

The complaint

Mr D has complained about Hoist Finance UK Limited defaulting his account.

What happened

In 2016, Hoist purchased a credit card debt of Mr D's. He had a payment arrangement in place, and used a debt management company.

In April 2019, Mr D's debt management company made a reduced payment offer to Hoist, owing to changes in Mr D's circumstances. Hoist accepted the offer, but mentioned to the debt management company that this could lead to a default down the line.

Hoist sent arrears notices, but told Mr D they were for information only and he didn't need to worry about them – he only needed to carry on with his arrangement.

In May 2019, Mr D missed his payment, and sent two payments in June instead. In June and July 2019, Hoist sent default notices to Mr D's home address. However, Mr D was away for work. He explained that the nature of his job meant he was often away from home, which is why he'd hired the debt management company to handle things for him. But because Hoist had sent the notices to Mr D directly, neither he nor the company had been aware of them.

Hoist defaulted the account. Shortly afterwards, Mr D got a loan through work and cleared all of his debts. Mr D says that had he been aware of the impending default, he would've acted sooner. He's asked for the default to be removed.

I sent Mr D and Hoist a provisional decision on 6 January 2021, to explain why I thought the complaint should be upheld. In that decision, I said:

Based on what I've seen so far, I currently think it would be fairest to remove the default – I'll explain why.

When Hoist sent Mr D his statements, they included an arrears notice. However, on the cover letter, they put in bold, italicised writing that the arrears notices were "for informational purposes only". The only action you need take is to continue with your concessionary payment arrangement." So they specifically told Mr D not to worry.

Their statements also seemed to be unclear about what was due. For example, Hoist's May letter set out that £69.11 was due, but just below it said that actually £52.48 was due straight away – presumably to clear the arrears – but then on the next page said the total arrears were only £33.26. And then the cover letter told Mr D to simply carry on with his £5.17/month arrangement and not to worry about the arrears notice. Meanwhile, it looks like Hoist had defined his contractual payments based off of a previous payment arrangement with the original creditor, rather than the payments in his actual credit card contract. Overall, I'm not confident that it was made sufficiently clear to Mr D about what was due, or what would or wouldn't lead to a default.

Hoist mentioned to Mr D's debt management company that they might eventually default the account, since the new payments were lower. But it doesn't look like the debt management company passed on this information to Mr D until after the default had already happened. From what I've seen, they simply told Mr D that Hoist had accepted his payment arrangement. That part isn't Hoist's fault, but combined with Hoist's unclear statements, I can see why Mr D wouldn't have thought he was in danger of a default.

Hoist sent the default notices to Mr D's home address – which, of course, makes sense. But Mr D has to travel for work, and has sent us the records from his workplace showing that he was living far away from home during the period in question. So he didn't see the letters at the time. And since Hoist didn't send a copy of the notices to Mr D's debt management company, they weren't able to tell him about the impending defaults either. Further, across his contact with our service, Hoist, and his debt management company, Mr D's testimony has been clear and consistent about him being unaware of the notices at the time. I think it's most likely he really wasn't aware of them until it was too late.

Shortly after the default, Mr D was able to get help from work to clear the debt. I see no reason why he wouldn't have done this earlier had he known the default was coming. He's also explained that had he realised Hoist were planning on defaulting him, he could have tried to rearrange his finances or got additional help from friends and family. He's explained it is important for his career to avoid such a default, so he was motivated to do so.

As I've said above, I'm not confident that Hoist got things entirely right here. But even if I accept that Hoist was technically correct in the way it defaulted the account, I need to consider whether the default was fair in the particular circumstances of this case. Here, it seems Mr D had been given the impression by both Hoist and his debt management company that his payment arrangement had been accepted and that things were broadly fine. I don't think Hoist gave him clear enough information about what was due or about the nature of his arrears. It seems most likely he wasn't aware of the default notices at the time. And it seems most likely that he would have prevented the default from happening if he'd known about it.

So on balance, I think the fairest thing to do is for Hoist to remove the default in question.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 3 February 2021. Mr D accepted the provisional decision. Hoist made some further submissions, which I'll go through below.

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.

Hoist explained that Mr D had previously gone into arrears in prior years, and that their arrears notices back then did not contain the “*for informational purposes only*” wording. While I understand where they’re coming from, I’m afraid I don’t think it’s relevant – my decision here concerns what happened in 2019 in the run-up to the default and its aftermath, and not what happened in previous years.

Hoist also said that their August 2019 statement contained clearer information about the sums due. I can see their point, but I don’t think that offsets the unclear information in prior statements. Further, this statement came after the default notices had already been issued. And, as Hoist appear to acknowledge, this came during the period where Mr D was away – so he wouldn’t have seen this statement at the time anyway.

Hoist explained that they’d previously been given the impression that Mr D was normally only away during the week. I accept that may have normally been the case, at least in the past. But as I said in my provisional decision, Mr D forwarded us his work records to show that he’d been away consistently during the events in 2019, including a long stint abroad. I will reiterate that I don’t think that’s Hoist’s fault, and I do not consider it unreasonable that they wrote to Mr D’s address at the time. But even if Hoist did nothing wrong there, the question is what’s fair and reasonable in the circumstances. And it doesn’t seem fair for Mr D to receive a default where he didn’t know it was coming, where he wasn’t able to see the notice in time, and where he could have prevented it had he known about it.

Similarly, Hoist reiterated that they told Mr D’s debt management company about the possibility of a default. But I already explained in my provisional decision that, as far as I can see, the debt management company didn’t pass this on at the time, and simply told Mr D that his payment arrangement had been accepted. Again, I’m not blaming Hoist for that, but I need to take it into account when considering what’s fair.

Hoist questioned why Mr D didn’t take out the loan through work earlier. But as we’ve already discussed at length, it looks like he was given the impression that his payment arrangement had been accepted and he wasn’t aware that a default was coming. So I’m not sure why Hoist would expect him to take such measures if he didn’t know he needed to.

Lastly, Hoist argued that Mr D’s credit file should be an accurate reflection of what happened. I agree. And I do not think it would be accurate to record a default where the customer had been given the impression that things were broadly stable, had not received the proper notice in time, had not had the proper chance to avoid it, and had been capable and willing to avoid it had they known it was coming. And to reiterate, I have not told Hoist to remove all historic information about this account – just the default.

So having reconsidered all the available evidence and arguments, I’ve come to the same conclusion as before – that on a fair and reasonable basis, Hoist should remove the default in question.

Putting things right

I direct Hoist Finance UK Limited to remove the default that’s been complained about.

My final decision

I uphold Mr D’s complaint, and direct Hoist Finance UK Limited to remove the disputed default.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 3 March 2021.

Adam Charles
Ombudsman