

The complaint

Mr B and Miss D have complained about a secured loan they have that was administered by Target Servicing Limited.

What happened

Mr B and Miss D took out the loan in April 2007. They borrowed £67,000 (plus PPI) over 200 months.

Whilst the loan had been taken out with a different lender it was subsequently transferred to Picture Home Loans, and the lender appointed Target to administer the loan on its behalf.

The account went into arrears in 2008, and between May 2010 and October 2017 (inclusive) no payments were made. By October 2017 the arrears were around £78,000.

A possession hearing was set for November 2017, but it was adjourned when Mr B agreed to start making payments again. Payments recommenced the same month, but at a level lower than the normal contractual monthly payment due.

The loan was transferred to a new lender on 24 September 2022.

One of my Ombudsman colleagues issued a decision about our jurisdiction in June 2023. In that she said we could consider the following complaint points:

- Mr B and Miss D are unhappy that Target checked their credit status without their permission.
- That Target sent a field agent to their home, and they were charged for the visit, despite having told Target that they didn't want the visit to happen.
- Mr B and Miss D are unhappy with what Target has asked of them in relation to paying the arrears on the loan as this would mean them being unable to pay their unsecured debts.
- The fact that Target has threatened repossession and Mr B and Miss D feel that it is trying to force them out of their home.
- Mr B and Miss D are not happy that Target won't correspond by email – while it doesn't consider email is secure enough, they are willing to take that risk, but Target still refuses. Instead, it sends correspondence by second class post, which they say either doesn't arrive or takes two to three weeks to do so. This has made it impossible for them to adhere to deadlines that have been set.
- Target wouldn't provide them a minimum figure the lender would accept to settle the account.

Our Investigator then looked at those points and didn't uphold the complaint.

Mr B and Miss D didn't agree and so it has been passed to me to decide.

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.

Mr B and Miss D have continued to correspond about the decision my colleague reached about our jurisdiction to consider this complaint. There has to be some finality in our process and it wouldn't be appropriate for us to continue to correspond about the same matters once an Ombudsman has issued a decision on them.

Having reviewed my colleague's decision I can't see that she's erred in her understanding of our rules, or in how she has applied them. I agree with the decision that she reached.

As I agree with her findings, this decision won't be answering Mr B and Miss D's various questions that relate to the areas we can't consider, such as whether the companies have the right to the loan, and why a claim wasn't made under the PPI policy. I also won't be considering Target's complaints procedure, for the same reason.

Target checked Mr B and Miss D's credit status without their permission

Mr B and Miss D signed their loan agreement on 12 April 2007. There is a section in the agreement entitled '*Customer Declarations and Consents*' which says

'Before signing this Agreement, You should read and understand the terms and conditions of the Agreement set out on this page and overleaf under the heading "terms and conditions". By signing this Agreement You consent to Our using Your data in accordance with the "How we will use Your Information" sheet. You also consent to Us collecting and sharing information about You with third parties (including, but not limited to, credit reference agencies, fraud prevention agencies, Your employer and Your existing mortgagee) for the purposes of prevention or detection of fraud, Our assessment of Your application for finance and for the ongoing management of Your account. You acknowledge that We may assign or otherwise transfer the benefit of this Agreement to any other person. You acknowledge that We can disclose to any such person (and that person's representatives, advisors and rating agencies) any information obtained by Us as a result of providing this Loan.'

From this we can see that Mr B and Miss D agreed, when taking out the loan, that information could be collected and shared about them as part of the ongoing management of their account, and that one party that could involve could be a credit reference agency.

In addition, clause E of the terms and conditions states

"If You fail to do anything that You are required to do by this Charge, or the Agreement secured by this Charge, We may, at Our discretion and without obligation, take whatever action We deem necessary to remedy that failure".

Having considered everything, I don't think it was unreasonable for a credit check to be carried out due to the account conduct and contact that had been had between the parties, and this was allowed for under the terms of the agreement Mr B and Miss D entered into.

The field agent visit

A letter was sent to Mr B and Miss D on 19 July 2021 which said:

'We have tried to contact you on a number of occasions without success. Your account remains in arrears by £59,612.87.'

As we have been unable to contact you, we will instruct a field agent to contact you and arrange a convenient time to visit you at home to discuss any difficulties you may be experiencing at present.

The cost of the visit is £120.00, inclusive of VAT, and this will be applied to your account following the visit. If you do not want a field agent to visit you, please speak with one of our Arrears Management team on [number] within 7 days of the date on this letter. We're open from 8am to 8pm Monday to Thursday, 8am to 6pm Friday and 9am to 1pm Saturday.'

