DRN-4299347

The complaint

Mr C is unhappy with the length of time it took The Enterprise Fund Limited ("EFL"), trading as Business Finance Solutions, to arrange for his loan to be written off. He also complains about the information he was given and the customer service that was provided as part of the process.

What happened

At the end of June 2022 Mr C contacted EFL about his health, and on 1 July 2022 he sent in medical evidence to demonstrate his circumstances. He asked for the 'start up loan' he'd taken in 2016 for a business venture to be written off. The funding had initially come from a charity, who EFL contacted about the proposed write-off and included a summary of his medical information.

Mr C contacted EFL frequently over the next few months, to chase an outcome to his write-off request. He explained how much the situation was affecting him, and how his health conditions made dealing with the issue much more difficult. Mr C spoke eventually to a manager at the charity, who confirmed to him and EFL that he would agree to the write-off in the circumstances.

But in October 2022 EFL realised that a different firm, which had taken over on the loan from the charity, would actually need to authorise the write-off. So Mr C's information was forwarded on, and the process restarted. That firm, as part of its process, required an income and expenditure form along with three months of bank statements before things could be finalised. So in November 2022 EFL asked Mr C for that information.

Mr C wasn't happy with the request for more information at that late stage, and raised concerns about the length of time the write-off process was taking. He also made a Subject Access Request (SAR). In an attempt to minimise any further impact, EFL compiled the evidence Mr C had provided already and submitted that to the firm for consideration – who agreed to proceed without the information usually required. EFL confirmed the loan was written off to Mr C on 7 December 2022.

After receiving his SAR Mr C called to complain about how he was referred to in the contact notes, and that his medical information had initially been shared with the charity. He believed that information should only have been sent to the firm that could authorise the write off. EFL's response acknowledged the mistake and apologised for incorrectly sharing his personal information with a third party. Unhappy with the response, Mr C engaged solicitors to help negotiate a settlement for damages resulting from the alleged data breach. EFL reached a settlement with Mr C, via solicitors, and paid him compensation for sharing sensitive personal information with the charity.

Later Mr C complained about the delays in writing off his loan and the customer service EFL had provided in the months leading up to that happening. EFL's response said it didn't believe it had provided poor service or misleading information, but acknowledged there had been delays in the write off process. The letter included an apology, but EFL said it was satisfied the compensation already paid adequately addressed any stress, inconvenience, or health issues Mr C experienced during the process. Mr C didn't think the response resolved his complaint, and so he referred the matter to our service for review.

One of our investigators reviewed everything and didn't think we should consider the complaint. He explained that under our rules, there were certain circumstances in which we may dismiss a complaint without considering its merits – and he believed this case was one such instance. In the investigator's view, a settlement had already been reached for damages which covered any impact arising from the mistake and write-off process. So he didn't think it would be appropriate for our service to reconsider an already settled matter.

Mr C disagreed, and said that while he had accepted an offer of damages for the sharing of his information, he didn't feel the customer service or delays had been addressed by that settlement. The investigator considered the responses and maintained his position that the complaint should be dismissed. As no agreement could be reached the matter was passed to me for a decision.

I issued a provisional decision explaining why I thought it was appropriate for us to consider the matter, and also that I planned to uphold the complaint. I've included below an extract from those findings, which sets out my rationale:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm planning to uphold Mr C's complaint and direct EFL to pay compensation for the distress and inconvenience caused by its mistakes. But I invite any further comments by the deadline, before I conclude the outcome of the complaint. Before I set out my rationale I wanted to acknowledge that I've set out what happened briefly and in my own words – which inevitably means I've included far less detail than has been provided to me. No discourtesy is meant by that, and even though I might not have directly referenced something I've carefully considered everything that's been sent by both parties. I also haven't intended to minimise what Mr C went through with my summary – I've avoided going into lots of detail for obvious reasons. But he's previously shared in detail with EFL the challenges he's faced with his health, and explained extensively during phone calls how delays in the process were affecting him. So I don't need to restate that here.

EFL believes our service should dismiss the complaint, and at first stage we agreed. But I've decided it is appropriate for our service to consider this matter separately to the previous settlement reached with Mr C. I should first set out that dismissing a complaint is something we would choose to do, at our discretion, because it would be inappropriate for us to get involved – rather than it being a question of our jurisdiction in a matter. For instance, it might be that looking at a complaint could in some way impair our effective operation. In those circumstances it might be appropriate for us to dismiss – even if the matter technically fell within our remit. I haven't found that to be the case here, as I consider the complaint about delays in the write-off process to be separate to the action Mr C took though solicitors in relation to EFL incorrectly sharing his personal information.

