

The complaint

Mr M complains that JAJA FINANCE LTD (“JAJA”) has recorded a default on his credit file. He says this has negatively impacted his credit score and his mental health.

What happened

Mr M held a credit card account that JAJA acquired from the original creditor. Mr M says he contacted JAJA to set up a payment arrangement as he was struggling to repay the balance of the account. He says he asked them to send proof of this arrangement by post but didn't receive this.

Mr M says he rang JAJA on several occasions to tell them he hadn't received any post from them confirming the arrangement and was told each time they would re-send the letters to him. But Mr M says he never received these or any other correspondence from JAJA. Mr M also says he told JAJA that he couldn't log into their app to see what had been agreed and the status of his account.

Mr M complained to JAJA in January 2022. JAJA replied saying their debt management team had failed to contact him about the payment plan. They apologised and offered to credit Mr M's credit card account with £45 for the distress he'd been caused.

Mr M made a further complaint to JAJA in August 2022. He'd planned to release some equity as his mortgage was up for renewal, but this was refused because JAJA had recorded a default on his credit file. Mr M says JAJA didn't send him any notification of their intention to do this and, had they done so, he would have made payments to ensure the account wasn't defaulted.

JAJA replied saying they'd applied the default correctly and that Mr M would have received a default notice to make him aware that they intended to do this. Mr M didn't agree and referred the matter to our service.

Our investigator didn't recommend that the complaint should be upheld. She felt JAJA was entitled to default the account because of the amount of missed payments and that they'd sent Mr M appropriate correspondence about this. So, she didn't think JAJA had made any errors.

Mr M didn't agree. He said he didn't receive any post from JAJA about his account at any point and had repeatedly told them this on the phone. Mr M also said that JAJA had a legal requirement to send him a default notice and hadn't done so.

Our investigator didn't change her view and so Mr M's complaint has been passed to me for a decision.

I issued my provisional decision on 8 March 2024, in which I said the following and which forms part of my final decision:

'At the outset, I must say that I don't think JAJA has done a particularly good job in how they've presented their evidence to us in support of their position on this complaint. For

example, I asked JAJA to send me a copy of the default notice they say they sent to Mr M. JAJA has only though sent me a copy of an example letter which sets out that a customer is in arrears and needs to pay the total minimum payment due. That is not though a default notice which sets out the actions that a creditor may take if a customer doesn't remedy a breach to repay arrears (including recording adverse information on a credit file) in a prescribed format as set out by the Consumer Credit Act 1974.

I'm also concerned that JAJA hasn't sent me a full picture of the interactions they've had with Mr M about his account. Mr M has sent us evidence that shows he called JAJA on several occasions in 2020 and 2021. I've asked JAJA to send their account history notes and there is no record of any conversation with Mr M in 2020 or 2021. As it stands, I'm inclined to believe Mr M when he says that he called them about the problems he'd had with receiving information from them. I say this bearing in mind that JAJA has no records of any conversations at all which I find unlikely to be representative of what happened.

I also think that JAJA's records about the payment arrangements they agreed with Mr M are less than clear. Certainly, I haven't seen much evidence of what was agreed and when this happened.

I'd add also that JAJA hasn't been particularly clear about when they defaulted Mr M's account. They've recently told me that they did this in July 2021. However, Mr M has provided me with a copy of his credit file, and this shows the account defaulted in March 2021. JAJA's records don't show me when this happened, and in fact the dates of correspondence that they say show when they wrote to Mr M sets out that "NOSIA" letters were sent in January, March and May 2021. I take this to mean that these were 'Notice of Sums in Arrears' letters. Again, this isn't the same as a default notice and there's no record that I can see within these records that shows that this was sent.

So, JAJA hasn't to date sent me any reasonably compelling evidence that they sent Mr M a default notice. Mr M is adamant that he didn't receive this and, as it stands, I'm not persuaded JAJA sent this to him. As Mr M has said, this is something that JAJA were obligated to do under the relevant legislation. Recording a default is a serious step. It not only indicates that the relationship between a creditor and a customer has broken down irretrievably, but it lets prospective creditors know that a customer hasn't been able to maintain the payment terms of the credit agreement. So, it will have a detrimental effect on a customer's credit file as has happened to Mr M.

