

The complaint

Mr C is unhappy that EUI Limited (EUI) recorded negative information on his credit file under a fixed sum loan agreement.

What happened

Mr C's motor insurance policy automatically renewed in October 2022. It was arranged for the insurance policy to be paid for by way of a fixed sum loan agreement, taken out with EUI. The agreement was for a period of one year, with an initial payment of £50.61 due on 13 October 2022, followed by 11 monthly payments of £50.39.

EUI has said that on 12 June 2023 it tried to collect the monthly payment of £50.39, but this wasn't successful. EUI said it had written to Mr C ahead of this, highlighting that it didn't have a live direct debit instruction set up for him, and that he should contact it to resolve the matter.

EUI said Mr C didn't contact it to resolve the problem. EUI said it wrote to Mr C on two further occasions in June 2023. The first noting that the June instalment was outstanding and needed to be repaid, and that a direct debit instruction needed to be set up. And the second noting that if Mr C didn't pay the arrears before 1 July 2023, it would act in accordance with the terms and conditions of the credit agreement and insurance policy, which could mean termination of the credit agreement, cancellation of the insurance policy or demanding payment of the outstanding balance.

EUI said Mr C didn't contact it. So, in July 2023 it wrote to him and said the fixed sum loan agreement had been terminated, and EUI required payment of the outstanding balance, which was £191.79, for the insurance policy to continue. It said if this wasn't paid by 8 July 2023 the insurance policy would be cancelled.

EUI said this wasn't paid, so the insurance policy was cancelled. And the debt was referred to a debt collection agency. EUI provided information to the relevant credit reference agencies, noting the missed payment, and ultimately registering a default for the agreement.

Mr C has explained that he wasn't aware of the above, until January 2024, when he was checking his credit file and realised it showed missed payments and a default. He explained that in June 2023 he had switched his bank account, using the current account switch service, and at that point the direct debit must not have transferred to his new bank account. Noting the issues on his credit file, Mr C said he contacted EUI immediately and offered to pay the missed payment of around £50. But he said EUI refused to accept this and resolve the matter.

Mr C therefore raised a complaint with EUI. EUI responded with its final response letter on 29 January 2024. In this it said it hadn't done anything wrong.

Mr C remained unhappy with EUI's position on the matter. He felt the final response by EUI was generic in its nature and didn't understand the concerns he was raising.

So, Mr C referred a complaint to this service. His complaint explained he was unhappy with the missed payment and default being recorded on his credit file, as well that he felt the final response provided by EUI was generic in nature. Mr C said that he would like EUI to remove adverse information from his credit file. And he noted he was happy to pay the £50.39 payment he had missed.

Our investigator considered Mr C's complaint and didn't think it should be upheld. They thought EUI had done enough to let Mr C know of the missed payment, and what would happen if this wasn't paid. The investigator didn't uphold Mr C's concerns about the final response to his complaint, either.

Mr C didn't agree with our investigator's outcome. In summary, Mr C said it wasn't his fault the direct debit for the credit agreement with EUI hadn't been transferred over to his new bank account, and that adverse markers had been applied to his credit file without warning. Mr C also highlighted his attempt to resolve the matter with EUI, without success. And he felt EUI's complaint response had been poor.

As Mr C didn't agree, this complaint has been referred to me to decide.

I issued a provisional decision to both parties on 1 October 2025. In this I said:

"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 intending on upholding this complaint. I've explained why below. When explaining my decision, I've only referred to information and evidence relevant to explain my outcome. This isn't intended as a discourtesy but reflects the informal nature of this service.

Obligations under the credit agreement

Mr C is unhappy that EUI reported adverse information to credit reference agencies under a fixed sum loan agreement he had with it. So, I've reviewed the agreement to understand both parties' right and obligations under it.

*On doing so I can see that the credit agreement explains under the title '**Important**' that:*

"3 You will be in Default under the Agreement:

*(a) If any Direct Debits are refused by the Bank/Building Society within any policy term
or*

(b) Should you fail to maintain an instruction to pay Direct Debits and such a failure is not corrected as requested, within the permitted time.

4 The whole of the outstanding balance on the account will become immediately due and payable

(a) Upon notice by us that you are in Default under the Agreement."

The credit agreement also explains that:

“Missing payments could have severe consequences such as:

i. we may cancel your insurance policy and use any refund of premium to repay the amount you owe us

ii. We may report your defaults with credit reference agencies which will make obtaining future credit more difficult.”

So, I’m aware based on the terms and conditions of the credit agreement Mr C would be in default if he failed to maintain a direct debit instruction and didn’t remedy this when requested. And that EUI was entitled to report this default to credit reference agencies. Given this, I’ve needed to decide whether Mr C was in default of his credit agreement. And, whether it was fair to report this to the credit reference agencies.

Recording adverse credit information

EUI has said Mr C missed a payment in June 2023. And it has said this is because Mr C didn’t have a direct debit instruction set up at this time. Mr C hasn’t disputed this. He explained he switched bank accounts, and the direct debit should have moved over to his new account.

