

The complaint

Mr P complains that Shop Direct Finance Company Limited unfairly rejected his repayment offer for his catalogue shopping account after it fell into arrears. Mr P is also unhappy Shop Direct recorded a default against his account on his credit file and sold his account on to a debt collection agency.

What happened

My provisional decision of 3 October 2024 set out the background to this complaint:

“Another Ombudsman considered a previous complaint made by Mr P that Shop Direct had lent to him irresponsibly. The Ombudsman’s final decision of 13 November 2023 set out the background to that complaint as follows:

- *Shop Direct approved Mr P’s application for a catalogue shopping account in 2011.*
- *The initial account limit was £1,000 and Shop Direct periodically increased Mr P’s limit until it reached £8,100 in February 2016.*
- *Mr P paid off the outstanding balance owed on the account in 2016.*
- *Mr P began using the account again in 2017. Shop Direct said that, at this time, it should have reduced Mr P’s credit limit to £2,800. So, Shop Direct said it would refund interest and charges on the closing balance of the account over £2,800. As the closing balance of the account was less than £2,800 at the time of the complaint, Shop Direct said no refund was due.*
- *Whilst our Service was considering this complaint, Shop Direct had refunded interest and charges that had become payable as a result of interest free periods of ‘buy now pay later’ (BNPL) arrangements coming to an end.*
- *Since making the complaint, Mr P’s account had fallen into significant arrears and Mr P said the account wasn’t affordable. He’d asked for the debt to be written off or Shop Direct to arrange an affordable repayment plan.*

In her final decision, the Ombudsman made the following findings:

- *There was no indication from Mr P’s account history that the borrowing between 2011 and 2016 caused Mr P any detriment.*
- *Shop Direct had acted fairly in agreeing Mr P’s credit limit should have been reduced to £2,800 in 2017.*
- *It was reasonable for Shop Direct to monitor Mr P’s account and refund any interest and charges while the balance exceeded £2800.*
- *Mr P should contact Shop Direct to discuss an appropriate repayment plan.*

After the Ombudsman’s final decision, Shop Direct demanded Mr P repay the arrears in full by 29 December 2023. On 20 December 2023, Mr P complained to Shop Direct, saying the debt should not have arisen in the first place. Mr P offered a repayment of £100 per month.

Shop Direct issued its final response on 20 February 2024. In summary, Shop Direct said:

- *Mr P had last made a payment to his account on 3 June 2022.*

- It was required to send a default notice when no payment is received in 180 days. So, Shop Direct was required to send Mr P's default notice on 9 December 2023.
- It was entitled to sell Mr P's debt on as he did not contact it within 20 days of the default notice.
- Shop Direct received Mr P's offer to repay £100 per month on 29 December 2023. As this was received more than 20 days after the default notice was issued, Shop Direct was entitled to sell Mr P's debt on.
- Mr P's credit file should be a true reflection of the payment history of his account.

Unhappy with this response, Mr P referred his complaint to our Service on 27 February 2024. He said Shop Direct did not comply with the regulator's rules by rejecting his reasonable offer of repayment without a clear reason. Mr P said Shop Direct had breached CONC 7.15.10 R by selling on his debt whilst it was aware he had submitted a valid complaint that was being considered by the Financial Ombudsman Service. Mr P added he felt pressured into having to make repayments.

Shop Direct confirmed it defaulted Mr P's account on 7 March 2024 and sold the outstanding balance owed to a third party debt collection agency. Shop Direct said Mr P's referral of his complaint to the Financial Ombudsman Service would not prevent it from selling on his debt.

Mr P thought it was unfair Shop Direct had not accepted his repayment offer and had instead accepted a much reduced payment when transferring his account to a debt collection agency.

