

The complaint

Mr K complains about Fairscore Ltd trading as Updraft (Updraft) registering a default in respect of his loan. And that they passed his account to a debt collections agency (DCA) whilst he had an agreed payment plan in place.

What happened

In July 2023, Mr K entered into a Fixed Sum loan agreement with Updraft for £5,000. With interest and charges applied the total amount he needed to repay was £8,088.70. This was repayable over 47 months at £168.31 with a final payment of £178.13.

Mr K maintained his repayments through to January 2024, after which he started to get into arrears with his loan. He said he first spoke to Updraft in February 2024 advising them of his financial difficulties and seeking their help. Mr K said he was passed between agents and after numerous attempts to get a payment plan set up, after one was agreed Updraft defaulted his account. And passed his account to a DCA. He complained to Updraft.

Updraft said they'd tried on several occasions to provide support to Mr K. They'd agreed various repayments which he failed to make. And after a payment plan was agreed Mr K didn't maintain this as he disputed the interest being charged.

Mr K wasn't happy with Updraft's response and referred his complaint to us.

Our investigator considered whether the loan had been affordable for Mr K which she found it had been. She also considered how Updraft had acted when Mr K advised them of his financial difficulties. She said that Updraft had acted with forbearance and due consideration.

Mr K agreed the lending had been affordable at the point of inception. But didn't agree that Updraft had treated him fairly after he'd told them of his financial difficulties. He said they'd gone back on an agreed payment plan and had changed dates to support their outcome. He asked for an ombudsman to decide.

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'm not upholding this complaint. I know this will disappoint Mr K so I'll explain why.

Firstly, as Mr K and Updraft have accepted our investigators finding about the affordability of the loan I won't comment further about this. What remains in dispute is how Updraft have acted with Mr K after he advised them of his financial difficulties.

In reaching my decision I've considered the evidence provided by both parties, and I've also obtained recordings of the phone calls between Mr K and Updraft when payments were agreed and around the setting up of payment plans. And a timeline of the actions taken by Updraft.

I can see that Mr K has been in touch with Updraft on several occasions to update them about his situation. He's explained his financial difficulties and explained the outcome he was looking to reach, the removal of interest, the rescheduling of the loan. He told Updraft about his plans to try and repay what he owed and to address the arrears. But much of this seems to be based around his experience with other loan companies and what he was prepared to accept. And despite several agreements to pay a monthly amount this didn't materialise in a way that meant Mr K was able to keep to any arrangement agreed with Updraft.

The relevant legislation (the Consumer Credit sourcebook "CONC") says that a lender must treat customers in Mr K's position with 'forbearance and due consideration'. And provides guidance about the actions a lender can consider.

I've also considered the terms of the agreement Mr K had with Updraft under the heading "*What happens if I miss a payment?*" Updraft explain:

- *We do not charge late payment fees but we will continue to charge interest on any unpaid balance at the rate above.*

From the evidence I've seen Mr K maintained his repayments up to January 2024. Updraft's records show Mr K made them aware he was having financial difficulties when his February payment was due. And I can see Updraft took steps to establish Mr K's financial position with the completion of an income and expenditure assessment. From this Updraft determined Mr K had sufficient disposable income and a catch plan was put in place whereby Mr K would pay three monthly payments of £168.31. As Mr K didn't make any payment for February and March 2024 Updraft noted the catch-up plan had failed.

A further income and expenditure form was sent, and it was agreed with Mr K in early April 2024 that he was able to pay a reduced payment of £163.95. Mr K made two payments in April 2024 totalling £81.10, which was less than the agreed payment. After further discussions and contact from Mr K's partner it was explained that Mr K's financial difficulties were attributed to gambling. A further promise to pay was agreed with Mr K in June 2024, with a reduced payment of £106.50. I can see Mr K spoke to Updraft in mid-June 2024 and the reduced payment was discussed. Mr K said the interest should have been frozen to which the agent explained that they didn't freeze the interest but that they'd pass his request onto their management team. Mr K confirmed he'd be able to make the agreed £106.50 payment and that he'd pay this by 28 June 2024. It was also noted that Mr K was a vulnerable customer.

In mid-July 2024 Mr K spoke with Updraft again as he didn't find their online discussions useful. Mr K hadn't made the agreed £106.50 payment. He told Updraft he'd have difficulty paying the agreed amount. Mr K said there wasn't any issue with him being able to make a payment of £65. He was again told that upon receipt of this payment a payment plan could be set up. Mr K asked about the interest and was told that they could after he'd made the £65, put a reduced payment plan in place and discuss further options such as considering the interest payable on his loan. But again, the payment wasn't made.