I don’t know what happened when Mr C changed his account between banks. But I don’t hold EUI accountable for the direct debit not transferring over. It wouldn’t have control over this change between accounts, or ensuring the direct debits were set up. That would be for the relevant banks and Mr C to do.

And, whilst I understand Mr C said he wasn’t aware of the missed payment until January 2024, I’m satisfied EUI did alert Mr C to the problem.

I say this because I’ve seen a copy of three letters it sent to Mr C’s address via post. The first was sent on 3 June 2023, highlighting there was no direct debit instruction in place, and Mr C should contact it to set one up.

A second letter was sent on 14 June 2023. This letter explained that the June instalment hadn’t been paid, asked for payment to be made, and for a new direct debit instruction to be set up by 1 July 2023. The letter also explained a default notice would be issued on 17 June 2023, which would formally explain what would happen if there was a failure to make payment.

On 17 June 2023, a default notice was then issued to Mr C. This noted that if payment wasn’t made by 1 July 2023, EUI may terminate the credit agreement, demand payment of the outstanding balance, or initiate the cancellation of his insurance policy.

EUI said these letters were also sent via email. I have seen copies of these emails too. But these don’t show the dates they were sent. So, I can’t be sure exactly if or when these reached Mr C. But this doesn’t affect the outcome here. Either way, I’m satisfied it was reasonable for EUI to write to Mr C at his address.

As Mr C didn’t contact EUI at this time to set up a direct debit instruction and make the relevant payments, I do consider it’s fair and reasonable that EUI decided to report the missed payment.

I’ve thought carefully about whether it was reasonable for EUI to record Mr C’s account as defaulted. And I do think EUI acted fairly here.

When considering whether the account was defaulted fairly in Mr C's case, the Consumer Credit Act 1974 is relevant. I say this because Section 61(1)(a) Consumer Credit Act 1974 (CCA 1974) provides that a regulated credit agreement isn't properly executed unless a document in the prescribed form is signed.

I'm aware Mr C's credit agreement wasn't signed by him. EUI has accepted this was the case too. So, based on the above, Mr C's agreement isn't properly executed. The CCA 1974 sets out the implications of an improperly executed agreement. At Section 65(1) CCA 1974 it is explained that "an improperly-executed regulated agreement is enforceable against the debtor or hirer on an order of the court only."

Given this, I'm aware if EUI wanted to enforce this agreement, it would need to refer the matter to court. In other words, Mr C's agreement is only enforceable by court order.

But the fact the credit agreement hasn't been referred to court to enforce it doesn't mean the agreement between Mr C and EUI wasn't valid. The court case of McGuffick v The Royal Bank of Scotland plc [2009] (McGuffick) is relevant here. In McGuffick, the court held that an improperly executed agreement is still a valid agreement between the parties. The judgment also held that defaulting an account didn't amount to enforcement action. So, I find EUI is entitled to default an improperly executed agreement such as this one.

EUI did follow the relevant process for defaulting an account. It wrote to Mr C explaining the nature of the breach of the agreement, how to remedy this and by what date.

Mr C didn't make the relevant payment by 1 July 2023. EUI has said it registered the default in September 2023, three months after the missed payment occurred and remained unpaid. Looking at a screenshot of what was reported to the credit reference agencies, I can see this notes a date of default in October 2023. The steering committee on reciprocity (SCOR) is a cross-industry forum made up of representatives from the credit industry, including the credit reference agencies. SCOR sets out guidance in its 'Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies.' These principles were set up in collaboration with the Information Commissioner's office (ICO). These say that as a general guide, a default may be recorded when somebody is at least three months in arrears.

Whether the default was registered in September or October 2023, Mr C was three months in arrears when the default was registered. So, given that EUI has acted in line with the above guidance and had given Mr C notice of the default, I'm satisfied it acted reasonably. So, I don't require EUI to do anything differently here.

It isn't my place to advise Mr C, but under the circumstances he's mentioned here he might want to consider putting a notice of correction ('NOC') on his credit file to explain the circumstances with the missed payment and the transfer of his bank accounts. Information about NOC's should be easy for him to find online.

Final response letter provided by EUI

Lastly, Mr C has said he considers the final response letter provided by EUI in response to his complaint to be generic, and feels it lacks understanding of his particular concerns. It isn't for me to tell EUI how it should respond to a complaint raised with it. If a consumer remains unhappy with the response a firm provides to a complaint, they can refer the matter

to this service, as Mr C has done. So, I don't require EUI to do anything in respect of this point."

