DRN-2309818

The complaint

Mrs W complains about a default marker recorded on her credit file by Cabot Credit Management Group Limited (trading as Cabot Financial (Europe) Limited), and related issues.

What happened

Mrs W used to have a store card with NewDay. In early 2019 she learned that this account had been sold to Cabot in December 2018, and that Cabot had recorded a default on her credit file. She says this drastically reduced her credit score and adversely affected her mortgage application, causing great stress to her and her husband. She brought complaints to this Service about both firms – Cabot and NewDay – as she claimed that neither of them had served her with a default notice or a notice of sums in arrears. She also said she had not been given a breakdown of the outstanding balance (which she has since paid off).

Those two complaints have been dealt with separately, and I am dealing here only with the complaint about Cabot.

Cabot said that Mrs W's debt was one of approximately 50,000 defaulted debts which it had bought from NewDay. At the time, its staff had attended NewDay's office and conducted random checks of some of the debts (since it would not have been practical to check all of them), and had verified that default notices had been served in each of those cases. It said this was enough to comply with its industry trade association and the relevant regulations.

Our investigator upheld this complaint. He accepted that Cabot had bought the debt in good faith, and that it had carried out the due diligence checks it had described. But he thought that was not enough, because Cabot had not specifically checked Mrs W's account, and had only inferred that a default notice had been served, because notices had been served in the accounts it had randomly checked. He recommended that Cabot remove the default marker from Mrs W's credit file and pay her £120 for her trouble. Cabot did not accept that opinion, and asked for an ombudsman to review this complaint.

That was in January 2020. Since then, in June 2020, another ombudsman, Ms Sara Falzon, issued a final decision in the NewDay complaint. She did not uphold that complaint, and found that NewDay had been entitled to default Mrs W's account and that the default did not have to be removed.

In October I issued a provisional decision which read as follows.

My provisional decision

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 have provisionally formed the view that Cabot has done nothing wrong.

Although I am only dealing with the complaint against Cabot, I have still considered the evidence provided in both cases. I have seen a default notice served by NewDay, dated 2 June 2015, addressed to Mrs W. I am satisfied that she received it, not least because she sent it to us when she brought her complaint against NewDay. But in case NewDay re-sent it to her in 2019, I have checked that the address is correct, and it is. I have also seen late payment letters which were sent to her before the account was defaulted.

But more importantly than that, I have read my ombudsman colleague's final decision in the NewDay complaint. In that decision, she said that she was satisfied that NewDay had done enough to tell Mrs W that the account was in arrears and was going to be defaulted. She concluded that NewDay had been entitled to default the account, and to sell the account to a third party. She didn't think any remedial action needed to be taken, and that the default balance had been correct, based on statements which had been sent to Mrs W at the time. So she did not uphold that complaint. Insofar as what NewDay did is relevant to the complaint against Cabot, I adopt Ms Falzon's findings, having seen the same evidence that she saw.

I think that that is enough to dispose of this complaint. Since Cabot was entitled (and, indeed, obliged) to record the default on Mrs W's credit file, I cannot reasonably tell it to remove the default, or to compensate Mrs W for having recorded the default, or hold Cabot responsible for any adverse effects the default marker had on her credit file or any subsequent applications for credit. That is sufficient reason for me to decide not to uphold this complaint.

But for completeness, I will still address the topic of whether Cabot's due diligence checks were enough.

I accept Cabot's argument that it would simply not be practical for it to conduct 50,000 individual checks on 50,000 different accounts. I do not believe that would be a sensible thing to expect it to do. Instead, random checks seem to me to be a proportionate way for Cabot to fulfil its obligations to its new customers.

So my provisional decision is that I currently do not intend to uphold this complaint.

Responses to my provisional decision

Mrs W wrote nine pages of submissions in reply to my provisional decision. In very brief summary, she pointed out that the June 2015 default notice had been satisfied, and NewDay had relied on a second default notice, issued in September 2015, when it had defaulted her account. She said the default had not been valid because (as NewDay itself accepted a few months later) the default notice had not complied with the relevant regulations. The default had not been reported to the credit reference agencies until the debt was sold to Cabot and Cabot began to report it. Mrs W questioned whether the account had ever really been properly defaulted at all. She referred to section 86D of the Consumer Credit Act 1974, which sets out sanctions for a lender's non-compliance with its legal obligations under section 86C.

Mrs W also argued she was worse off as a result of the sale to Cabot, because now that Cabot was reporting the default this had adversely affected her credit score. She said that the sale of the debt had not been lawful because the debt had not been defaulted, and that Cabot's due diligence checks had failed because they should have picked up on the fact that NewDay had failed to report the default.

Mrs W also said she had recently come across evidence of a payment of £100 which she had made to NewDay in early September 2015, which she had forgotten about until now.