One of our Investigators reviewed Mr P's complaint and recommended it be upheld, in part. Our Investigator said:

- Shop Direct had a responsibility to ensure it fully understood Mr P's circumstances before agreeing a repayment plan, so it was unable to confirm Mr P's repayment proposal was affordable without completing an income and expenditure check. But Shop Direct didn't receive Mr P's repayment proposal until 29 December 2023 and, by this time, the debt was already eligible for resale.
- The Information Commissioner's Office (ICO) states that when a customer is at least three months behind with their monthly payments, a default may be registered. And it would expect the default is registered once a customer is six months behind with their payments. This service generally takes a similar view.
- Shop Direct was entitled to report missed payments on Mr P's credit file but should amend the date on which it recorded Mr P's account as in default to 23 March 2023, when Mr P's account was already four months in arrears.
- Shop Direct defaulting the account is not the same as issuing legal proceedings. Legal proceedings, as an example, would be applying for a County Court Judgement.

Shop Direct accepted our Investigator's recommendation but Mr P did not. Mr P said defaulting the account is a pre-cursor to legal action being taken so it was "semantics" to say Shop Direct had not issued legal proceedings. Mr P said Shop Direct did not tell him an income and expenditure check was required to agree a repayment plan."

I then set out my provisional decision:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Another Ombudsman considered Mr P's complaint that Shop Direct lent to him irresponsibly,

as I have set out above. So, I cannot consider that complaint again, and I cannot comment on Mr P's assertion that the arrears on his account are the result of a debt that should not have arisen in the first place. My decision here is limited to Shop Direct's handling of Mr P's account since it entered into arrears.

Mr P says Shop Direct has failed to meet its regulatory obligations and highlighted rules he thinks it has broken. It might be helpful to clarify that only the regulator, the Financial Conduct Authority, has the power to punish Shop Direct for any regulatory failings. Instead, my role here is to consider whether Shop Direct has made any error that caused Mr P a loss and, if it has, decide how Shop Direct should compensate Mr P. So, even if I were to conclude that Shop Direct had broken a rule, my role would be to decide whether that had any impact on Mr P that requires compensation.

I've reviewed Mr P's credit agreement with Shop Direct. The terms of the agreement entitled Shop Direct to demand immediate repayment of the full outstanding balance and terminate the agreement if he failed to make the minimum repayment by the due date. The agreement also set out that Shop Direct may transfer Mr P's account to a debt collection agency if he did not keep up with repayments.

Mr P says he was not told Shop Direct required him to complete an income and expenditure check before agreeing to his repayment proposals. Having reviewed the default notice issued to Mr P on 12 December 2023, it said the outstanding balance owed on the account was £5,286.15. The letter went on to say:

"....you have failed to make all your periodic payments in full by its due date... and arrears amounting to £1,793.32 are outstanding.

To remedy the breach you must pay £1,793.32 before 29-DEC-2023...

If you have any difficulty in paying any sum owed under this agreement, you can apply to the court for an order to give you more time to pay any sum owed."

Mr P wrote to Shop Direct with a repayment offer of £100 per month until the outstanding balance is cleared. This is clearly not meeting the terms of the default notice to repay the arrears in full by 29 December 2023. The account was more than six months in arrears. The ICO sets out that Shop Direct should ensure Mr P's credit file is an accurate reflection of the state of his account and, if it is in arrears, apply a default after three to six months of arrears have accrued. Shop Direct did not receive the repayment required to bring the account up to date by 29 December 2023. As the account was more than six months in arrears, I think Shop Direct was entitled to default the account.

As the account should have been recorded as in default, I also think Shop Direct was then entitled to sell Mr P's account on to a debt collection agency. Shop Direct was not obliged to pause this process because Mr P had previously referred a complaint to our Service or made a new complaint to Shop Direct itself. I note Mr P is unhappy Shop Direct sold his debt on for less than he owed, instead of accepting his repayment offer. If Shop Direct exercised its commercial discretion to sell the debt for less than Mr P owed, it was entitled to do so. It does not automatically follow that Shop Direct should have accepted Mr P's repayment offer of £100 per month, made in December 2023 – I'll explain why.

Shop Direct was not obliged to accept any repayment offer it considered to be unacceptable because it was, for example, very low or a token payment. It would have taken over 17 months to clear the arrears and longer to clear the entire balance owed. As the account would still have been more than six months in arrears even if Shop Direct had accepted Mr P's repayment plan, it would still have been obliged to record the account as in arrears

and apply a default to Mr P's credit file. So, I do not think it would have made a difference to the outcome here if Shop Direct had made it clearer Mr P should include details of his income and expenditure with any partial repayment offer made or explained the reasons for rejecting Mr P's offer in more detail.

