

## **The complaint**

Mrs W says First Central Insurance Management Limited, trading as 1st Central (who I'll call First Central), were wrong to report a default to her credit file as the wording in what they say was their default notice was not compliant with the relevant legislation.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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.

I know it will disappoint First Central, but I agree with the investigator's view of this complaint. Please let me explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Section 88(1) of the Consumer Credit Act (CCA) explains that a default notice must be in the "prescribed form". The Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983 prescribe the form the default notice must take.

S2 (2) of those Regulations say:

*"Any notice to be given by a creditor or owner in relation to a regulated agreement to a debtor or hirer under section 87(1) of the Act (which relates to the necessity to serve a default notice on the debtor or hirer in accordance with section 88 before taking certain action by reason of any breach of the agreement by the debtor or hirer) shall contain –*

*(a) a statement that the notice is a default notice served under section 87(1) of the Consumer Credit Act 1974;*

*(b) the information set out in paragraphs 1 to 3, 6 and 8 of Schedule 2 to these Regulations; and*

*(c) statements in the form specified in paragraphs 4, 5, 7 and 9 to 11 of that Schedule."*

The January 2020 notice that First Central sent Mrs W doesn't comply with those requirements and neither, for the benefit of doubt, does the correspondence sent to Mrs W in

October 2019. It doesn't, for instance, state it is a default notice or that it is served under s87(1) of the CCA.

So, I don't think First Central were fair to apply a default without giving Mrs W the requisite information.

First Central suggested that the legislation changed in December 2020 and that there was a six month implementation period up until June 2021. They explained that as the default they said they'd sent was in 2019 it couldn't be considered. I asked First Central to clarify their opinion. I said:

*"...the legislation our investigator has referred you to is the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983. It's the form of a default notice that is set out in the Schedules of those Regulations that is, therefore, being considered. It doesn't look like your January 2020 email to Mrs W conforms to that? Can you please explain which 2020 legislation you're referring to and explain what you meant by it cannot be considered?"*

First Central didn't respond by the deadline I set, and I don't think it's fair to keep Mrs W waiting any longer.

### **Putting things right**

First Central should, therefore, remove the default.

Mrs W has experienced some distress and inconvenience here. She's had, for instance, to escalate her complaint to this Service when I think it could have been resolved earlier, and she's explained that she's had difficulty opening a bank account as a result. In the circumstances, I think First Central should provide £150 in compensation.

If the debt has been passed on to a third party and there is still an outstanding balance, First Central should liaise with that third party and ensure they remove any reports of default they may have made to Mrs W's credit file. First Central should either bring the debt back and arrange an affordable repayment plan with Mrs W or liaise with the third party to ensure that objective is achieved.

### **My final decision**

I uphold this complaint and direct First Central Insurance Management Limited to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 27 December 2023.

Phillip McMahon  
**Ombudsman**