

The complaint

Mr O complains about Lendable Ltd recording a default on his credit file in relation to a personal loan account.

What happened

By December 2022, Mr O's loan account had been in arrears for several months. Lendable contacted him about missed payments and the outstanding balance prior to that, explaining how it could be repaid and setting out the potential consequences of non-payment within the timeframes it had given.

As a result of the continued non-payment, Lendable ultimately put the account into default and notified the credit reference agencies (CRAs) who recorded the default on Mr O's credit file.

Unhappy with Lendable's actions, Mr O complained to it. Part of his complaint was that Lendable had discriminated against him on the grounds of race. Lendable rejected the complaint, saying it was entitled to register the default as he hadn't satisfied the terms of its '*Notice of Sums in Arrears*' (NOSIA) correspondence.

Still unhappy with Lendable's response, Mr O referred a complaint to this service. Most recently, I issued a provisional decision recommending the complaint be upheld in part. Essentially, I believed Lendable had acted fairly in recording the default as it had.

I didn't believe there was evidence to suggest Lendable had treated Mr O unfairly due to his race. But I did think Lendable had failed to address his complaint about that, despite him clearly voicing his concerns with it. As compensation for the impact of it not responding to those concerns, I asked Lendable to pay Mr O £200.

Lendable said it accepted my provisional decision. Mr O didn't agree with my findings. He replied with further comments and asked for more time to send additional information. He didn't specify how much more time he needed and, when asked, he didn't clarify. So, I felt it was fair to ask that he send his final submissions by 12 February 2024. That equated to an extension of the original deadline of one month. To date, nothing further has been received from Mr O.

In fairness to both parties, and to avoid undue delay, I've reviewed the complaint once more and reached a final 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.

For the avoidance of doubt, I've carefully considered all the evidence and information provided by the parties, including from Mr O. He's made a number of points – both before I issued my provisional decision and in response to it – in support of his complaint. Given the

quick and informal nature of this service, I won't address them all individually or in great detail in this decision. Rather I've focused on the issues which I consider go to the heart of his complaint.

Having done so, I'm still upholding this complaint in part. I'll explain why.

It's not in dispute that Mr O's account fell into arrears in 2022 in advance of the default being added by the end of that year. Mr O told Lendable that he was struggling financially at that time, largely due to a period of unemployment. The terms of Mr O's loan agreement, which I've reviewed, made clear that:

'In the event of a default... we may issue a Default Notice under s.87 of the Consumer Credit Act 1974'

The terms set out various '*events of default*' and these included where an amount equal to, or greater than, two monthly instalments had become due for payment but remained unpaid.

I've considered the above, and the actions Lendable took, when thinking about Mr O's argument that it wasn't entitled to register the default when it did.

I can see that Lendable didn't demand that Mr O pay the money back straight away when payments first became overdue. Instead, the events included the following:

- April 2022 – after March's scheduled payment, Mr O contacted Lendable to request that April's payment be re-scheduled. Lendable agreed and the payment was made as agreed.
- May to December 2022 – no scheduled payments were made by Mr O for seven consecutive months. After that time, Mr O was in effective arrears of £1,928.50.
- June to December 2022 – Lendable sent Mr O several NOSIA letters stating what arrears were payable and when. Information sheets were enclosed which included details of how to get free debt advice and the implications of not paying any arrears. Lendable arranged for a default to be registered on Mr O's credit file.
- January 2023 – Mr O re-commenced monthly payments on a day of his choosing albeit the account remained in arrears following the previous missed payments.
- Numerous calls were held from the period in question between Mr O and Lendable, available recordings of which I emphasise I've listened to carefully.

Overall, I think Lendable acted reasonably and sympathetically towards Mr O regarding the amount he owed. Mr O argues he was vulnerable for a time, and I think Lendable's response to his situation reflects and takes account of this. From what I've seen, Lendable gave him adequate notice that the account was in arrears, tried to engage with him about arranging and deferring repayment, and warned him of the consequences of non-payment in full. Lendable also signposted ways in which Mr O might obtain advice from various debt organisations and charities. I haven't seen evidence showing he's been victimised or that the default was orchestrated by Lendable in a deliberate attempt to treat him unfavourably, as he alleges.

