

The complaint

Mr W is unhappy that PayPal Europe Sarl & Cie, SCA have refused to remove a default from his credit file as a result of his bankruptcy in 2018.

What happened

Mr W was declared bankrupt on 22 May 2018. The debts listed in the bankruptcy order included an amount owed to PayPal.

Before the date of the bankruptcy order, PayPal had written to Mr W regarding his account. They said that he was in arrears with his payments and asked for this to be paid. Letters were issued in March and April 2018.

On 11 May 2018 PayPal issued a Notice of Default to Mr W and the account defaulted on 11 June 2018. This was registered on his credit file at the credit reference agencies

Before that, on 6 June 2018, PayPal were told that the Insolvency Service were acting on behalf of Mr W. This is normal in bankruptcy proceedings.

On 11 July 2018, PayPal confirmed Mr W's insolvency from the insolvency register. So, they marked this against his account in their records.

Mr W was discharged from bankruptcy on 22 May 2019, one year after the bankruptcy order. He checked his credit file at the credit reference agencies. Mr W saw that an amount outstanding to PayPal was recorded as a default. He thought that the debt should be removed from his record under the bankruptcy order.

Mr W said that he emailed numerous complaints to PayPal asking them to update his record. He said that these were ignored. So, Mr W decided to bring his complaint to this service.

One of our investigators has looked at the circumstances of Mr W's complaint. He said PayPal needed to do more here. He didn't think it was correct that PayPal leave the debt as it is. He also said that PayPal shouldn't ask for repayment if Mr W decided to use their service in the future. He said that PayPal needed to:

- clear the outstanding Balance on Mr W's account which was included on his bankruptcy order.
- submit an amendment to the credit reference agencies to reflect the account as settled.
- Amend the default date to 22 May 2018 at the credit reference agencies.

Having reviewed Mr W's complaint, I reached a different outcome to that of our investigator. Because of that, I issued a provisional decision on 10 March 2021 giving both Mr W and PayPal the opportunity to respond to my findings before I issued a final decision.

In my provisional decision I said:

A bankruptcy order lists the debts of the person named in it. The order sometimes doesn't detail all those outstanding. But it will still apply to any debts from before the date of the order, even if they weren't listed. There are statutory exclusions, but none of these apply here. The debt with PayPal was listed in this case.

The current ICO/SCOR guidelines say that in normal circumstances lenders will be notified when the debt that is owed to them is to be included in a bankruptcy. So, a default should be filed as being no later than the date of the insolvency order. In circumstances where the lender is not immediately aware, the default can be filed at that point in time. If evidence of the insolvency date is provided, the default date recorded at the credit reference agencies will be aligned.

I have seen evidence of Mr W's credit file. This shows that the debt to PayPal has a "Defaulted" status. It also confirms a "Default Date" of 11 June 2018. This needs to be aligned with the bankruptcy order. The only exception would be where the debt was created after the date of the bankruptcy order. It wasn't here.

Part of the Official Receiver's role is to arrange the payment of Mr W's debts from the sale of his assets – where possible. When it's not possible, there may be no payment. In Mr W's case, the debt he had with PayPal was not paid by the Official Receiver.

The ICO/SCOR guidelines say that any debt record with a credit reference agency should be closed and marked as partially settled where:

- The lender accepts final settlement of the account for less than the balance outstanding, or*
- The account is included in an insolvency such as a bankruptcy which is discharged and less than the full amount is paid.*

Mr W was discharged from his bankruptcy on 22 May 2019, but the debt wasn't repaid. So, PayPal must update the credit reference agencies to show that the defaults have been partially settled.

PayPal said that the debt isn't written off and will remain in their systems. They also said that the debt will need to be paid if Mr W wants to use their services again. This is PayPal's own policy. It's not the role of the service to question this. But it's important that PayPal shouldn't continue to report any debt, pre-dating Mr W's bankruptcy, to the credit reference agencies. It's also important that PayPal don't make legal attempts to recover a debt that pre-dates the bankruptcy order. Under the terms of the bankruptcy order, Mr W doesn't have to pay this.