I have reviewed when Mr P last made a payment to his account to determine when Shop Direct should have recorded the account as in default. In its final response to Mr P's complaint, Shop Direct said the last payment was made in June 2022. But having reviewed the archived statements provided by Shop Direct, it lists the last payment as being made in November 2022 and the account being one month in arrears in December 2022. Shop Direct should have recorded a default on Mr P's credit file no later than six months after his account fell into arrears, which appears to be in November 2022. So, I agree with our Investigator it would be reasonable for Shop Direct to have recorded the account as in default by 23 March 2023 – I note Shop Direct accepted our Investigator's recommendation. I would also like to confirm to Mr P that, for the reasons explained above, including the guidance set out by the ICO, we would not expect Shop Direct to delay applying a default because a complaint about Mr P's account had been referred to our Service. Delaying the recording of a default can mean a firm does not stop applying interest and charges to an outstanding balance owed to it. A delayed default will also show on a credit file for more than six years after it should have been applied.

Because of the above, I think Shop Direct should amend its record of the date Mr P's account defaulted to 23 March 2023. From the statements provided, it is not possible to say for certain that no interest or charges were applied, so I need to recommend Shop Direct refund any interest or charges applied to the account since this date. If no interest or charges were applied, it would be helpful for Shop Direct to clarify this and provide supporting evidence in its response to my provisional decision."

Shop Direct had no further submissions in response to my provisional decision. Mr P said his debt existed because Shop Direct broke the Financial Conduct Authority's (FCA) requirements in determining affordability, which they admit to. Mr P said the default was unfair when the contract was in dispute and Shop Direct broke FCA rules that require forbearance on delayed, outstanding or disputed payments. Mr P added that he paid the arrears of £2,673.35 but Shop Direct then sold his account to a debt collection agency. .

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, my provisional decision remains unchanged but I'll address Mr P's response to that decision.

Mr P says his debt existed because Shop Direct broke FCA requirements in determining affordability. Another Ombudsman considered his complaint that Shop Direct lent to him irresponsibly. I confirm I cannot consider that complaint again or comment on Mr P's assertion that the arrears on his account are the result of a debt that should not have arisen in the first place. My decision here is limited to Shop Direct's handling of Mr P's account since it entered into arrears.

Mr P says it's unfair the default was applied after he disputed his contract. For the reasons set out in my provisional decision, including the guidance set out by the ICO, we would not expect Shop Direct to delay applying a default because Mr P made a complaint or because he later referred it to our Service.

Mr P says Shop Direct broke the FCA's rules requiring forbearance. However, I think Shop Direct delayed applying a default for longer than it should have. Mr P's account was more than six months in arrears – the ICO's guidance sets out that Shop Direct should have applied a default after his account was three to six months in arrears. Shop Direct's statements indicate the last payment was made to the account in November 2022. I think Shop Direct should have met its obligation to default Mr P's account once it reached six months of arrears. For the reasons set out in my provisional decision, I agree with our Investigator it would be reasonable for Shop Direct to have recorded the account as in default by 23 March 2023. And once the account was in arrears, the terms of Mr P's agreement set out Shop Direct may transfer Mr P's account to a debt collection agency.

I know Mr P feels it is unfair a default will be recorded on his credit file but, as I said in my provisional decision, the ICO sets out that Shop Direct should ensure Mr P's credit file is an accurate reflection of the state of his account. I remain of the view that Shop Direct should have defaulted Mr P's account sooner than it did. So, to put things right, I think Shop Direct should amend the date of default to 23 March 2023 and refund any interest or charges that were applied to the account since that date. This will ensure that the default is removed from Mr P's credit file sooner than it would have been otherwise.

Putting things right

Shop Direct should amend the date it recorded Mr P's account as in default on his credit file to 23 March 2023. As Shop Direct sold Mr P's debt to a third party, it should liaise with the new debt owner to remove any interest or charges applied to the account since 23 March 2023 from the outstanding balance owed.

My final decision

I uphold this complaint and require Shop Direct Finance Company Limited to do what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 28 November 2024.

Victoria Blackwood
Ombudsman