

The complaint

Mr B complains that Bank of Ireland (UK) Plc trading as Post-Office Financial Services (BOI) unfairly defaulted his loan account, negatively impacting his credit file.

What happened

Mr B had a loan with BOI, which he took in November 2016. His monthly payments on the account were £245.77.

Unfortunately, around September 2017 Mr B became unemployed and was unable to maintain his monthly payments. BOI agreed to temporarily place his payments on hold. He missed four monthly payments in total, falling behind by £983.08. He resumed his contractual monthly payments in February 2018.

Mr B says he received arrears letters from BOI but when he discussed the letters with them, he was told they were automated, and he could ignore them.

Mr B spoke with BOI about the letters again in March 2018 and they explained the letters are generated automatically and are there to remind him that there are arrears on the account, and he needs to bring the account up to date. Mr B told BOI at this time he intended to start making overpayments in May 2018. Mr B had a similar conversation again with BOI in June 2018. In this call BOI also explained to Mr B the importance of bringing the account up to date.

In October 2018 Mr B agreed to make additional payments towards the arrears, and BOI says he can disregard the letters about arrears. Mr B makes one additional payment of £50 but doesn't make any further payments towards the arrears.

BOI send Mr B a notice of default on 14 November 2018, setting out that he needed to bring his account back up to date in order to prevent it from defaulting. As Mr B didn't do this the account was defaulted on 10 December 2018.

In March 2019 BOI sold the debt to another company, that for the purpose of this decision I'll call C. Mr B says it was only when C informed him, they had purchased the account, that he noticed the default. He says they had overstated the balance of the account, and this was later corrected – and this was what he believed had led to the default.

Mr B says he didn't realise the impact of default until now, as he is applying for a mortgage. He doesn't feel he received the right level of communication from BOI, and says had he known there was a risk of this occurring he could have used personal savings or borrowed money from family to clear the arrears on his account. He says the debt has been cleared completely with C now.

Mr B complained to BOI about this, asking for them to remove the default from his records. They looked into things but felt they had defaulted the account correctly, so didn't agree to remove the default. But they did find they hadn't reported the sale of the account to C properly on Mr B's credit file and so the account would have been showing as two loans

instead of one. They corrected his credit report to reflect this and offered Mr B £150 for the mistake.

Mr B wasn't satisfied with this response and so brought his complaint to this service. Our investigator partially upheld Mr B's complaint. In summary he said:

- The £150 BOI had paid for the error in their reporting was fair
- Even though he had been told he could ignore system generated arrears letters he thought the notice of default letter was sufficiently different that Mr B should have queried it.
- He thought it was likely that the account would have always defaulted as Mr B had been given the opportunity to bring his account up to date and said he had intended to but didn't act on it. So, it was fair for BOI to record the default, in line with the terms of the credit agreement. They had issued the correct letters to Mr B to be able to do so.
- However, he thought BOI should have defaulted the account three months after the account fell into arrears (nine months before they did) in line with the guidance from Information Commissioners Office (ICO). As applying the default later meant that it prolonged the affect of it on his credit file.

Mr B didn't agree, he wants the default removed completely from his file as a resolution to his complaint.

BOI responded saying they didn't think it was fair for the investigator to consider when the default was applied as this wasn't the original complaint. The investigator explained to BOI that we have an inquisitorial remit and as we had looked at the presence of the default and if it had been applied fairly, we could also consider when it was applied as part of our investigation. BOI didn't respond.

The matter has now been passed to me to decide.

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.

I realise that I've summarised this complaint in less detail than the parties and I've done so using my own words. I've concentrated on what I consider to be the key issues. The rules that govern this service allow me to do so. But this doesn't mean that I've not considered everything that both parties have given to me. Having done so I have reached the same outcome as the investigator and for broadly the same reasons, I'll explain.

Before I do I think it's important that I explain to BOI that the Financial Ombudsman Service has an inquisitorial remit and we're able to look beyond the strict complaint brought to us and consider the wider issue. I think that's important here because while Mr B's complaint is he thinks the default shouldn't have been applied at all, for me to say it's been applied fairly I have to be able to consider all aspects of how it's been applied, including when it was applied.

