

complaint

Mr S complains that Lloyds Bank Plc is persecuting him about a debt and would like it to stop.

background

Mr S took out a business loan in 2009. The loan was secured on his house. Mr S didn't maintain payments and the loan was refinanced in 2011. The monthly payments for the new loan were lower as the loan had a longer term. The new loan was also secured on Mr S's house. Mr S didn't maintain payments and the loan account was transferred to Lloyds' recoveries team in 2012.

Mr S raised complaints and Lloyds put collection activity on hold until the complaints were resolved. Lloyds says it instructed solicitors to start possession proceedings as it was unable to reach an arrangement with Mr S to repay the loan. Mr S disputes that Lloyds tried to reach agreement with him.

Mr S took legal advice and agreed a settlement agreement with Lloyds in 2018. He says he finds the agreed payments unaffordable and would like to reduce the monthly payment. Lloyds declined. Mr S says Lloyds continues to threaten him despite him making payments. He says this has made him unwell.

Our investigator didn't recommend that the complaint should be upheld. He said as the loan is secured on Mr S's property it's not unreasonable for Lloyds to see this as a way to recover the debt. While Mr S finds this upsetting, there's no evidence Lloyds acted unreasonably. Mr S took legal advice before signing the settlement agreement and the information Lloyds had suggested the repayments are affordable. It was for Lloyds to decide whether to accept lower monthly repayments.

Mr S didn't agree, saying:

- the adjudicator's view contradicts previous decisions of this service about the sale of the loan and related payment protection insurance.
- Lloyds sought to distress the loan. Mr S says he's received nearly 300 calls from Lloyds, starting at 7.30 in the morning to 10pm at night. He says Lloyds infringed his human rights and wants to steal his assets. He says he's had advice this is harassment.
- he tried to settle with Lloyds. He said he offered monthly payments of £750 but as soon as he said he'd seek legal advice Lloyds refused to deal with him and appointed its own solicitors. Mr S said this happened again when the settlement agreement was reached, unfairly increasing his costs.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr S's previous complaints

Mr S said our investigator's recommendations weren't consistent with this service's previous decisions. I've looked at Mr S's previous complaints. I'm satisfied that the matter I'm dealing with here – whether Lloyds acted fairly in trying to recover the debt owed to it by Mr S – is different from the subject matters of the previous complaints.

what happened?

Mr S took out a business loan in March 2011 for about £39,000. The loan was secured by a second charge on his house. The loan refinanced Mr S's previous loan from Lloyds.

The loan was in arrears from May 2011. Lloyds served a formal demand in 2012 and transferred the loan to its recoveries team.

Mr S raised complaints with Lloyds and with this service. Mr S's complaint that the loan was mis-sold wasn't upheld by this service (March 2017). His complaint about the sale of PPI was upheld (May 2017) and Lloyds paid compensation.

In June 2017 Lloyds instructed solicitors to start possession proceedings.

In August 2018 Mr S and Lloyds signed a settlement agreement. Mr S agreed to make a lump sum payment and a payment of £750 on the first day of each month until the loan was repaid. The agreement says "the amount of the monthly payments shall not decrease".

In September 2018 Mr S asked Lloyds to accept reduced monthly payments. Lloyds said it wasn't prepared to renegotiate the terms of the settlement agreement.

the settlement agreement

Mr S provided income and expenditure information which Lloyds used to assess how much he could pay each month. This suggested he had enough disposable income to meet the agreed monthly payments (or a higher amount). Lloyds provided a copy of an email from Mr S to its solicitor in which Mr S says "I can therefore offer the £20,000 immediately and £750 a month as a suitable compromise". I think it was reasonable for Lloyds to assess the payments in the settlement agreement as affordable.

The settlement agreement says Lloyds can recover its legal costs. Mr S agreed to this when he signed the settlement agreement.

Lloyds agreed not to pursue Mr S in respect of the debt and not to recover contractual interest applied during a specified period. Mr S agreed that certain events (including not making a monthly payment on time) would release Lloyds from its agreement. Lloyds would then be entitled to seek to recover all contractual interest and take steps to recover the debt from the sale of the property or other assets.

Mr S had legal advice before signing the settlement agreement and his solicitor assisted him in negotiating the terms of the settlement agreement. So I think it's reasonable for Lloyds to assume he understood the terms of the agreement when he signed it.

Lloyds' recovery action

Mr S's business loan was secured by a second charge on his house. When security is given for a debt and the borrower doesn't pay the debt when due – as is the case here – the lender can seek to recover the debt from the proceeds of sale of the secured asset.

Here, Lloyds didn't continue with possession proceedings: it agreed to Mr S repaying the debt on the terms set out in the settlement agreement.

Lloyds provided evidence Mr S hasn't always made the monthly payment on the first day of the month – as required by the settlement agreement. I don't think it's unreasonable for Lloyds to contact Mr S when he doesn't make the agreed payments.

Mr S says he can't afford to make the monthly repayments he agreed in the settlement agreement. It's for Lloyds to decide whether a lower monthly repayment is acceptable.

Lloyds contact with Mr S

Lloyds says it tried to contact Mr S about reaching an agreement to repay the debt. Its records support this.

While Mr S says Lloyds' contact amounts to harassment, I haven't seen evidence to support this. I think it's reasonable for Lloyds to contact Mr S about the debt – for instance when Mr S doesn't make agreed payments on time. And, while I appreciate it can be upsetting, I think it's right for Lloyds to explain the possible consequences of missing payments.

I think it was reasonable for Lloyds to appoint solicitors. In 2017 Mr S's solicitor wrote to Lloyds raising a number of points, including that Mr S disputed owing the debt to Lloyds and questioning the security. I think it was reasonable for Lloyds to appoint solicitors to advise on the settlement agreement. Mr S agreed to pay the costs of Lloyds' solicitors.

Overall, I don't think the available evidence here suggests Lloyds has acted unreasonably.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 July 2019.

Ruth Stevenson
ombudsman