It doesn't appear that Mr B and Miss D contacted Target in response to that letter and so the field agent was instructed on 29 July 2021.

The company that had been instructed for the visit – which I'll refer to as company A – wrote to Mr B and Miss D on 10 August 2021. Mr B emailed company A on 23 August to say:

"I have received your letter dated 10/08 on Wednesday 18/08 and can confirm we do not wish a representative to visit our premises.

Please advise what you require, and we will endeavour to assist. Please also confirm how you and not Picture are now dealing with this matter and what sort of assistance you can offer and how you fit into this matter."

A representative from company A then visited the property on 31 August with the notes of the visit saying that the representative spoke to a male at the property who wouldn't provide the information requested to verify his identity. This meant the visit was curtailed.

Mr B and Miss D have said they wanted all communications to be in writing, which is why they emailed rather than phoned. That is Mr B and Miss D's choice, but unfortunately the consequences of that are that a field agent fee was incurred as they didn't follow the correct process to cancel it, and more importantly they didn't do so in a timely manner so the field agent had already been instructed and the fee had become payable.

The terms and conditions of the account allowed for such visits to be undertaken (clause E as detailed previously), and for any costs incurred to be charged to the loan account under condition 7.1

'You will pay to Us any and all reasonable costs and expenses We incur in enforcing Our rights under this Agreement including, but not limited to, the costs of telephone calls or letters to remind You a payment is due, finding You if You move and do not tell Us, taking reasonable steps (including court action) to obtain payment of any sums owed by You, or handling Monthly Repayments not made by direct debit or refused by Your bank.'

Whilst Mr B and Miss D sent an email asking that the visit be cancelled, it was sent about a month late and to the wrong business. For the visit to be cancelled without charge Mr B and Miss D needed to phone Target on the number provided by 26 July. Instead, they emailed company A on 23 August.

Having considered everything I don't uphold this part of the complaint.

The amount Target asked Mr B and Miss D to pay to the loan each month

This loan is secured on Mr B and Miss D's property and is considered to be a priority debt. Non-priority debts are things like credit card balances, unsecured loans and debts owed to family and friends.

The credit search indicated that Mr B had taken out a new unsecured loan in October 2021 (paying £345 a month towards that), with all the payments on that and their various credit card debts all being up to date. It is important to note that, at this point, this secured loan was around £59,000 in arrears with monthly payments of £200 being made against a contractual monthly payment of around £830. Mr B and Miss D said they could increase their monthly payments to £500 for around six months whilst they repaid money they owed to Mr B's family, and then to £700 a month once his family had been repaid.

Priority debts should be paid first so it wasn't unreasonable for Target to ask Mr B and Miss D to make higher payments than they wanted, rather than paying money to unsecured creditors, including Mr B's family. That's because those higher payments were shown to be affordable if Mr B and Miss D weren't, instead, prioritising their non-priority debts.

If Mr B and Miss D are at all unsure on this point and require independent advice about the priority of – and dealing with – their debts, then I can only recommend they contact a debt advice service. Further details can be found at www.gov.uk/debt-advice.

Having considered everything, I don't uphold this part of the complaint.

Mr B and Miss D feel that Target is trying to force them out of their home

We'd expect a lender to look at offering help to consumers going through a temporary problem, especially in situations where it can be seen their situation is likely to improve. The problem here is that Mr B and Miss D's difficulty in getting on top of their arrears was anything but temporary. There's no doubt they've gone through difficult times. The pressure to make their loan payments against such a backdrop must have been immense for them, and I'm not unsympathetic towards Mr B and Miss D in that regard. But my impartiality means I must also have regard for the lender's point of view.

From the lender's side, Mr B and Miss D owed it money and for many years they hadn't met all their contractual repayments. For a period of over seven years (from May 2010 until October 2017) no payments were made at all to the loan. By November 2017, when Mr B and Miss D agreed to start making payments again to avoid possession action, their account was around £78,000 in arrears. Having considered everything it seems the lender showed a great deal of patience and leniency towards Mr B and Miss D for a number of years; it wasn't obliged to do so indefinitely.

Since then, despite the income and expenditure assessments showing the full loan is affordable, Mr B and Miss D still haven't resumed making their full contractual monthly payment. Instead, it seems, prioritising paying their unsecured non-priority debts.

Having considered all that, I wouldn't say the lender acted inappropriately in moving things forward and, in 2017, arranging a court hearing for possession and then later warning Mr B and Miss D about the risk of possession action being taken. A final notice was issued in December 2021, and further action was deferred whilst a payment plan was under discussion between the parties.

