

The complaint

Miss D is unhappy at Shop Direct Finance Company Limited's trading as Very ("Shop Direct") handling of her account when she experienced financial difficulties.

What happened

Miss D had a credit agreement with Shop Direct. In February 2017, due to a change in her financial circumstances, she fell into arrears on her account. In March 2017 Shop Direct agreed that a 12-month payment plan would be put in place at the rate of £2.00pm. This would allow for the possibility that Miss D's circumstances would improve and see if an increased payment plan could be put in place in the future that would clear the arrears in a reasonable period of time. All interest and charges were suspended when the plan was put in place.

At the end of the payment plan period, Miss D received a letter from Shop Direct asking if there had been any changes to her financial circumstances. She contacted Shop Direct via the Live Chat system. She explained there hadn't been any changes and said she could continue with the same payment rate as had originally been agreed. The agent said a note would be placed on Miss D's account and she didn't need to do anymore.

In April 2018 Miss D received a default notice from Shop Direct that was dated the end of March 2018. Miss D rang Shop Direct but says she was told that her account was to be sold to a third-party company and there was nothing more she could do.

In May 2018 Miss D's account with Shop Direct was sold to a third-party company and Miss D says she is now making payments to them.

In February 2021 Miss D complained to Shop Direct about how it had handled her account. Although Shop Direct acknowledged that the agent Miss D had spoken to via Live Chat hadn't provided her with the correct information, it said that as Miss D was unable to clear the arrears or make more than a token payment each month then it had followed the correct processes by passing her account on.

Miss D was unhappy at Shop Direct's response as she said had she been given the correct information about who to contact then she would have done so and would have made an offer. Miss D also queried the date of the default that had been recorded on her credit file in May 2018 as she said it had been issued in March 2018.

Our investigator recommended that Miss D's complaint should be partially upheld.

Our investigator said that under the terms and conditions of the credit agreement Shop Direct had been allowed to sell on the debt to a third-party company. And that the agreement also advised that missing payments could have an adverse impact on a consumer's credit file. Our investigator said she didn't think Shop Direct had done anything wrong in regard to selling Miss D's account on or reporting adverse information to the credit reference agencies.

Our investigator also said that even though the agent hadn't advised Miss D correctly about who she needed to speak to when her payment plan had ended, it was clear that Miss D wasn't in a position to increase the payment rate she had been making. This meant that Shop Direct's decision to take action and issue the default notice hadn't been unfair.

However, our investigator thought the date recorded on Miss D's credit file for the default had been unfair. She said looking at the guidance given by the Information Commissioners Office (ICO), a default may be registered when a customer is at least three months in arrears and that it would be expected that a default would be registered by the time a customer was six months in arrears. Here, although there had been an arrangement to pay, our investigator said this hadn't been reviewed for 12 months despite being only a token payment. She said it would have been fair in Miss D's circumstances to have recorded the default in April 2017 as to delay this was unduly detrimental to her in the long term for her credit file.

Our investigator said that due to the way Shop Direct had handled the recording of the default that £100 compensation to Miss D would be fair.

Shop Direct said that it has now changed its processes and payment arrangements of six months are agreed rather than for 12 months. It also said that it isn't part of its processes to default accounts until they are six months in arrears. So, this meant that a default would have been recorded on Miss D's credit file in August 2017 so it thought that backdating the date of the default to August 2017, rather than April 2017, would be fair.

Shop Direct agreed that £100 compensation to Miss D would be fair and reasonable as it acknowledged that the payment arrangement set for her account would have taken years to repay and this would have been unfair to her in the circumstances.

Miss D agreed with the view of our investigator, she didn't think the date for recording her default should be backdated to August 2017.

As the parties were unable to reach an agreement the complaint was passed to me. I issued a provisional decision along the following lines.

I was sorry Miss D had been through a difficult time. I'd seen that in February 2017 her account with Shop Direct had fallen into arrears and that a payment arrangement of £2.00pm had been agreed for 12 months. Shop Direct said this period was, at that time, its usual process and was designed to allow Miss D time to potentially improve her circumstances so she could then clear the balance in a reasonable period of time.

Unfortunately, Miss D hadn't been able to increase her payments once the 12-month period had ended. It was agreed that Miss D hadn't been properly advised by the agent that she had spoken to in March 2018 as to who she should discuss her situation with. However, since Miss D's financial circumstances were unchanged, I couldn't reasonably say that her situation as to the passing on of her account by Shop Direct, wouldn't have arisen in any event. That was because by March 2018 her account had been significantly in arrears and it couldn't have been paid off by her within a reasonable period of time as she wasn't in a position to pay more than £2.00pm. Payment arrangements are meant to be short-term arrangements which are regularly reviewed to ensure they are affordable and reasonable. Reasonable includes how long it would take to clear the balance, and here that would have been several years at that payment rate.

