

The complaint

Mr B feels that his contractual agreement with Fairscore Ltd, trading as Updraft, isn't legally enforceable, and is also unhappy with how Updraft administered his account.

What happened

Mr B had a loan with Updraft and raised a complaint with Updraft because he felt that his loan agreement with them wasn't legally enforceable. Updraft responded to Mr B and said that they would continue to pursue him for repayment of the loan as per the terms of the loan agreement. Mr B wasn't happy with Updraft's response, and he also wasn't happy that they'd transferred his loan debt to a debt recovery agency ("DRA") or with how they were reporting his loan to his credit file.

One of our investigators looked at this complaint. They noted that this service doesn't have the authority to decide if a loan agreement is legally enforceable or not and that this service's remit is based on general fairness. And they felt that because Mr B had received the loan funds from Updraft, it was generally fair that he should be expected to repay Updraft in line with what had been agreed between them.

Our investigator also noted that this service can only consider points of complaint which have previously been raised with the respondent business and which that business has had the formal opportunity to consider and respond to. And they felt Updraft hadn't yet had the formal opportunity to consider and respond to Mr B's dissatisfaction that his loan debt was transferred to a DRA or with how Updraft were reporting the loan to Mr B's credit file.

Because of this, our investigator referred Mr B to Updraft to raise a new complaint with them about these issues. Mr B didn't accept the view of this complaint put forward by our investigator, so the matter was escalated to an ombudsman for 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.

Having done so, I'd like to begin by confirming that this service isn't a regulatory body or a Court of Law and doesn't operate as such. Instead, this service is an informal, impartial dispute resolution service. And while we do take relevant law and regulation into account when arriving at our decisions, our remit is focussed on determining whether we feel a fair or unfair outcome has occurred – from an impartial perspective, after taking all the factors and circumstances of a complaint into consideration.

Mr B feels that his loan agreement with Updraft isn't legally enforceable. But given that this service isn't a Court of Law, it isn't within the remit of this service to decide whether a loan agreement is legally enforceable or not. If Mr B would like such a decision, he would need to obtain one from a Court of Law.

What this service can consider is whether a business has acted fairly in a general sense.

And where a consumer has received loan funds and had the benefit of those funds, as Mr B doesn't dispute is the case in this instance, then this service will usually feel that it's fair that the consumer should repay those loan funds in line with what they agreed to when they applied for and received the funds. And I see no reason why this line of reasoning shouldn't apply in this instance.

Accordingly, I don't feel that Updraft are acting unfairly towards Mr B by pursuing him as they see fit for repayment of the loan in line with the loan agreement. And I can only reiterate that if Mr B feels that the loan agreement isn't legally enforceable, then he will have to obtain a decision on that point from a Court of Law.

Mr B is also unhappy that Updraft transferred his loan debt to a DRA, as well as with how Updraft are reporting his loan to the credit reference agencies, and that Updraft didn't default the loan when he felt that should have. But as our investigator has explained, this service can only consider points of complaint that have previously been referred to a respondent business and which that business has therefore had the formal opportunity to consider and respond to.

In this instance, I can't see that Updraft have had the formal opportunity to consider and respond to these further points of complaint raised by Mr B. And so, I can only refer Mr B to Updraft to refer these points of complaint with them in the first instance. And I confirm that after Updraft have had the opportunity to consider and respond to those points, it may be the case that Mr B has the right to refer those points of complaint to this service at that time.

However, speaking generally for information purposes only, this service usually won't consider it unfair for a debt to be passed to a DRA if the terms of the credit agreement stipulate that it can be, and usually won't consider it unfair if a credit provider makes reports to the credit reference agencies that are an accurate report of payments or non-payments that have occurred. Finally, this service will usually expect a credit provider to default an account in line with guidance published by the Information Commissioner's Office ("ICO") of which Mr B has been previously appraised by our investigator.

All of which means that I won't be upholding this complaint or instructing Updraft to take any further or alternative action at this time. This is because I don't feel that Updraft are acting unfairly by pursuing Mr B for the money that he's received from them in line with the agreement made between them when Mr B received that money.

I realise this won't be the outcome Mr B was wanting, but I trust that he'll understand, given what I've explained, why I've made the final decision that I have.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 February 2025.

Paul Cooper
Ombudsman