

## The complaint

Mr M has complained about the way Fairscore Ltd trading as Updraft “Fairscore” defaulted two of his loan accounts.

## What happened

All parties are familiar with the facts of this case so I’ll only briefly set them out here. Mr M’s accounts fell into arrears with last payments being made to accounts \*164 and \*669 in April and August 2023, respectively. In January 2024, Fairscore issued notices of default for both accounts giving Mr M until 5 February 2024 to clear the arrears to avoid the defaults. On 12 February 2024, Fairscore wrote to Mr M to notify him that with effect from 29 January 2024, his accounts had been sold to a third party creditor who I’ll refer to as T.

Mr M wasn’t happy saying the accounts had been defaulted earlier in January 2024 before being assigned to T, that this took away his statutory right to a notice period and the opportunity to remedy the breach of the credit agreements. It also said that T wrote to him on 12 February 2024 seeking repayment when he was advised in the default notices that no enforcement action would be taken until 19 February 2024.

Fairscore didn’t agree with Mr M’s complaint and issued a final response letter in August 2025 and said the default notices were correctly issued. Unhappy, Mr M referred his complaint to our service reiterating his earlier points.

Mr M’s complaint was considered by one of our investigators. They didn’t recommend the complaint be upheld explaining that the Information Commissioner Office (ICO) debt guidelines said a default could be issued after three months of arrears and by the time Fairscore had issued default notices on Mr M’s accounts it had been longer than this. They said that it looks like Fairscore did register the defaults earlier before the accounts were passed to T but as Mr M confirmed he wouldn’t have been able to clear the arrears by 5 February 2024 in any event, they didn’t think this needed to be remedied. Defaults remain on a consumer’s credit file for six years after they’re registered and as they would have been applied anyway, defaulting the accounts earlier than 5 February 2024 meant that they would be removed from his credit file sooner than they otherwise would have. They did however recommend Fairscore pay Mr M £50 compensation for defaulting the accounts earlier than it should have leading to Mr M complaining.

Mr M didn’t agree broadly for the following reasons:

- He wasn’t given the full notice period and his opportunity to remedy the breach of his credit agreements was undermined irrespective of his ability to actually remedy the breach.
- The legal consequences of not complying with the law means the notice is invalid and cannot be relied upon for enforcement action.
- Whilst assigning the debt to a third party isn’t expressly prohibited, the effect of it is that he lost the opportunity to deal directly with Fairscore and remedy the breach which is inconsistent with the purpose of the law which gives consumer’s a meaningful opportunity to remedy the breach.

- He feels that the outcome is inconsistent as it makes a finding that the defaults were registered earlier than they should have, but the default is still deemed valid.
- He felt his conduct and inability to clear the arrears is irrelevant as to the question of whether Fairscore has complied with the law.
- Mr M wanted the service to declare that the default process was not carried out in line with the law, that the early default and assignment were unfair, that his credit file be amended to reflect the proper timeline and award appropriate compensation reflecting the seriousness of the breach.

Our investigator explained that the service has no punitive powers and cannot regulate the way a business conducts itself. It said Mr M wasn't aware that the loans had been assigned to T until after the end of the due date in the default notices and made no attempt to try to contact Fairscore to clear the arrears during this time so was unaffected by the assignment during the notice period. That Mr M's behaviours, given his financial position would have remained the same even if Fairscore had waited until the 5 February 2024 to both default the accounts and assign them to T. They noted that the date the accounts were defaulted were early, but they didn't recommend this be changed as the early record on Mr M's credit file benefits him, as this will result in them falling off his credit file sooner than they otherwise would. The compensation is based on the impact an error has on a consumer and not on the seriousness of the mistake made by Fairscore.

Mr M still didn't agree, he asked for an ombudsman to review the complaint reiterating his earlier points. He added that focussing on Mr M's ability to clear the arrears when considering appropriate remedy undermines the purpose of the statutory framework as the purpose to protect consumers exists irrespective of their financial position. He added that a lender should not be allowed to disregard the terms of its own default notice without consequence and the compensation proposed does not reflect the seriousness of the breach. He wanted confirmation that the default notice cannot be relied upon for enforcement where statutory process has not been followed. So, as the complaint couldn't be resolved, the complaint has been passed to me to make a 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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider having been good industry practice at the relevant time.

I'm sorry to hear about the impact the situation is having on Mr M. Having considered all the circumstances, I've reached the same overall conclusions as the investigator for broadly the same reasons. I've read and considered the evidence submitted by both parties, but I'll focus my comments on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the quick and informal nature of this service in resolving disputes.