Having reviewed the correspondence on both sides in relation to that settlement, it's clear that agreement related solely to the data incident. At no point is it mentioned the compensation would also cover impact caused by the delays or the customer service given as part of the write-off process. I asked EFL to send me evidence that those complaint issues were explicitly included as part of the negotiations for the settlement, or for some

indication they were intended to be, and everything I've received confirmed the contrary. The only time it's mentioned is when Mr C later complained about the write-off process. So I'm satisfied the data incident has been settled separately, and I won't be considering any aspect of that (including the compensation paid) as part of this complaint. The issues Mr C has asked us to review haven't been settled already, and so I've deemed it appropriate for me to decide how those should be fairly resolved.

When Mr C approached EFL about writing off the loan, he evidenced that he was very vulnerable and his health was poor. The whole process took over five months, whereas it should have taken weeks (even setting aside Mr C's vulnerability). The guidance from the Financial Conduct Authority on dealing with vulnerable customers, in force at the time, sets out that firms should be prepared to adapt processes where individuals are at greater risk of detriment due to their circumstances. So, given what Mr C had explained to EFL about how the debt was affecting him, I'd have hoped the request would have been dealt with as quickly as possible – with some pragmatism exercised around what Mr C was expected to do as part of it. I appreciate, though, that EFL only had control over a limited portion of the process – but it was responsible for managing Mr C's overall journey through it.

It's clear from the timeline that EFL made a mistake right at the start of the write-off process, by sending the request through to the wrong party. So EFL is accountable for the majority of the delays here – which is at least four out of the five months. During that period he contacted EFL frequently, and was seriously distressed by the largely avoidable wait for the outcome. I acknowledge that Mr C's health challenges pre-date this period, and I'm not suggesting EFL caused them – but the mistakes certainly exacerbated his existing anxiety.

The loan was eventually written off, which was a decision taken by another firm. I've considered whether that was something our service would have likely directed, as it if it wasn't I might feel that in the round there wasn't anything further needed to put things right. The Money Advice Liaison Group said in its 'Debt and Mental Health Guidelines 2015' that "Creditors should consider 'writing off' unsecured debts when mental health conditions are long-term, hold out little likelihood of improvement, and are such that it is highly unlikely that the person in debt would be able repay their outstanding debts". The Lending Standards Board later echoed that advice, and both pieces of guidance reflected what good practice looked like at the time in question here. So, having reviewed the evidence concerning Mr C's circumstances, along with the relevant industry guidance, I'm satisfied writing off the loan was the appropriate outcome here. That assessment, combined with it being the owner of the debt rather than EFL which made the decision, means I'm comfortable compensation is due on top of the write-off.

Mr C has said EFL gave him misleading information during the period in question. I agree that in the calls I've listened to, and emails I've reviewed, he was given conflicting answers around which firm was in charge of writing of the debt and what the process looked like. Whilst some of the information Mr C was given was incorrect, I don't think EFL set out to deliberately mislead him. But the impact was the same – as Mr C became increasingly frustrated by the confusing responses, and understandably suspicious about what was actually happening given the extraordinary length of time it all took. The conversations were difficult ones to have for both Mr C and EFL's agents, though I'm by no means equating the difficulty experienced. Mr C was in a very vulnerable position and clearly struggling, yet there was little any of the agents could do to help on each call (EFL wasn't making the write off decision). But underlying all of that was a delay that should never have occurred – so Mr C should never have needed to have any of those conversations.

The wording in some of the contact notes, which Mr C saw following his SAR, upset him – and I think that was largely down to an error that occurred when they were exported to a

spreadsheet. Some of the notes were cut off, which meant Mr C only saw part of what was recorded. One entry finished abruptly in an unfortunate place, and in its unfinished state seemed to imply Mr C 'took' the money. Again, that wasn't deliberate on EFL's part – but the effect was the same, as Mr C felt he was being discussed in a derogatory way. Having heard the full wording of the communication sent to the firm, as part of the write-off considerations, I'm satisfied it was factual and not personal. The inclusion of an assessment of Mr C's likelihood to repay the debt was important. Ultimately it's that factor, caused by his health conditions, which meant the write-off was appropriate – rather than the health conditions themselves in isolation.

After the mistake was discovered, EFL was told to request further information in line with the new firm's write-off process. That was understandably distressing for Mr C, as it would've felt like he was starting the process all over again (and effectively he was). That's despite having been told by a manager at the charity the write-off had been agreed. EFL did step in and ensure there was some pragmatism exercised on the part of the firm deciding the write-off, which did avoid further delays. But I still think the request for further evidence at that stage was distressing in the context of how long Mr C had waited for an outcome to his request – and would've been avoided, had the delays not occurred.

