short term solution so it started the recoveries process straight away.

I realise Mr B thinks he was forced into a default status when he was guaranteed this wouldn't happen but I haven't seen any information to support this. The loan agreement which was signed by Mr B explains that his account may default if payments aren't made. I'm satisfied that the letter Lloyds sent to Mr B in January 2018 made it clear that it was a temporary and non-binding arrangement and that the terms of his loan agreement – requiring him to make contractual payments when due – would remain in full force. This letter also explained that his account was in the process of being sent to recoveries and that a default notice would be issued.

There's nothing to show that Mr B made any further payment to Lloyds after his direct debit was cancelled or after Lloyds' letter in January 2018 so I can't say it was unfair for Lloyds to issue a default notice.

The ICO has issued guidance on the registering of defaults. This guidance broadly provides that the ICO would normally expect a bank to apply a default when an account is at least three months in arrears and by the time an account is six months in arrears. In Mr B's case, although the default notice was issued in February 2018, the default wasn't applied until June 2018. As the default was recorded within the time recommended by the ICO guidance I think Lloyds acted fairly because I haven't seen anything to suggest Mr B made any payments after the default notice or demand were issued.

I think it was fair for Lloyds to pass Mr B's debt to a third party debt collector because the default notice and formal demand letter explained that Lloyds could do this if the debt remained unpaid.

Lloyds' customer notes show that after it completed details of Mr B's income and expenditure a short term plan wasn't affordable. Given that was the case I think Lloyds treated him positively and sympathetically in the circumstances because it stopped any further interest from accruing on his loan and it discussed his options after they'd obtained details of Mr B's financial circumstances.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 February 2020.

Michelle Hayward
ombudsman