BOI allowed Mr B breathing space when he lost his job, as I would expect them to. But once Mr B was able to resume payments, he had a responsibility to make up the payments he had missed and bring his account up to date. I'm satisfied that BOI was sufficiently clear with him

about the importance of bringing his account back up to date in the various calls he had with them.

That being said I understand Mr B's frustrations about being told to ignore any letters about the arrears when he spoke to BOI in October 2018. It wasn't ideal of them to say this but in defence of the agent, they did say this to Mr B at a time when he was making an additional payment towards the arrears and agreeing to bring the account up to date. So, I think it's reasonable for BOI to have assumed at that time that Mr B was going to continue to make the extra payments he was agreeing to, in which case the account would have been brought up to date and no default would have occurred. But Mr B didn't continue to make the extra payments he'd agreed to, triggering the default process.

The notice of default letter, BOI sent to Mr B, clearly states what he needed to do and when he needed to do it by to stop the default from occurring. Mr B hasn't said he didn't receive the letter. And I'm satisfied, the letter is sufficiently different, from the other letters he had received in the past, to make him aware he needed to do something.

Mr B says he didn't realise the impact that the default would have on him later down the line or he could have easily cleared the arrears using savings or borrowing money from family. Mr B entered into a credit agreement and was obliged to pay the money back in line with that agreement, BOI was good enough to allow him breathing space when he had financial difficulties. And so, I don't think not realising the impact of the default, later down the line, is a good enough reason not to have brought the account up to date, if he could have easily done so, as he says.

Mr B had lots of opportunity to bring the account up to date by making extra payments but didn't. So, I think it's unlikely that he was able to do so easily and that the account was more likely to have always been heading for default.

The ICO issues industry guidance setting out how lenders should treat customers experiencing financial difficulties. It gives broad guidelines concerning when it's reasonable to record a payment arrangement or terminate an account on someone's credit file. The guidance says a business can consider closing an account and recording a default when it falls between three and six months behind. It also says businesses can agree a payment arrangement with the borrower to stop an account terminating and a default be recorded.

BOI explained their standard processes to wait 12 months before they record the default on an account. But in the circumstances of Mr B's case, I think BOI should have considered he was unlikely to bring his account back up to date and defaulted the account earlier, when he had gone three months into arrears, so in December 2017. I say this because after missing three payments he asked BOI to extend his breathing space, they said they couldn't do this, but he went on to miss a further payment, even though there was no agreement he could do so. I think it was clear at this point Mr B would struggle to get his account back up to date.

By delaying defaulting the account, BOI have caused Mr B's credit file to be impacted for longer than is necessary. The default is currently recorded from December 2018, meaning it will be reported on his credit file for six years from this date, so December 2024. I believe BOI should have recorded the default from December 2017, therefore it should stop being reported in December 2023.

I understand Mr B's strength of feeling about this and recognise that he would like the default to be removed completely, but I can't fairly say BOI was incorrect in defaulting the account, and so I can't ask them to remove it.

Moving to the error BOI made in continuing to report the account to the Mr B's credit file after it sold the account on to C. I'm satisfied they corrected this soon as they were aware. Mr B himself hadn't been aware of this, so I can't say the error was causing him unnecessary distress. Because of this I think the £150 BOI offered as compensation for this is fair and reasonable and in line with what I'd expect.

I know Mr B will be disappointed with this outcome. But my decision ends what we – in trying to resolve his dispute with BOI – can do for him.

Putting things right

- If they haven't already done so, BOI should pay Mr B the £150 they offered for their error in continuing to report the account on Mr B's credit file after they had sold it to C.
- BOI should update Mr B's credit file to reflect his account defaulting three months after the arrears began on his account.

My final decision

For the reasons set out above, I uphold Mr B's complaint about Bank of Ireland (UK) Plc trading as Post-Office Financial Services. And I now require BOI to put things right as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 November 2022.

Amber Mortimer
Ombudsman