

## The complaint

Miss W complains that Shop Direct Finance Company Limited have treated her unfairly when she was in financial difficulty.

## What happened

Miss W opened a credit account with Shop Direct in November 2013. She fell into arrears and contacted them in February 2018 to discuss her financial difficulties. Miss W is unhappy because she said she contacted Shop Direct several times to set up a payment plan with amounts she could afford, but that these were rejected.

Shop Direct eventually agreed to a payment plan of £95 per month for 33 months, with the first payment falling due on 20 July 2018. But Miss W was unhappy to learn that her account had subsequently been defaulted and the debt sold on to a third-party collection agency, as Shop Direct said she did not make the payment as agreed. Miss W said that she had set up a direct debit, and that Shop Direct have not treated her fairly.

Shop Direct said that no direct debit was set up, and that Miss W did not contact them to arrange for the payment to be collected. So the payment arrangement was suspended and, given that they hadn't received a payment since January 2018, they defaulted her account on 30 July 2018. As they received no response to the default notice, Shop Direct sold the debt to a third-party collection agency on 27 August 2018. They said they made sufficient attempts to contact her about the debt, and that they had treated her fairly and in line with their terms and conditions.

Our investigator didn't uphold the complaint. He considered that Shop Direct had treated Miss W fairly given that they placed a hold on her account and arranged a payment plan. The investigator did not think there was enough evidence to suggest that Miss W had set up a direct debit to pay the agreed amount, so he considered that Shop Direct had acted in line with their terms and conditions by defaulting the account and selling the debt.

Miss W disagreed. In summary, she said:

- She contacted Shop Direct on more than three occasions offering various repayment plans (such as £6.81 a month, which she offered to increase to £15 a month) which were not accepted.
- She was not alerted to the fact that the payment was not taken, and she did not receive the default notice Shop Direct says they sent her.

Miss W asked for a final decision on her complaint, so the matter has been escalated 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. Having done so, I've decided not to uphold it.

I've considered the way in which Shop Direct treated Miss W when she told them about her financial difficulty in February 2018, and whether they have acted in line with their regulatory obligations.

CONC 7.3.4 of the Financial Conduct Authority (FCA) handbook states:

*"A firm must treat customers in default or in arrears difficulties with forbearance and due consideration".*

CONC 7.3.5 of the FCA handbook goes on to outline certain examples of this:

*"Examples of treating a customer with forbearance would include the firm doing one or more of the following, as may be relevant in the circumstances:*

*(1) considering suspending, reducing, waiving or cancelling any further interest or charges...*

*(2) allowing deferment of payment of arrears:*

*(a) where immediate payment of arrears may increase the customer's repayments to an unsustainable level; or*

*(b) provided that doing so does not make the term for the repayments unreasonably excessive;*

*(3) accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock..."*

What this all ultimately means is that Shop Direct has to treat their customers in financial difficulty fairly.

When Miss W contacted Shop Direct in February 2018 to highlight her financial difficulty, she owed £3049.96 on her account. She said she had been in contact with Payplan, and that she wanted to freeze her account payments and interest, while making a payment of £6.81 – but she said that her financial situation would be back to normal by April/May.

Shop Direct agreed to place a hold on Miss W's account for 28 days pending a reasonable offer of a payment plan. They asked that she complete an income and expenditure form and outline how much she could afford to pay each month. They also directed her to the charity Step Change for advice. Miss W subsequently completed several income and expenditure forms, making offers of repayment plans such as £15 a month. But Miss W was unhappy that they did not accept her offers.

I accept that Shop Direct could have engaged with Miss W more constructively at this point, rather than getting her to complete several income and expenditure forms only to reject her repayment offers. But I can see that the offers she was making would have resulted in an unreasonably excessive repayment term (e.g. her offer of £15 a month would have taken 203 months to pay off the remaining debt). But in any event, they did eventually accept a repayment plan of £95 per month for 33 months.

So, given that Shop Direct placed a hold on Miss W's account, and given that they eventually accepted a repayment plan for a lesser amount than her monthly repayments, I'm satisfied that they have treated her with appropriate forbearance and due consideration in this regard.

But Shop Direct subsequently defaulted Miss W's account and sold the debt onto a third party – so I've also considered whether they've acted fairly and reasonably in taking such action.

Miss W says she arranged for the £95 payment to be taken from her account in line with the payment plan, but that Shop Direct failed to collect it. But Shop Direct say that no direct debit was arranged. Miss W has provided screenshots which she says show that the direct debit was set up. But all the screenshots seem to show is that the payment plan of £95 per month had been arranged – not that any payment instructions had been set up for the money to be debited from her account at a certain time each month. And Shop Direct have provided evidence that shows no direct debit had been arranged for them to collect the money. So despite the payment plan being arranged – with the first payment due on 20 July 2018 – it does not appear that Miss W made arrangements to ensure it was paid on time.

Shop Direct say they sent Miss W's statements for that month on 28 July 2018, which would have shown that no payment had been made. But they said she did not get in contact with them, so the payment plan was suspended in line with their terms and conditions.

As they had not received any payment since January 2018, and given that Miss W failed to make the £95 payment agreed under the payment plan and did not get in contact, Shop Direct sent her a default notice on 30 July 2018 pursuant to section 87(1) of the Consumer Credit Act 1974 demanding payment. However, they did not hear anything from Miss W, so the account was defaulted and sold on 27 August 2018 to the third-party debt collectors.

Miss W maintains that she did not receive the default notice. But I can see from Shop Direct's system notes that it was issued on 30 July 2018 – and that they had her correct address. I've not been made aware of any problems with the postal system in Miss W's area at the time. And I have to take into account that the vast majority of correctly addressed mail is safely received by the recipient, so I think it's more likely than not that the default notice was sent and received at Miss W's address.

But even if it wasn't, I think Miss W ought reasonably to have known her account was in default, given that she hadn't made a payment since January. And given the financial difficulties she was in, it seems unlikely she would have been able to settle her debt at the point the notice was issued – so the default of the account was inevitable in any event. So I don't think Shop Direct have acted unfairly by defaulting the account or selling the debt to the third-party debt collectors. And I'm satisfied they have treated Miss W with appropriate forbearance and due consideration in these circumstances. It follows that I do not uphold this complaint.

### **My final decision**

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 15 April 2020.

Jack Ferris  
**Ombudsman**