Taking the above into account, I might be inclined to direct JAJA to remove the record of the default from Mr M's credit file with the relevant credit reference agencies. However, I also can't ignore the fact that Mr M has missed numerous payments on this account over several years. I can see from Mr M's credit file that he missed payments on two occasions in 2020, and on three consecutive occasions from November 2020 to January 2021. It also appears that no payments were made from August 2021 to July 2022 and in certain months in 2023.

Mr M said he had concerns about JAJA as he hadn't received any post from them including confirmation of the agreed repayment plans. And that is why he stopped paying them. However, Mr M does I think acknowledge that this debt was outstanding and that he was due to repay this. Even though I think JAJA's record-keeping and interaction with Mr M has, from what I've seen, been substandard, the fact remains that there have been many missed payments throughout the history of this account and Mr M was bound to make payments to reduce the debt.

As such, I think JAJA would have been entitled to send Mr M a default notice. The default notice would likely have said that Mr M needed to repay the outstanding arrears and that failure to do so would mean that they would take further action, which here would likely mean recording a default. However, from what I've understood of Mr M's circumstances and the fact he missed payments over such a long period of time, I don't think it likely that he would have been able to remedy the breach in this way.

If I were to direct JAJA to remove the default from March 2021, there's a high possibility that JAJA may re-apply this at a later date bearing in mind the recent account history. And if they send a default notice to Mr M about this, I'm not sure he would be able to comply by repaying what was required within the time given (which normally isn't much time at all). That would mean the default would remain on Mr M's credit file for longer than it currently will be.

So, having carefully considered the matter, I don't currently propose to direct JAJA to remove the record of the default. I do though find that Mr M has been inconvenienced by JAJA's actions that has led to this being recorded. I intend therefore to direct them to pay him compensation for the distress and inconvenience he's been caused. I currently think £250 is a fair amount'.

I asked both parties to send me any further comments and evidence to consider.

JAJA replied saying they accepted my provisional decision.

Mr M replied saying he would have prioritised paying the due arrears to prevent his account from being defaulted, had JAJA sent him a default notice. He said he would have explored all available options including re-budgeting, asking his utility bill providers to make reduced payments, or contacting his mortgage provider to pause payments temporarily. Mr M feels it would still be fair for his credit file to have the default removed. And he said he has the funds available to settle the debt in full so there would be no prospect of JAJA recording a default in future if it were to be removed now.

Mr M also said that he has had problems setting up direct debits and paying by bank transfers which hasn't helped him make payments towards the debt. And he asked whether I could reconsider the amount of compensation JAJA should pay him for the way they've mismanaged the account.

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'd like to thank Mr M for his response to my provisional decision. I've carefully considered what he's said.

I agree with Mr M that JAJA has been at fault here. As I mentioned in my provisional decision, their evidence to support their position on the complaint has been somewhat lacking. And I agree that JAJA should have sent Mr M a default notice, and likely didn't. This deprived Mr M of potentially remedying the breach on the account by repaying the arrears that had built up.

I can't though be sure that Mr M would have taken the steps he's outlined in his response to

my provisional decision, to ensure he repaid the arrears. I can't be certain for example that his mortgage provider would have allowed him to pause his payments or that his other creditors may have accepted reduced payments without there being a negative impact on his credit file. In other words, it was possible that adverse information may have been prevented from being recorded in respect of the JAJA account, but not with the other creditors from whom Mr M would have needed to negotiate. I'm not saying that was inevitable, it's just that I can't discount that this was a reasonable possibility. And Mr M may not have wanted that to happen either.

As I said in my provisional decision, Mr M had missed payments towards the account on several occasions. So, I think JAJA would have been entitled to send him a default notice and, from what I've seen, likely still would have defaulted the account which wouldn't have been unreasonable. I realise Mr M says he now has the funds available to repay the debt in full. But, given the account history, I don't want to potentially make matters worse for Mr M by asking JAJA to remove the default only for them to subsequently re-add this if he wasn't able to use the money as he's described.

So, for the reasons I've set out above, including those set out in my provisional decision, I won't be directing JAJA to instruct the relevant credit reference agencies to remove the default that's been recorded on Mr M's credit file in respect of this account. JAJA did though act unreasonably, and I'm satisfied that an award of £250 is fair.

Putting things right

JAJA should pay Mr M compensation of £250 for the distress and inconvenienced he's been caused by their failure to manage his account appropriately.

My final decision

I uphold this complaint and direct JAJA FINANCE LTD to pay Mr M £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 April 2024.

Daniel Picken
Ombudsman