Firstly, I want to make clear the limitation of powers of the Ombudsman Service. The Financial Ombudsman Service is an alternative dispute resolution service and our role is to resolve complaints. The service is not a replacement court. I have no powers to determine the legal validity of documents issued by businesses. While the courts may have the power to deem a notice unenforceable, this isn't within my remit. I've considered what's fair and reasonable and as part of that, I've considered any losses Mr M may have experienced

whether that be actual financial losses or compensation for distress and inconvenience. I've considered Fairscore's action and the impact of it.

This service also does not regulate businesses and has no punitive powers. The Financial Conduct Authority is able to look into the conduct of businesses and has a wide range of enforcement powers such as issuing fines (which may reflect the seriousness of any failings) in accordance with its own rules but this is not paid to consumers. Consumers are able to report matters to the Financial Conduct Authority but it generally won't reply to individual consumers about any possible investigations it may conduct.

As explained by our investigator, it's not in dispute that Mr M's accounts were in arrears for more than three months at the point Fairscore issued default notices on his loan accounts in January 2024. And this is in line with ICO debt guidelines that says defaults can be issued after three months of arrears.

I've looked at the main letters and notices issued by Fairscore and note the following:

1. A default notice for loan \*669 was issued on 18 January 2024 and the last payment was made to the account over five months before the default notice was issued. It noted that arrears of £321.55 needed to be repaid by 5 Feb 2024 which was noted as the arrears due date. It went on to say that if arrears were not cleared by the arrears due date (which was 5 Feb 2024), Fairscore would terminate the credit agreement and demand immediate repayment of the full balance of £1,417.97. It said this full amount should be paid by 19 Feb 2024 and it may also take legal action and disclose information to credit reference agencies.
2. A default notice for loan \*164 was issued 18 January 2024 and the last payment was made to the account over nine months before the default notice was issued. It noted that arrears of £602 needed to be paid before 5 Feb 2024, which was the arrears due date. It went on to say that if the arrears were not cleared by the arrears due date, it will take further enforcement action which involves terminating the agreement and demanding immediate repayment of the full outstanding balance of £13,411.72. It said the full balance should be paid by 19 February 2024 and it may also take further legal action to recover the loan including a charging order and disclose information to credit reference agencies.
3. 12 February 2024, Fairscore wrote to Mr M to explain his accounts had been assigned to T which was effective from 29 January 2024 and provided its contact details.

As explained by our investigator, I don't think Fairscore has acted incorrectly by issuing default notices on the loan accounts. Based on the arrears that had accrued on both accounts, default notices were issued after several months and in line with ICO debt guidelines that says businesses should generally wait a minimum of three months before defaulting accounts. The notices themselves do not appear to contain any errors.

Mr M's main concerns are twofold. One the assignment of his accounts to T and defaulting his accounts before the notice period ended in the default notice.

As Mr M appears to accept, the assignment of an account during a default process is not prohibited under the law. In fact, many accounts are routinely assigned to new creditors even when they're not in arrears at all – and it's simply the change in ownership of the account. Where accounts are assigned, however, we would expect consumers to be treated fairly and their rights maintained.

Fairscore explained that, in its view, Mr M's consumer rights were not impacted by the assignment. He was able to clear the arrears by the 5 February 2024 had he wanted to and

been able to and avoided the default in line with the termination notice. It explained that the assignment itself, did not prevent Mr M from remedying the breach of his credit agreements if he could have. It said it had an agreement with T, that if Mr M remedied his accounts by the end of any notice periods, the accounts would be assigned back to Fairscore and any defaults issued would have been removed. The effect of this is that Mr M did have the opportunity to avoid the default if he was able to remedy the breach of his credit agreements and his consumer rights protected.

It went onto say as part of the assignment to T, it defaulted the accounts before the accounts were assigned. So, it does look like it defaulted the accounts early, within the notice period, but put in place provisions to rectify this for those consumers who were able to clear their arrears and bring their accounts back in line with the credit agreements. It also said it made no contact with Mr M, and Mr M did not contact it during the notice period, and it wrote to him on the 12 February with notification of the assignment which is after the arrears due date of the 5 February 2025.

I appreciate Mr M feels the important date is the 19 February 2024 but the default notices makes it clear that the due date of the arrears is the 5 February 2024, and it is on this date that all arrears have to be repaid, and it is after this date the credit agreements will be terminated and the full amounts due be demanded. Although it says that it expects the full amount to be repaid by 19 February 2024, nothing in the notices says it can't and won't contact him until 19 February 2024 to demand full repayment, only that the full amounts should be paid by 19 February 2024. It explicitly says that:

*"We won't take any of the actions set out below if you make the payment set out above in full before the arrears due date."*

The arrears due date is 5 February 2024. The notices then go onto say what action may result from not clearing the arrears by the arrears due date which include, terminating the agreements, demanding full payment of the outstanding balance, disclosing information to credit reference agencies and further legal action.