EUI responded to the provisional decision and noted it didn't have anything further to add. Mr C responded and explained he disagreed with the provisional decision reached. In summary, Mr C said:

- It wasn't fair to hold him accountable for an error that arose within the banking system – namely the failure of his direct debit for the finance not to have transferred to his new bank account. Mr C said he shouldn't suffer lasting damage as a result of the banking system's failure.
- The provisional decision didn't mention the Consumer Duty, which Mr C said was relevant to this complaint. He said that the Consumer Duty requires firms to act to prevent foreseeable harm and deliver fair outcomes. And, that it was foreseeable that a missed payment that resulted from a failed bank transfer would cause disproportionate harm. Particularly given Mr C had immediately tried to pay once notified of the issue.
- That CONC 7.3.4R notes a firm mustn't threaten or register a default unless it had taken all reasonable steps to resolve the matter. Mr C said EUI had refused payment from him when he tried to rectify the issue – which was unreasonable conduct.
- In relation to his credit agreement being improperly executed – it was incorrect to continue as if the credit agreement was fully valid for the purposes of reporting adverse credit data. Mr C said that EUI shouldn't have been permitted to take this action, which was adjacent to enforcement action. Mr C said the case of *McGuffick* referred to doesn't consider whether it is fair and reasonable under Financial Ombudsman Service and FCA standards to report adverse data on an improperly executed agreement.
- Mr C felt that in finding that EUI didn't act unfairly in reporting adverse credit information it was punishing the consumer, whilst allowing a lender to breach statutory execution requirements.

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've carefully considered the further submissions provided to me.

I do understand Mr C has highlighted the reason the direct debit payment stopped was because of an issue when he switched bank accounts, which he explains wasn't his fault. I'm not party to what happened with the respective banks when the switch was made. But I want to make it clear I'm not making a finding on any fault here by either Mr C or the banks involved.

My role is to consider whether *EUI* has done anything wrong in respect of this complaint. And *EUI* wouldn't have been responsible for the switching of Mr C's bank account, or moving the direct debit. So, I do still remain satisfied it isn't accountable for this. If Mr C does feel another party is accountable, then he would need to raise this with them.

When thinking about whether *EUI* has done anything wrong here, I need to think about how *EUI* handled the matter once it was clear Mr C no longer had a direct debit in place, and he

missed the payment in June 2023. For the reasons set out in my provisional decision, I'm satisfied EUI did handle this fairly, and in line with the relevant law, rules and guidance.

I won't repeat the full details of my provisional decision here. But, EUI did contact Mr C to alert him that there was no longer a direct debit in place. And it issued him communications, including a default notice, when payment was missed. When it didn't receive payment by the date set out in the default notice, or in the following months, it registered a default with the credit reference agencies. And, I'm satisfied it did this in line with the guidance on issuing defaults – which note that as a general guide, a default may be registered when someone is at least three months in arrears. By the time EUI registered the default in this instance, Mr C was in arrears of this timeframe. So, I don't think it did anything wrong here.

Mr C has referred to CONC 7.3.4R. This notes that a firm must treat customers approaching arrears with forbearance and due consideration. But for the reasons set out above, I'm satisfied EUI did reach out to Mr C to attempt to resolve the issue, but it didn't receive any response within the timeframes laid out. I do understand Mr C has explained he tried to remedy the matter as soon as he found out – in January 2024 – and EUI wouldn't accept payment. But it was too late by then – the default had been registered in September or October of the previous year, after EUI had followed the relevant process to make Mr C aware and gain payment. So, it is correct the account had defaulted.

Mr C has referred to the fact his agreement was improperly executed – and noted it isn't right to continue as if the credit agreement was fully valid for the purposes of reporting arrears. Mr C feels this punishes the consumer. And he said that the case of *McGuffick* doesn't take into account this service or the Financial Conduct Authority's standards. But I do remain of the opinion *McGuffick* is a relevant consideration here.

When coming to my decision I must take into account relevant law, as well as regulations, guidance, standard industry practice, and what is fair and reasonable in the circumstances. And the case of *McGuffick* does note that an improperly executed agreement is still valid, and that defaulting an account didn't amount to enforcement action. It isn't for me to regulate the rules around this but to look at whether EUI acted fairly within the relevant framework.

I have previously detailed why I consider EUI met its obligations and acted fairly in terms of the missed payment and registering the default. Given this, I'm not requiring it to be removed – I'm satisfied EUI acted fairly and the default reasonably reflects payment wasn't received within the relevant timeframe.

Mr C has referenced to the Financial Conduct Authority's Consumer Duty. I do wish to reassure Mr C that I did consider this – alongside all other relevant law, rules, regulations and guidance when coming to my overall decision. But the Consumer Duty doesn't alter the outcome of this complaint. Mr C has said it was foreseeable that a missed payment from an issue with the direct debit failing to transfer would cause foreseeable harm. But as above, I don't consider EUI responsible for the actions that led to the missed payment, and I'm satisfied it took the necessary steps to alert Mr C that the problem needed to be remedied, before it defaulted the account.

I want to reassure Mr C that I've carefully thought about everything else he said, alongside all the evidence previously received on this complaint. Having done so, my decision does remain the same as that within my provisional decision. So, I don't require EUI Limited to do anything more.

My final decision

Given the above, my final decision is that I don't uphold this complaint. I don't ask EUI Limited to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 November 2025.

Rachel Woods
Ombudsman