

complaint

Ms M complained that Lloyds Bank PLC had:

- acted unfairly when her property went through the “*Mortgage Rescue*” scheme; and
- wrongly passed her details to a third party debt collection agency.

Ms M wants her debt written off.

background

Ms M and her ex-husband had a mortgage with Lloyds. They split up in 2011. After discussions, the property was bought by the local housing authority under the “*Mortgage Rescue*” scheme. But Ms M was in arrears and still owed £4,242.73, which wasn’t paid off by the sale. She signed a promissory note, agreeing to pay £15 a month. No interest would be added.

Ms M complained to Lloyds in 2012 about what had happened. She received a final response dated 20 August 2012. This said that if Ms M was dissatisfied with the decision, she could refer her complaint to this service, provided she did so within six months of the date of the letter. Ms M didn’t contact this service, and continued to pay £15 a month.

In 2018, Lloyds changed its debt recovery agency, which acts for the bank to recover mortgage shortfalls. The bank’s new agent wrote to Ms M in May 2018. The letter said Lloyds had passed on Ms M’s account details. It said it offered a flexible approach to repayment and had different options, and it would be in touch with her.

Ms M complained to Lloyds. She was unhappy that Lloyds had passed her details to the debt recovery agency, and felt Lloyds had broken the agreement.

Lloyds replied that the debt collection agency had got in touch with Ms M in order to set up an official plan, and might want her to go over a financial statement over the phone, for the records. Lloyds said it had spoken to the debt collection agency, which had said that if Ms M got in touch, it would be happy to continue the same payment plan as she was already on.

Ms M wasn’t satisfied and complained to this service. She told us about what had happened in 2011, and why she was unhappy with this. She also said she hadn’t authorised Lloyds to pass her details to the debt collection agency, and she was unhappy that she and a relative were getting calls from the agency. Ms M believed Lloyds had broken the agreement. She wanted the debt written off, as she said it was based on unfair charges and was always unfair. She said Lloyds had now breached the agreement by passing on her details to the debt collection agency.

The adjudicator explained that this service can’t look at part of Ms M’s complaint. And she didn’t uphold the part we can look at.

The adjudicator said that Ms M had initially complained to Lloyds about events around the “*Mortgage Rescue*” in August 2012. In the bank’s final response, it had told her about the right to complain to this service – provided she did so within six months of the letter. Ms M hadn’t complained to this service within that time. So we can’t consider the shortfall on Ms M’s Lloyds mortgage or how it arose.

But the adjudicator did consider Ms M's complaint about Lloyds passing her details to the debt collection agency. The adjudicator explained that as that organisation was acting as the bank's agents, Lloyds hadn't breached Ms M's data protection rights. Essentially, the agent was acting in the place of Lloyds, so it could have the information. And it would have the same duty of care over Ms M's data as Lloyds did.

The adjudicator also explained that Lloyds had said that what the debt collection agency was trying to do was a review, to ensure that £15 a month remained affordable, or whether Ms M was able to pay a little more. It wasn't that Ms M had to pay more – just that her circumstances hadn't been reviewed, so it was time this happened.

Ms M wasn't satisfied. She gave more detail about the circumstances of the 2011 changes. She said she wouldn't have agreed to pay £15 a month to Lloyds if she'd thought she'd then be chased by debt agencies for something she was continuing to pay. She still believed that Lloyds was in breach of the agreement, and said she was prepared to take this to court. She wanted to know why all of this had happened in the first place, and why it had been transferred to a third party who now had an interest in her finances.

my findings

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

I recognise that Ms M feels strongly about many issues in her situation. But this service is governed by rules about what we can and can't look at. These are set out by the Financial Conduct Authority (FCA). One of those rules says that complaints must be brought to us within strict time limits. I issued a separate decision about the part of Ms M's complaint which I can't consider. In that, I explained that I don't have the authority to look at Ms M's complaint about how her mortgage debt came about, or anything about the circumstances at the time. That's because she brought it to us outside the time limits.

What I can look at is Ms M's complaint about Lloyds' change to using a new debt collection agency. That happened in 2018, and Ms M complained to us in time. That's what this decision is about.

The debt collection agency acts as an agent of Lloyds – in other words, on its behalf and in its place. So Lloyds was allowed to let the agency have Ms M's details, and there are no grounds for writing off Ms M's debt on that basis.

Ms M said that even if Lloyds said it had the right to pass on her details in a mortgage, this agreement was no longer a mortgage agreement. She said it was a completely separate agreement drawn up only with her – whereas the mortgage had been in the joint names of Ms M and her ex-husband.

It's correct that the shortfall debt was no longer a mortgage agreement. However, it's not correct that Lloyds gave Ms M's details and an "*interest*" in the debt to a third party. What Lloyds did was hire the third party debt collection agency to do its debt management. So the debt collection agency was Lloyds' agent. Nothing that's happened means the debt collection agency has an interest in the debt.

And in relation to Ms M's details being given to the debt collection agency, as long as Lloyds was satisfied with the agency's data protection arrangements, it was fine for it to hire in resource, to do functions which would otherwise be carried out by an internal department.

Although I find that Lloyds hasn't done anything wrong, I recognise that Ms M has expressed anxiety that she might be chased by a debt agency for something she was continuing to pay. I understand why she'd be concerned about this when she was used to dealing with Lloyds direct. But I've seen nothing on file which would indicate that the agency was trying to get Ms M to pay more. It's understandable that after some years, it would be time for a review of Ms M's circumstances, and I accept that this update was what the debt agency was trying to do. And I see that Lloyds reassured Ms M that it had got in touch with the agent on her behalf, and the agent was happy to accept the ongoing £15 a month payment.

my final decision

My final decision is that I do not uphold Ms M's complaint about Lloyds passing on her information to its debt collection agency.

In a separate decision, I explained that I don't have jurisdiction to consider Ms M's complaint about the circumstances around her 2011-2012 mortgage rescue, because she brought the complaint too late.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 1 March 2019.

Belinda Knight
ombudsman