I've considered our approach to making these types of awards, and the guidance we publish on our website. Compensation for distress or inconvenience isn't designed to be punitive – it needs to fairly address the practical and emotional impact mistakes have resulted in. The mistakes affected Mr C significantly, when he was already vulnerable. So, taking account of everything I've described above, I consider fair compensation to be £400 in the circumstances. That puts the award in the range (from our published guidance) covering a mistake causing "considerable distress, upset and worry – and/or significant inconvenience and disruption that needs a lot of extra effort to sort out… over many weeks or months". I think that description is commensurate with the impact EFL caused Mr C – and having reflected on the example case studies given under that range, I'm confident £400 represents fair compensation for what happened here."

Mr C replied to say he accepted my findings. EFL didn't agree with my provisional decision, and made the following points in response:

- EFL agreed with the investigator's point of view, that the offer made for damages relating to the data breach also covered the impact claimed for here – i.e. the distress and inconvenience caused by the delay in writing off the loan.

- EFL said that was because the data breach had effectively caused the delay, as the sending of the information to the wrong party resulted in the loan not being written off for many months.

- EFL argued the issues being looked at under this complaint were knock on effects from the data breach incident and the information being passed to the wrong party. So it wouldn't be fair for me to direct further compensation, when what had been paid already was (in the investigator's view) above and beyond what we would have recommended.

- Mr C had also benefitted from the loan being written off.

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.

Having done so, I've decided to uphold Mr C's complaint and for the same reasons I set out in my provisional findings. I've not been persuaded to depart from that position by EFL's response – but I've addressed the points it raised below.

EFL is attempting to apply a retrospective argument here – specifically, that because the data incident kicked off the issues complained about, or was the first mistake in the timeline, the damages already paid to compensate the breach should (implicitly) be taken to cover everything that happened. But I don't agree the impact arising from the delay in writing off the loan was clearly intended to be included in the settlement reached. I also don't agree the impact I'm awarding for all flows from the data breach, or was a knock on effect of it.

I've already set out that, having reviewed the correspondence between Mr C's solicitors and EFL, I think the settlement negotiated only intended to compensate him for the distress directly arising from the sharing of his personal information. There's no mention of the damages covering any alleged consequential losses – like delays in the loan being written off. So I don't think Mr C could have reasonably known those issues were included in what he was agreeing to.

The delay in the loan being written off was really down to EFL not realising sooner the request hadn't been sent to the right party – rather than the data incident itself. There were plenty of opportunities for that realisation, as Mr C was in frequent contact with EFL during the period in question – which is why I've held it accountable for the delays. Mr C also had other complaint points which weren't connected to the initial breach, like being given incorrect information – and I'm awarding for those mistakes too. I consider the issues covered under this decision relate to EFL's responsibility as administrator for the loan, in charge of managing the write off process – rather than its obligations under the General Data Protection Regulations ("the GDPR") as a data controller.

What we'd have been able to look at, had the claim arising from the data incident not been settled already, would have been quite different in scope. The settlement reached was for a breach of the GDPR, and damages for that can only be awarded by the courts. Our service doesn't have the remit to decide if there's been a breach or direct compensation be paid under Article 82 of those regulations. As I have no power to make such an award, it follows that I don't have the remit required to decide if it was fair damages, and include it as part of any overall considerations. I find the matters Mr C has referred to our service sufficiently distinct to the data incident anyway. So, as compensation for the breach has been settled separately to this complaint, I'm not taking that previous offer into account when deciding a fair award for the errors in the write-off process.

I've considered what EFL has said about Mr C 'benefitting' from the loan being written off, but that doesn't change my stance on whether additional compensation is due. The idea that Mr C benefitted from that decision implies it was above what would have been required. But I have no doubt the loan being written off was the only fair outcome to his request – and something our service would have directed, had it not already been agreed. So I haven't viewed it as a 'benefit'. EFL hasn't lost out on recovery of those funds either, as a different firm owned the debt. So I've not considered the write off amount as something EFL has already 'spent' towards putting right its mistakes. It is separately responsible in this matter.

I've previously set out the reasons why I consider £400 to be fair compensation in the circumstances – and I've not been persuaded to depart from that outcome.

My final decision

My final decision is I uphold Mr C's complaint about The Enterprise Fund Limited, and direct it to pay him £400 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 September 2023.

Ryan Miles
Ombudsman