Mr W said that he made several attempts to ask PayPal to update his credit file. He wants PayPal to compensate him for time spent trying to deal with this. I have seen an email dated 9 July 2020 in which PayPal acknowledge receipt of Mr W's certificate of insolvency. They go on to confirm amounts owed and that they have ceased further contact from their collections department.

PayPal apologised for delays in responding to Mr W in a further email dated 31 August 2020. They say that PayPal Credit is a regulated product and that they have taken the correct actions. They also say that the status of the account is automatically reported to the Credit Bureau.

Overall, I agree that PayPal need to do more to make sure that Mr W's credit file shows the correct information. But I won't be asking them to cancel the debt from their own records. This is their own company policy.

It's clear that Mr W has asked PayPal to correct his credit file on a number of occasions without success. I'm sure that this has not only been time consuming, but also frustrating and worrying for Mr W and he should be compensated for this. So, I think it is fair to reflect this in my decision.

So, I said that I believed that PayPal needed to do more here. I said that in order to comply with ICO/SCOR guidelines, PayPal would need to make corrections to the information they'd reported to the credit reference agencies. I also believed that it would be fair to reflect the additional distress and inconvenience caused to Mr W.

Mr W responded to my Provisional Decision. He said that he'd submitted a complaint to the Information Commissioner's Office (ICO) about PayPal's processing of his personal information. In the ICO's reply, they said that *"there is more work for PayPal to do"*. They explained that Mr W's issues would be raised with the Data Protection Officer, explaining that they want them to work with Mr W to resolve any outstanding matters. So, Mr W said that he wants PayPal to pay compensation of £5,000.

PayPal responded to my provisional decision and confirmed that they don't intend to challenge the decision proposed. They also confirmed that they'd amended Mr W's credit file to show the debt as partially settled to the dates I'd suggested. They also asked for specific account details to enable them to pay to Mr W the compensation proposed.

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.

In my provisional decision, I said that I thought that PayPal needed to make corrections to the information they'd given to the credit reference agencies. My thoughts are supported by the findings of the ICO following Mr W's complaint to them. The ICO also said that an individual *"may go to court to claim compensation for damage or distress caused by an organisation if they have breached the Data Protection Legislation but the Information Commissioner cannot award compensation"*. I was pleased to hear that PayPal have confirmed that they've now corrected the information detailed in Mr W's credit file.

It's important to recognise that our role is to provide a fair and impartial service to help settle disputes. It's not a regulatory one. Neither is it our role to penalise financial institutions where they make a mistake. Where a mistake has been made, we can award an amount that we consider fair compensation to ensure that a customer has not lost out financially. We may also consider awards to reflect distress and inconvenience.

With all of this in mind, I remain of the opinion that it's fair to reflect the distress and inconvenience caused to Mr W. But I've not been provided with any information that persuades me to award the level of compensation that Mr W seeks. I do understand that Mr W will be disappointed by my decision. But I don't think a higher compensation amount would be fair here. I believe that the amount of £100 proposed is appropriate. It's in line with what I would expect to see in these circumstances.

So, the requirements set out in my provisional decision remain appropriate.

My final decision

For the reasons set out above, I uphold Mr W's complaint.

To comply with ICO/SCOR guidelines, I require:

- PayPal Europe Sarl & Cie, SCA to align any default date recorded with the credit reference agencies with that of the bankruptcy order (i.e. 22 May 2018)
- PayPal Europe Sarl & Cie, SCA to update the status of any default to Partially Settled.
- PayPal Europe Sarl & Cie, SCA must not include any debt created before the bankruptcy order (i.e. 22 May 2018) in any monthly account status reports to the credit reference agencies after the date of the bankruptcy order.

I also require PayPal Europe Sarl & Cie, SCA to pay to Mr W compensation of £100 to reflect any distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or

reject my decision before 25 May 2021.

Dave Morgan
Ombudsman