

complaint

Mr H complains that John Lewis Financial Services Limited unfairly recorded his credit card account as being in default when he suffered temporary financial difficulty.

background

Mr H says he contacted John Lewis in October 2009 to ask if he could make reduced payments but, although he submitted income and expenditure forms, full payments were still requested. He says he had similar contact with John Lewis in November and December 2009, until in January 2010 he told John Lewis he would be receiving a lump sum in March 2010 which would enable him to get the account up to date. He paid lump sums in March and April 2010, and settled the account. He does not believe that the default status accurately reflects the situation.

Our adjudicator did not recommend that the complaint was upheld. He acknowledged that it had been a difficult time for Mr H. But he said that John Lewis had appeared to fulfil its obligations by attempting to assess Mr H's income and expenditure. It had also sent out a notice of default action before Mr H's contact in January 2010. John Lewis's records did not contain anything to show Mr H had made contact earlier. When arrears had built up and no payment plan had been agreed, he did not think we could ask John Lewis to remove the default record.

Mr H disagreed. He said that his account had been in good order until autumn 2009. The reason his credit limit had been exceeded was because John Lewis had later reduced the limit: not because he had spent over the limit, as had been suggested. He said John Lewis had made no attempt to offer a repayment plan, but instead pursued a path to default action. It had not acted positively or sympathetically. Mr H provided copies of letters he had sent to John Lewis in November and December 2009, and February 2010, to show he had contacted it several times before the default was registered in February 2010. While he had been warned of potential default action, he had never been told a default had been registered. He had complied with a payment plan so that should not have happened. He felt that John Lewis had reported inaccurate and misleading information to credit reference agencies, both about the default and about his pattern of payments.

my findings

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

I can see Mr and Mrs H were in a difficult situation after Mrs H lost her job. To his credit Mr H did make efforts to keep up with the payments and then to liaise with John Lewis when he found he was no longer able to do that.

There are some conflicts between the two parties' accounts of events particularly:

- about when Mr H's credit limit was reduced and whether he exceeded it; and
- about what contacts he had with John Lewis in late 2009. Although the information John Lewis sent us did not refer to it getting letters from Mr H before January 2010, he has provided a copy letter sent in November 2009 saying he had already sent an income and expenditure form in October, and asking to set up a repayment plan.

However I do not think they are crucial to the core issue in this complaint, the default registration.

A key purpose of credit reference records is to give future creditors an accurate picture of how someone has dealt with previous credit. Guidance at the time from the Information Commissioner said that defaults should not routinely be filed where full payments are less than three months in arrears, but that they should normally be filed as in default when payments due have not been made for six months.

At the time John Lewis sent the default notice, Mr H had not made the payment due in October, had paid a lot less than the due payment for November and had not paid in December. By the time default was actually registered in February 2010, he had also paid nothing in January and a very small sum in February. So he had not made full contractual payments for five months and was more than four months in arrears.

It looks as though Mr H sent an income and expenditure form before the one John Lewis got in January 2010, and that one went astray. Possibly John Lewis could have been more responsive to Mr H's suggestions about a plan. But he was offering only small sums in respect of a significant amount of arrears on a balance of nearly £8,000.

Mr H says that in January 2010 he told John Lewis he would be receiving a lump sum of money in the first week in March and would use that to bring the account up to date. However in the last letter he sent, in February, before the default was registered he proposed that he paid £25 in February, £50 in March and £50 in April. So by April he would have been over six months in arrears. John Lewis was not obliged to agree to a plan, especially when such a small amount was offered. I can understand why, if that was the most Mr H could pay, John Lewis felt it should go ahead with registering the default. As far as I can see, no plan had been agreed before the default was registered.

I know that in fact in March Mr H negotiated to pay off the account (in a discounted settlement) by making substantial payments in March and April. Mr H has said he told a collections agent some time in February (after his last letter) that he would make a payment from the lump sum in March. I don't know whether that was before or after the default was registered. But when he had recently offered only small payments in March and April despite telling John Lewis about the lump sum, I can understand why it might not be convinced that he would actually make a substantial payment. So I can accept that, even if that call was before the default was registered, John Lewis could reasonably have gone ahead with the registration. When it had already given notice of a pending default, and Mr H had not been able to bring the account up to date, it was not obliged to send a further notice when the default was actually registered.

I realise that Mr H was trying to resolve matters, but in all the circumstances I do not think I have adequate grounds to say that John Lewis acted unfairly in registering the default.

my final decision

My decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 September 2015.

Hilary Bainbridge
ombudsman