She said that this payment had cleared the arrears, and so this was another reason why NewDay had been wrong to default the account.

Cabot did not reply.

My findings

I apologise to Mrs W for referring to the June default notice; she is quite right that it was the September notice which NewDay relied on originally. (I haven't been provided with a copy of the September notice, but I have seen evidence that it was sent, in the form of screenshots from NewDay's systems.) I note that my ombudsman colleague Ms Falzon correctly referred to the September notice in her final decision in that case, so the error was mine. So I have looked at all of the evidence in the NewDay case again, as well as the various documents which accompanied Mrs W's response.

Although Mrs W had forgotten about the £100 payment she made to NewDay in September 2015, evidence of this payment was sent to our Service by NewDay in December 2019, in the form of the covering letter which Mrs W sent with her cheque. I can see that NewDay recorded this payment on its systems, so it was taken into account at the time (and Ms Falzon referred to it in the second paragraph of her final decision).

Unfortunately the £100 payment did not clear all of the arrears on the account. Mrs W knew that at the time, because she mentioned in her letter that there was still a remaining balance which she expected would be paid automatically by her direct debit towards the end of the month. But the direct debit payment was not made after all: I have seen the statement for September, and the £100 was the only payment which was made in that month. So the account remained in arrears.

NewDay sent the second default notice, and continued to send letters to Mrs W. In late September, NewDay asked her to provide some medical evidence which she had mentioned in her letter. And I have seen a screenshot from NewDay's contact notes showing that another such request was sent to her on 17 December. There is no record of Mrs W responding to these letters, or making any more payments.

The account was defaulted at the end of January 2016. That was not because, as Mrs W suspects, her £100 payment had not been credited to her account, but because there were still arrears outstanding after that payment was made. The default balance was £423, which is the same amount as the balance at the end of the statement for September 2015, after the £100 was credited. It would otherwise have been £523. I therefore agree with Mrs W that interest and fees on the account were on hold during this period, but that doesn't mean that she didn't have to make any more payments to reduce the outstanding balance, or that NewDay couldn't serve a default notice.

Some time later, in June 2016, NewDay realised that it had not complied with the rules about default notices, in that it should have sent a third default notice before defaulting the account but had failed to do so. It follows that NewDay was not entitled to default the account in January 2016. By doing so, it contravened the Consumer Credit Act, and the effect of section 86D is that NewDay was prohibited from defaulting the account. Therefore I agree with Mrs W's argument that the account was not defaulted correctly at the time.

However, in June 2016 NewDay defaulted the account properly, by serving a third default notice, and then defaulting the account again. It backdated that default to January, since that was when it had meant to default the account in the first place. That means that the default marker will still come off Mrs W's credit file in January 2022, instead of in June of that year.

When Mrs W received the new default notice in June 2016, she did not bring the account up to date. So I infer that her reaction would have been the same if she had received a proper notice in December 2015 or in January 2016. Therefore I think that the impact of NewDay's error in January was negligible or nil.

Ms Falzon wrote about all of this in her final decision, in which she said this:

> "While I would usually expect NewDay to send a default notice, I have to consider whether I think it would have made a difference if it had. Mrs W was aware there was still a debt on the account when she contacted NewDay in September 2015. And she received a statement in January 2016 showing her account balance. While Mrs W says she made a further payment, I think she should have been aware that there was an outstanding balance remaining on the account. …
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> "And when a further default notice was sent in June 2016 to replace the one that hadn't been sent, Mrs W didn't make the payment to bring the account up to date. So I haven't seen any evidence that convinces me that Mrs W's account wouldn't have defaulted if she had been sent the default notice on January 2016."

I agree with all of that, and I would add that Mrs W would also have received monthly statements in October, November and December 2015. Since she did not clear the arrears in the period between September 2015 and January 2016, or on receipt of the June 2016 default notice, I think it is unlikely that she would have done so if she had received a third default notice in December or January.

For all of these reasons, I will not require Cabot to remove the default marker.

It follows that the account was not improperly or unlawfully sold to Cabot. The account had been properly defaulted by then; it was not included with the other defaulted accounts by mistake.

NewDay made another mistake in 2016: it failed to report the default to the credit reference agencies. But Mrs W benefited from that mistake, because it meant that her credit score was higher than it should have been. Now that Cabot is reporting the default, she argues that she is worse off as a result of the account being sold to Cabot. I can see what she means, but that doesn't mean that Cabot is doing anything wrong – it is supposed to report the default, whether or not NewDay did. And Mrs W is not in a worse position than she would have been in if NewDay had been reporting the default all along.

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 Mrs W to accept or reject my decision before 1 December 2020.

Richard Wood
Ombudsman