

complaint

Mr D complains about a default registered on his credit file for a loan to be repaid to Motormile Finance UK Limited, trading as MMF. He states that he never received the original default notice.

background

Mr D took out at least two payday loans with a lender in 2010. These were not repaid on the original due dates and Mr D cancelled the arrangements to repay the outstanding money. The lender sent a notice of default to the address Mr D used when taking out the loans.

No further repayments were made and the original lender sold this debt to a third party in December 2010. They then sold the debt on to MMF in 2011. MMF sent Mr D a formal notice of assignment in October 2011 informing him that he owed them £1,125.

In 2013 Mr D raised a complaint with MMF that a default was registered on his credit file and this was marked for a mail order account. MMF informed him that they were the legal owners of this debt and that the account was correctly marked as defaulted. They would mark it as settled once Mr D settled the account.

Mr D complained to the ombudsman service primarily about the default notice not being supplied. During the investigation into Mr D's complaint, our adjudicator provided him with copies of two loan agreements that he signed in May and July 2010 respectively, as well as the original default notice and the formal notice of assignment provided by MMF.

Mr D told us that he does not believe the debt is enforceable because he has never seen the deed of assignment between MMF and the third party they bought the debt from. Our adjudicator explained to Mr D why he could not recommend upholding his complaint. He also said:

- Mr D was aware that he had never repaid the original debt;
- There was no obligation on MMF to provide Mr D with the deed of assignment and he had been properly informed that MMF now legally held his debt;
- MMF had not acted incorrectly in updating his credit file with the default information; and
- Errors in the credit file record had been amended and any remaining – like the date of default – did not affect Mr D detrimentally.

Mr D remained unhappy with the adjudicator's findings and asked for the complaint to be reviewed.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

There are a number of different aspects to this complaint as Mr D has raised additional concerns whilst he has been waiting for an ombudsman to review his complaint. I hope he does not think I am being dismissive if I do not respond to each issue but I will be referring to those which I am satisfied are relevant to the outcome of the complaint.

the default notice and Mr D's credit record

Mr D's original lender provided us with evidence that they sent him a default notice about his original debt. This notice was sent to the address that the lender had on file for Mr D. This was also the address that Mr D used when he took out the loans.

From the information that Mr D provided to us about his address history, I can see that he wasn't living at that address at the time. However this was the address that Mr D provided to them so it is not unreasonable that they sent the default notice there.

In any case, I am satisfied that Mr D knew he had an outstanding debt that he was obliged to repay. Whether he received the default notice or not makes no difference to that fact. It's worth saying that Mr D has not disputed that he took out the loans.

It appears that, although the default existed, the original lender stopped registering it when updating Mr D's records after they had sold on the debt. I am satisfied that that this doesn't mean that the default had been removed just that they no longer owned the debt. It's unclear whether the third party who first took over the loan updated Mr D's record with the default.

I believe that it was only when MMF took over the debt and registered the default on Mr D's credit record that he became concerned. I accept that originally this may have stated it was for a mail order account, which was incorrect but I believe that has been amended. I have reviewed the record, and the information that both MMF and Mr D have provided to us. I note that the record states the default was lodged on 31 August 2010, which is actually the date that the last payment was due on one of his accounts. I believe this is an error and this should say 1 November 2010 which is the date that the original lender said the account would be in default. The original lender confirmed to us that they sent a notice of default to Mr D on 1 October 2010.

That said I do not believe this will have had any impact on how others view Mr D's credit record. If anything the default will come off his record earlier rather than later because it has been dated slightly incorrectly.

In Mr D's most recent correspondence with us, he remains adamant that MMF is at fault and their actions do not meet the requirements of either data protection legislation or guidance issued by the Information Commissioner's Office. He has told us that one of the credit reference agencies has deleted the default. I can see why this will have made him believe that he is being treated unfairly.

All I would say to him is that, whilst I take note of legislation and guidance that exists, I am reviewing his case on the basis of what is fair and reasonable. I consider MMF's actions to be fair. There is no doubt that Mr D is in default and has not repaid this debt and therefore it is fair for a default for this debt to exist on his credit record.

When we look at what a business may have done wrong, we also look at the impact of their actions. In this case, although MMF may have made an error, I am satisfied that Mr D has suffered no financial loss.

notice of assignment to MMF

MMF sent Mr D a notice of assignment dated 5 October 2011 telling him that they were taking over this debt from the third party who had bought it from Mr D's original lender.

I am satisfied that this notice was sent to Mr D at the address he was living in at the time. I see no reason to believe that this was not delivered properly.

Mr D disputes MMF's right to enforce this debt. He has stated to us that the relevant sections of the Consumer Credit Act 1974 mean that the actual deed of assignment should be provided to him. I am considering his complaint in light of what I consider to be fair and reasonable and I confirm that I do not consider it fair or appropriate for MMF to provide Mr D with the deed of assignment.

I am satisfied that proper notice has been given to Mr D and MMF has acted reasonably in trying to collect this debt.

Overall I am satisfied that MMF has acted fairly in this case and I am not upholding Mr D's complaint. I appreciate that he will be very disappointed with this outcome. However, he is not bound by my decision. If he does not accept it, he can still choose to pursue this through the courts. I have explained why I don't believe a strict legal interpretation is fair or reasonable but I appreciate that he disagrees with me.

I know it won't have helped that he has had to wait a while for his case to be reviewed by an ombudsman. I can only apologise but I can understand that will be small consolation.

my final decision

For the reasons set out above, my final decision is not to uphold Mr D's complaint and I make no award or instruction against Motormile Finance UK Limited, trading as MMF.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr D to accept or reject my decision before 9 December 2014.

Sandra Quinn
ombudsman