Mr M has confirmed that he was unable to clear the arrears by the arrears due date and has concerns over the way T is pursuing repayment of the debt. But as explained, I cannot look at a complaint about T's actions in a complaint against Fairscore and any concerns related to T's behaviour have to be directed against T.

As explained above, I'm also unable to make a finding that the default notices are legally invalid, or unenforceable so cannot be relied upon as I do not have the same powers as the court. I'm only able to see what (if anything) has gone wrong, how that's impacted a consumer and consider a reasonable remedy to put that right.

Based on what I've seen, I don't think the evidence supports the conclusion that Mr M wasn't given an opportunity to remedy the breach. Fairscore has made it clear that Mr M was able to make payments into the accounts and clear the arrears – this is what he is entitled to, (an opportunity to clear the arrears and avoid the default). Whether its paid to T or Fairscore doesn't change that he was able to clear the arrears and remedy the breach of his credit agreements if he was financially able to. While the process of removing the defaults after they've been issued early rather than waiting to issue them on time is unusual, this doesn't change that he could have avoided the default and did have the benefit of the notice period.

As he wasn't able to clear the arrears and didn't try to, I've seen no evidence that what Fairscore said is untrue. If he had tried to clear the arrears, and wasn't able to due to the assignment, for example due to any practical difficulties caused by the assignment, I may have looked at the complaint differently. As it stands, I've seen nothing to suggest that what

Fairscore said isn't true that Mr M's consumer protections were unaffected by the assignment and he could have cleared the arrears and avoided the default if he was able to.

Mr M has continued to reiterate that he feels compensation should be based on the seriousness of the breach committed by Fairscore, that Fairscore shouldn't escape consequences of not complying with the terms of its own default notices. But our investigator has already explained that we do not regulate the way businesses conduct themselves and have no punitive powers. Our powers to award compensation to consumers are focussed on the impacts and consequences on consumers. And the consequence on Mr M has been limited. He wasn't aware of the assignment until the arrears due date had passed, he wasn't able to avoid the defaults by clearing the arrears and he hadn't tried to contact Fairscore during the notice period. Additionally, defaulting the accounts early actually is beneficial for Mr M as they will fall off his credit file sooner than they otherwise would have. So, I can't safely conclude that his financial position has been detrimentally affected by Fairscore's actions.

The compensation recommended by our investigator of £50 is limited because the impact on Mr M has been limited. I agree that £50 is a fair way to recognise that Mr M's credit file may show defaults earlier than he expected which has clearly caused him some upset that gave rise to this complaint. But beyond that I can't see any lasting impact due to the error of registering the defaults early.

The issuing of the default notices isn't otherwise unfair based on the way his accounts were managed before this. Ultimately Mr M's accounts were in arrears for a significant period of time before the default notices were issued and he was in breach of the terms of his credit agreements. Fairscore is expected to ensure his credit file reflects the true conduct of the account and it looks like the accounts were defaulted earlier than it should have. I appreciate Mr M wants his credit file to exactly reflect the true timeline, but this doesn't benefit him so like our investigator, I haven't recommended Fairscore to amend this. And Fairscore has accepted our investigator's view of the complaint and agreed to make the payment of £50 to recognise the nominal impact on him if Mr M accepts this as a way of resolving his complaint against it.

I would add that I appreciate Mr M feels that T is acting aggressively in how its pursuing the debt and obtaining a declaration that the default notices are invalid or cannot be relied upon for enforcement action may assist him with any cases against T. But for the reasons explained above, I am unable to assist him with this.

## Summary

Overall, I think the default notices were fairly issued after Mr M's accounts had been in arrears for a considerable amount of time in line with ICO guidance. I do not have the power to determine that the default notice is legally invalid/unenforceable or cannot be relied upon for further enforcement action against Mr M. While I accept Fairscore should have defaulted the account on 5 February 2024 rather than earlier in January 2024 when the accounts were assigned to T, I'm not persuaded the assignment of the accounts and the early defaulting of the accounts has materially impacted Mr M. So, I don't agree that Mr M is entitled to any more compensation above what's already been recommended. As explained, our compensation awards *are* subjective and focus on the impact and losses individual consumers experience based on their own specific circumstances. I am unable to direct Fairscore to pay more compensation to Mr M to recognise the seriousness of the error. So, I don't ask Fairscore to do any more than its now offered in response to our investigator's view.

I should also point out that Mr M doesn't have to accept this decision. He is free to pursue the matter by more formal means such as through the courts and ultimately it's for the courts to conclude the legal validity of the notices.

### **Putting things right**

To the extent not already done so, Fairscore must pay Mr M £50 compensation.

### **My final decision**

For the reasons I've explained, I uphold this complaint in part. Fairscore Ltd trading as Updraft must put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 May 2026.

Asma Begum

**Ombudsman**