In the calls Updraft discussed Mr K's financial circumstances and his ability to meet any agreed payment as well as asking Mr K how long he foresaw he'd struggle to maintain his repayments for. But from emails I've seen Mr K wanted confirmation about the interest and

long-term payment plan before he'd make any payment. And as he didn't make the agreed payments the arrangements were noted as broken and so there weren't any payment plans set up. I can understand Mr K wanting clarity about the payments going forward but I think Updraft also made clear that he needed to make the first agreed payment before any formal plan was put in place.

The relevant guidance here says that an account should generally be reported as defaulted when between three to six months of arrears have built up, or payments missed for that time. By mid-July 2024 there were significant arrears on the account and Mr K hadn't made a contractual payment for a substantial period time. Updraft has shown a default letter dated 11 July 2024 was sent to Mr K. The default notice said:

"You must bring your account up to date by making the payments you have missed in order to correct this breach. To do this, you must pay us the total amount overdue which is £760.45 before July 31, 2024. If the action required by this notice is taken before the date shown, the action below will not be taken in respect of the breach."

The default notice went on to explain what would happen if Mr K didn't bring his account up to date. Mr K has said this default was issued after he'd made his payment in July 2024, but I've seen an email from Mr K dated 17 July 2024 which was prior to his payment confirming he was aware a default notice had been sent to him. Updraft could have defaulted the loan around May 2024 due to the arrears on Mr K's account, but they didn't do so as they were trying to agree with Mr K the payment of a specified amount after which they'd set up a payment plan. And despite several arrangements being agreed Mr K failing to make the agreed payment prevented any payment plan being set up.

I think on balance it was the default notice that prompted Mr K to again to try to seek an agreed payment plan. And I can see it was agreed for him to pay £52, after which a payment plan would be set up for him. And I can see he made a payment of £52 before the end of July. I know Mr K feels that paying the £52 when he did should have stopped the default from being registered.

Throughout these discussions Mr K had consistently asked for the interest on his account to be frozen, he'd asked for confirmation in writing as to what was happening with the interest, what was outstanding, and has said it would be after he'd got this that he'd make his payments. But I can also see that Updraft made clear that while these options would be considered by their management team, Mr K first needed to make his agreed payment so that a payment plan could be set up, which I don't think was unreasonable. And Mr K agreed each time that he would make the payment.

After he made the £52 payment in July 2024 I can see a confirmation email was sent by Updraft that told Mr K that the reduced payment plan of £52 a month for five months had been set up, the impact this would have on his credit file. And that whilst the payment plan had been set up they would still be applying the interest.

I understand that one of Mr K's other debtors had removed the interest and rescheduled his loan repayments and Mr K wanted the same action to be taken by Updraft. And I think this is the issue here. Updraft aren't obliged to follow the same actions as other lenders. Once a customer's financial situation is clear, there's a range of measures a business can take to help. This could be for example reducing or writing off interest, allowing nominal or reduced repayments or a payment holiday or rescheduling or consolidating what's owed. It's clear to me that Updraft has looked to support Mr K by reducing his monthly repayments over a period of several months. Updraft agreed several monthly payments with Mr K based on

what he's told them and been willing to renegotiate these, even when he hadn't stuck to the agreed terms – which I think is a fair approach.

And I can see the interest Updraft charged continued to be an issue after Mr K made the £52 payment in July 2024. So, the payment plan of £52 a month for a further five months wasn't maintained. While it could be argued that Updraft could have put the default on hold as they'd agreed a repayment plan with Mr K of six-monthly payments of £52. I think even if Updraft hadn't registered the default when they did, it's more likely than not a further default would have been sent when Mr K continued to hold back any payment dependent on whether Updraft removed any interest being applied. As a default is registered for six years it's more beneficial for Mr K for it to be registered sooner rather than later.

And it wouldn't be fair if the business didn't record the default by the time the consumer is between three and six months in arrears, and a payment plan wasn't being maintained as by this point it'd be clear they aren't able to make their contractual payments. So, I don't think it was unfair of Updraft to register Mr K's account as being in default.

As no further payments were made by Mr K the arrears continued to build. As Mr K wanted the same outcome as he'd with his other lenders and Updraft's approach was different, I think the relationship he'd with Updraft had broken down. So, I can't say Updraft acted unfairly when in August 2024 they informed Mr K that his account would be passed onto a DCA.

In the overall circumstances here, I think by this point, it was clear that Mr K's financial difficulties were long term and where that's the case, it's fair to do what Updraft did here. This will have an impact on Mr K's credit file, but this accurately reflects the conduct of the account and should also mean that Mr K is able to make more affordable payments going forwards.

I know Mr K will be disappointed by my decision, but I hope he has some reassurance that I've considered the points he's raised and understands my reasoning for the outcome I've reached.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 21 May 2025.

Anne Scarr
Ombudsman