I recognise that Mr O feels a sense of injustice given, for example, the situation he found himself in. He believes he missed fewer payments than has been argued but the breakdown of arrears I've been provided with indicates to me that more than enough payments were missed between May and December 2022 for Lendable to fairly invoke the default process. Even if Mr O was correct about the number of payments missed, I still believe Lendable was entitled to register the default, because of the arrears that had accrued, and notify the CRAs as it did. That's despite Mr O's circumstances, however unfortunate.

I'm sorry to hear from Mr O of the effects of the default on him and his family. I realise their impact can be far reaching and that six years isn't an insignificant time for the default to remain on his credit file. However, I don't find that Lendable's treated him unfairly in the circumstances.

I'm sorry to hear that Mr O's upset by the treatment he received from Lendable. While I can consider the impact of anything Lendable might have done wrong, it's not my role to say whether it acted unlawfully or not. That's a matter for the courts. My role is to decide what's fair and reasonable in the circumstances of the complaint. In doing that, I must take a number of things into account including relevant law and what we consider was good industry practice at the time. So, I'm required to take discrimination laws into account, if relevant, among other things when deciding what's fair and reasonable in the circumstances of the complaint. As Mr O says he's been discriminated against, I think the Equality Act 2010 is a relevant consideration here.

Specifically, I note that Mr O believes Lendable applied the default after conducting an online search of him and that it was added because of his race. I understand that Mr O feels that way and I do think Lendable hasn't quite grasped how he felt about it.

That said, I haven't seen any evidence which persuades me that Lendable's actions before, during or after the default was applied were related to Mr O's race. I understand that Mr O feels he was treated less favourably than other customers, but I'm not persuaded that Lendable acted unfairly in that respect. I think it's important to emphasise that, as I've mentioned, Mr O had missed several payments on his account before the default was applied.

Nevertheless, I think Lendable could have handled things better once Mr O complained about how he'd been treated. It's clear to me that one of Mr O's major concerns was that he'd been discriminated against. Although, as I say, I haven't seen grounds to believe he was singled out because of his race, it's reasonable to expect Lendable to have addressed Mr O's allegation in its responses to him.

For instance, Lendable sent Mr O its final complaint response in March 2023. While the letter addresses whether the alleged online search was carried out, at least in part, no reference was made to his allegation of discrimination. I believe that gave him the impression that his allegation was being dismissed without due consideration.

Mr O's queried my finding that it seemed Lendable hadn't carried out any searches of Mr O's social media profiles, contrary to what it told him initially. I've yet to see persuasive evidence of this despite the data subject access request Mr O's submitted to one organisation in particular. Nevertheless, rather than simply saying in its final response that no searches had been carried out after all, and acknowledging that it had mis-led Mr O about that previously, Lendable merely denied the allegation. This did little to clear up the confusion Lendable had caused or to alleviate any of Mr O's concerns.

Mr O has accused me of bias on this point, and I'm sorry he feels that way because I assure him that's not the case. But on this issue, as with all the issues I've considered as part of this complaint, I've based my determination on the available evidence.

I can see that the lack of engagement from Lendable about these issues was upsetting and frustrating for Mr O, as he took that to mean his genuine concerns weren't taken seriously. I believe Lendable ought to have also addressed the allegation of discrimination and that its failure to do so had a negative impact on Mr O in making him feel as though he hadn't been

heard. As such, I believe Lendable should pay Mr O compensation for the distress and inconvenience he's been caused by its handling of his complaint.

Finally, Mr O points to an apology from Lendable and an offer of £50 as compensation as a general '*admission of guilt*' on its part. But that relates to a specific issue – the cancellation of a payment plan – that I'm satisfied falls outside the scope of the current complaint Mr O's brought to this service. I realise Mr O believes that aspect forms part and parcel of this case, and he's suggested this again in his response to my provisional decision. But I remain satisfied it's sufficiently remote, in nature and time, from the events currently in question such that it should remain separate.

Putting things right

Deciding on awards for distress and inconvenience is seldom straightforward. The issues involved are subjective by their very nature and the impact on the consumer can be difficult to determine. Mr O says the impact of Lendable's actions are unquantifiable. I recognise the level of upset he's been caused.

In the circumstances, I still think an award of £200 as compensation is justified in this case given among other things the seriousness of the allegations that went unanswered, the length of time the dispute's been ongoing and the impact this has had on Mr O.

My final decision

For the reasons given, I uphold this complaint in part. I require Lendable Ltd to put things right for Mr O as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 20 March 2024.

Nimish Patel
Ombudsman