So, I thought Shop Direct's actions of passing Miss D's account on for collection would, more

likely than not, have happened even if she had spoken with the correct department at the time her payment plan had ended. I couldn't say Shop Direct had acted unfairly in making the decision to sell her account on.

Shop Direct issued a default notice to Miss D March 2018. A default notice is a notification from a lender that there has been a breach of the contract, usually by missing payments. By the time Miss D was sent the default notice her account would have been around 12 months in arrears. Miss D was unable to clear the arrears and subsequently a default was recorded on her credit file.

A default can have a serious financial impact on a consumer's credit file, and they remain on the file for a six-year period from the date of the default. It would be unfair if a default was registered too quickly as a consumer may be in a position to clear the arrears and so avoid this being recorded on their credit file. There is guidance issued by the Information Commissioners Office ("ICO") which says that a default may be registered when a customer is at least three months in arrears and would be expected to be registered by the time a customer is six months in arrears, as long as the lender has dealt with the borrower fairly.

I would also have expected a business to treat its customers sympathetically and fairly when an account goes into arrears before registering a default. This service would also expect a default to be registered within three to six months, although there would always be exceptions.

Here I'd seen Miss D had been offered a period during which she was able to make nominal payments towards the balance. I understood that interest and charges hadn't been accruing in this period. However, I thought not reviewing the payment plan for 12 months wasn't fair to Miss D. This was because her account was growing in its arrears status for a significant period before a decision was made to issue the default notice and then to record the default when the arrears weren't cleared. Taking this time would have been to Miss D's detriment due to the impact the arrears and then the default showing had on her credit file.

Looking at the payments made by Miss D, I thought it had been fair to issue a default notice for the arrears, however I also thought it would have been fair to do so before March 2018.

Shop Direct had explained that it had actually altered its processes and now a payment plan would be agreed for six-months and then would be reviewed. This meant that in Miss D's circumstances, since nothing would have changed, and payments couldn't be increased that a default would have been registered at the six-month stage and not 12. It had offered to backdate the default recorded on Miss D's credit file to August 2017 which would be consistent with how it would now have handled her account.

I appreciated that Miss D had rejected this offer as she felt the investigator's view of having the default recorded from April 2017 was fair as this would have marked when her account had been around three months in arrears. But I was afraid I disagreed with this view. Miss D's account had fallen into arrears in February 2017, and in March 2017 a payment plan had been agreed. I thought it would have been fair for Shop Direct to have given Miss D an opportunity to see if her circumstances might have changed, bearing in mind the impact of a default. I thought it was also reasonable to say that when the payment plan had been agreed there hadn't been a breakdown in the relationship between Miss D and Shop Direct. So, I thought issuing a default in April 2017, which would have been only around one month after the payment plan had commenced, would have been considered premature and unfair.

Shop Direct's view that it would be fair to backdate the default to August 2017 was both

in line with the ICO guidance and with its own processes (as updated) for handling arrears. And I thought this action would have been fair in all the circumstances. The six-month arrears would have been reached by the August 2017 statement and this period would have allowed Miss D an opportunity to catch up with her payments. So, I agreed with Shop Direct's view as to the backdating of the default.

Shop Direct had agreed that its handling of Miss D's account had caused her unnecessary distress and inconvenience and that £100 compensation was fair. As I thought Shop Direct had been entitled to record the default on her account but should have done so sooner and thereby reducing the overall impact on her credit file, then I agreed £100 compensation was reasonable looking at the impact on Miss D.

For the reasons given, I was intending to partially uphold Miss D's complaint in that I agreed the default recorded on her credit file by Shop Direct should be backdated but I thought that should be to August 2017 and not April 2017. I was also asking Shop Direct to pay Miss D £100 as compensation.

Neither Miss D nor Shop Direct has asked me to reconsider my provisional decision.

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.

Although neither party has asked me to reconsider any parts of my provisional decision, I have still reviewed it against the evidence that's been provided to me. I haven't changed my view. For the reasons set out above, I still think it would be fair for Shop Direct to backdate the default recorded on Miss D's credit file to August 2017.

I also think that £100 compensation to Miss D is fair and reasonable for the unnecessary distress and inconvenience caused by Shop Direct's handling of her account when it fell into arrears.

As set out above I am partially upholding Miss D's complaint.

Putting things right

I'm asking Shop Direct to do the following:

- Backdate the default recorded on Miss D's credit file for this account to August 2017.
- Pay Miss D £100 compensation for the distress and inconvenience caused by the handling of her account.

My final decision

For the reasons set out above I'm partially upholding Miss D's complaint. I'm asking Shop Direct Finance Company Limited trading as Very to do the following:

- Backdate the default recorded on Miss D's credit file for this account to August 2017.
- Pay Miss D £100 compensation for the distress and inconvenience caused by the handling of her account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 24 June 2022.

Jocelyn Griffith
Ombudsman