

The complaint

Ms L complains that Topaz Finance Limited unfairly recorded a default on her credit file. She says she's been unable to get a mortgage. She asks that the default is removed and for compensation for her distress and inconvenience.

What happened

Ms L took out a joint mortgage and linked unsecured loan with another lender in 2006. Her debt was later transferred to Topaz. Although some of the events pre-date the transfer, for simplicity I will refer to Topaz throughout this decision. The mortgage and unsecured loan were separated in 2015 when the security property was sold.

Ms L had financial difficulties and in 2012 entered a debt management programme. Topaz agreed a reduced payment plan which was reviewed yearly. A review was due in April 2018. Topaz was unable to get in contact with Ms L and defaulted the account in mid-2018.

Ms L says Topaz should have recorded the default some years earlier, or not at all. She says Topaz should have made more effort to get in contact with her before defaulting the account. Ms L says although she'd moved, Topaz had her email address.

Our investigator said we wouldn't expect Topaz to record a default while an arrangement was in place. And it was entitled to write to Ms L using the address in its records. Our investigator said Topaz hadn't acted unfairly.

Ms L didn't agree. She said Topaz should have made more effort to contact her in 2018 before recording a default. She says she didn't update her address due to health issues. And payments under her debt management programme continued. Ms L said she wasn't given clear information about the arrangement, or when it was due to end. Ms L provided a screen shot of information provided by a credit reference agency saying lenders can record a default despite agreeing to a debt management plan.

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.

The issue here is whether it was right and fair for Topaz to record a default on Ms L's credit file in 2018. Ms L says it should have recorded a default years earlier or not at all.

Ms L says Topaz should have recorded a default when her account was between three months and six months in arrears. The date that the default was recorded is important as it stays on Ms L's credit file for six years. If Topaz had recorded a default in 2012 it would no longer be on her credit file.

Ms L refers to guidance from ICO which says in general lenders should record defaults when the account is in arrears of more than three months and before it reaches arrears of six months. I think, in many cases, that would be fair. If arrears of six months have built up on

an account, that suggests the borrower is unable to repay the debt.

But this isn't always the case. Ms L agreed a payment arrangement with Topaz. ICO's guidance says if an arrangement is agreed, a default would not normally be recorded unless the terms of the arrangement are broken. While a payment arrangement was in place, I think it was fair for Topaz to record this on Ms L's credit file, rather than recording a default.

Ms L's payment arrangement was in place until April 2018. Topaz was unable to get in contact with Ms L. It couldn't deal with the organisation managing her debt management plan as it couldn't pass security. Topaz was unable to reach Ms L by post or telephone as she'd moved home and hadn't updated her contact details with Topaz.

Topaz wrote to Ms L at the address in its records. It sent letters in April 2018 about needing to review the payment arrangement. It sent a letter in July 2018 saying it urgently needed to discuss the account with her due to the level of arrears and reduced payments. This letter said it would record the loan as in default in 28 days time.

It was Ms L's responsibility to update her contact details with Topaz when she moved. Ms L says she didn't update her contact details with Topaz due to health issues. I'm sorry about this, and I appreciate this was a difficult time. But I think it was fair for Topaz to try to contact Ms L by post and telephone using the details in its records. I don't think it's fair to say that Topaz should have tried to contact Ms L using an email address. Topaz says it doesn't use email as it isn't secure. I don't think Topaz had fairly to do more to try to trace Ms L at that time, before defaulting the account.

Ms L says she wasn't given clear information about the arrangement to pay. A debt advice organisation was managing Ms L's debt management plan between 2015 and 2018. It seems this worked satisfactorily until 2018, when the debt advice organisation couldn't pass Topaz's security. Topaz's records for April 2017 show it offered a payment arrangement with a stated monthly payment and an end date of April 2018 and this was accepted. Topaz dealt with the debt advice organisation, as requested by Ms L. I think this was reasonable. I don't know what information the debt advice organisation gave Ms L about the terms of the arrangement with Topaz, or if it told her it could no longer speak to Topaz on her behalf after failing security. If it didn't give her clear information, I don't think I can fairly hold Topaz responsible for this.

By August 2018 the arrangement to pay had expired and hadn't been renewed or replaced. Topaz was unable to contact Ms L. Topaz's letter to Ms L in July 2018 also mentions the level of the arrears and the reduced payments. Topaz decided to default the account.

Taking all this into account, I don't think it was unfair for Topaz to record a default on Ms L's credit files in August 2018. It follows that I don't think it's fair and reasonable to require Topaz to remove the default from Ms L's credit files or pay compensation for any upset this caused her.

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 Ms L to accept or reject my decision before 26 May 2022.

Ruth Stevenson
Ombudsman