

complaint

Mr B complains that Next Retail Limited ("Next") has refused to write off his debt, despite the fact that he is seriously ill. It has also transferred his debt to a third party. He further complains that Next only recorded adverse information on his credit file in 2014 rather than when his account first defaulted. He wants the default removed.

background

Mr B's account defaulted in 2006. He entered into a repayment plan with Next. In 2013 a further repayment plan of £5 was set up. However Mr B was unable to make the repayments. A default was registered in early 2014, because he had missed a number of payments. Mr B felt his balance should be written off due to his ill health. Next refused to write off the balance or remove the default. But said he would not have to deal with third parties and it would accept £5 a month by way of repayments for as long as he needed this.

Mr B's debt is still over £500. He has explained he is unable to pay this as he has a serious mental illness and cannot work, also a close family member is terminally ill and another has a life limiting illness. The debt is making his health problems worse and he is unable to pay the debt back.

The adjudicator did not uphold the complaint. She said Next has been flexible in its dealings with Mr B. It accepted a payment arrangement and has agreed to deal directly with Mr B so he doesn't have to deal with third parties. Further, Mr B has had the benefit of the goods and it is not fair and reasonable to expect Next to write off the debt.

In response, Mr B still thinks the debt should be written off in view of his health problems. He says the default on his credit file is not correct. It should have been applied when he defaulted in 2006, not on 31 January 2014. Now it will be on his file until 2020. He wants this removed.

After I reviewed this case, Mr B and Next were advised that I was considering upholding the complaint in part by asking Next to write off the debt. Both were given the chance to give comments. In response, Next said it was not prepared to write off the debt. And Mr B still maintained the default should be removed.

my findings

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

It is not in dispute that the debt is owed, and in normal circumstances I would be satisfied that Next is entitled to pursue it. However, given Mr B's circumstances – in particular his serious mental health problems and the fact that it seems extremely unlikely he would ever be in a position to pay off the debt – I have also considered industry guidance regarding vulnerable consumers.

I have considered The Financial Conduct Authority's (FCA's) report published in April 2014, entitled 'Consumer credit and consumers in vulnerable circumstances'. This guidance defines a vulnerable consumer as '*someone who, due to their personal circumstances, is especially susceptible to detriment*'. Mr B sent in medical evidence about his condition

explaining how the debt makes his condition worse, and from this I am clear that he is a vulnerable consumer.

I have also looked at guidance issued in November 2014 by the Money Advice Trust and the Royal College of Psychiatrists, entitled 'Lending, debt collection and mental health: 12 steps for treating potentially vulnerable consumers fairly – a briefing for lenders, creditors and debt collectors'. The guidance expressly refers to the need to treat consumers fairly, and discusses this in the context of consumers with mental health problems. Clearly, the fact that a consumer has mental health problems does not mean a debt should simply be written off. However, Next must respond to Mr B's circumstances positively and sympathetically.

Next has taken some steps to treat Mr B positively and sympathetically. It has entered into a £5 a month repayment plan and has not applied interest and charges for the whole period. Further, it has offered to deal directly with Mr B so he doesn't have to deal with third parties. However, I am not persuaded that it has done enough. Given that he has a serious mental illness and is in severe financial difficulties, and cannot even pay £5 a month. Even if Mr B resumed repayments of £5 each month it will take at least eight years to repay. I think in the circumstances here it is unlikely that he will ever pay off this debt.

Further, the debt is making his health condition worse and so he is unlikely to be in a better financial position whilst this debt is outstanding. Continued attempts to collect the debt are also, in my view, likely to cause further problems for Mr B. Accordingly, I am persuaded that Next should write off the debt in its entirety.

I appreciate that Mr B feels that if the default was applied in 2006 it would now have been removed. Our consumer credit jurisdiction only started in April 2007 and we are unable to decide if his account should have defaulted before this date. It is unfortunate that the default wasn't registered earlier, however the default accurately reflects what has happened between Mr B and Next. I do not think it is fair and reasonable to ask it to remove this.

my final decision

My final decision is that I uphold this complaint in part. I require Next Retail Limited to write off the debt in full. It is not required to remove the default.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B to accept or reject my decision before 13 April 2015.

Clare Hockney
ombudsman