At the point the loan was transferred to the new lender (in September 2022) no formal possession proceedings had been undertaken (other than the November 2017 hearing which was adjourned).

Letters giving updates about the status of the account had to be issued, and other letters would also include a warning at the end about the risk of repossession; a warning that Target was required to give all its customers receiving that type of letter by the regulator.

Having considered everything I don't think Target acted inappropriately here and so I don't uphold this part of the complaint.

Target won't correspond by email

Mr B and Miss D wanted Target and the lender to communicate with them only by email. They said they wanted things in writing, but that post either doesn't arrive or takes too long. Target said it (and the lender) can't communicate with them by email as it is not a secure medium.

Target's concerns about email communications are legitimate ones for it to have. Many companies don't want to send sensitive personal information by email, and Target does have obligations to protect Mr B and Miss D's confidentiality. I therefore wouldn't have been prepared to direct that Target must communicate only by email, irrespective of Mr B and Miss D giving their consent to do so. However that point is now moot as the loan has been transferred to a new lender.

Having considered everything, I don't uphold this part of the complaint.

Target wouldn't provide a minimum figure to settle the account

In a call in February 2022 Mr B asked Target how much would be accepted in full and final settlement of the debt, and then sent an email to Target in March 2022 saying

'If we were able to raise the funds, can you advise what is the minimum figure you would accept as a 'full and final settlement' i.e. £0.10 in the pound.'

In the final response letter of 26 April 2022 the lender explained why it couldn't provide a minimum figure, instead Mr B and Miss D needed to provide a figure they were able to pay (plus supporting information)

'You have asked what we would accept as a full and final settlement. We are unable to provide you with a figure to pay as we are unable to provide financial advice. Any offer to settle the account would need to come from yourself and be reviewed along with supporting information and documentation.'

Mr B and Miss D have said *'We did make an offer in writing, albeit a little 'tongue in cheek' of 10p in the pound'*.

An email was sent to Target on 23 May 2022, saying

"... we have asked you to provide us with a figure that you would accept as a full and final settlement on the account. You have declined to provide a number so subject to the various investigations by the ombudsman we will offer 10% of the outstanding amount. Please confirm your acceptance of this to allow us, once all the various investigations are complete and all parties are satisfied with the outcome to look at raising these funds to settle this matter once and for all."

Whilst I can understand why Mr B and Miss D feel this should have been treated as a formal short settlement offer, I don't agree. It wasn't an offer that they were willing to fulfil at that time (they wanted to delay until after our service had decided the complaint and *'all parties*

are satisfied with the outcome’) and they didn’t have the funding in place to make the payment (they were talking about looking at raising the funds).

For a short settlement offer to be considered Target would have needed detailed information including evidence of where the funds were coming from, and a deadline would have been set for the funds to be paid over to Target. Having considered the May 2022 email, Mr B and Miss D weren’t ready for a formal short settlement offer to be made and accepted as they still needed to look at raising funds and didn’t want to make payment until our service had completed its investigation.

I acknowledge Mr B and Miss D wanted to pay as little as possible, that is entirely understandable. But this was a secured loan where Mr B and Miss D had originally borrowed £67,000 (plus PPI) and, by the time the loan was passed to the new lender in September 2022, they’d only made around £47,500 in payments. That was £19,500 less than they’d originally borrowed, with only around 15 payments left in the loan term. By that point, if Mr B and Miss D had made all their payments in full and on time, they should have paid about £100,000 more than that.

The income and expenditure information indicated that the full monthly payment was affordable if Mr B and Miss D prioritised this loan over their unsecured debts, and Target noted the value of similar properties in the area indicated there was likely to be sufficient equity to repay the loan if the property was sold.

Lenders don’t have to accept short settlement offers, and having considered everything it doesn’t seem unreasonable that the lender wouldn’t have been willing to accept just 10% of the sum outstanding here, albeit it doesn’t seem that it communicated that to Mr B and Miss D.

I acknowledge that Target didn’t respond promptly to Mr B and Miss D’s emails about this, but there was no financial loss incurred due to the delay as Mr B and Miss D weren’t in a position to go ahead with a short settlement at that time (for the reasons I’ve explained above) and I don’t think it is likely Target would have accepted such a low offer (and I wouldn’t have said it was wrong not to do so).

I don’t uphold this part of the complaint.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B and Miss D to accept or reject my decision before 18 October 2023.

Julia Meadows
Ombudsman