DRN2313378

complaint

Mr V complains about the actions of the Co-operative before and after he set up a new payment plan for his credit card debt. In particular, he questioned registration of a default and whether the bank's actions amounted to harassment within the terms of Section 40 of the Administration of Justice Act or the Office of Fair Trading's guidance on debt recovery.

background

Mr V reported financial difficulties to the Co-operative in 2008, and subsequently made various repayment arrangements for his credit card account. In late 2011 he was attempting to agree a new arrangement, and felt under pressure to pay more than he had calculated he could afford. However, in December 2011 the Co-operative made a new six month agreement and Mr V adhered to that. Nevertheless, the Co-operative contacted him a number of times about the debt. In January 2012 he was sent a default notice and a default was registered in April 2012.

our adjudicator's view

The adjudicator said, in summary, that she could not conclude that a default had been registered in error. Although the Co-operative issued some automated letters, and some letters in error, she did not consider those amounted to harassment. This service could not determine whether Section 40 of the Administration of Justice Act had been breached: that would be a matter for a Court. She considered that £100 offered in compensation was fair and reasonable.

Mr V provided a detailed response covering a number of disagreements with the adjudicator. He described the difficulties of his current working and financial situation. He raised various points about the detailed sequence of events, and questioned why he had received a default notice when he had been taking action to resolve matters through a repayment plan and had been told by the Co-operative to ignore automated letters sent about his account. He questioned why the adjudicator made any comment on the issue of harassment if she could not make a judgement about Section 40 of the Act. He pointed out that on his complaint form he had not asked for compensation, but an apology. However, he went on to say how much time he had spent on the complaint and how much that had cost in various ways. He also referred to a recent response he had received to a data subject access request to the

Co-operative, when it had sent him information relating to someone else.

my provisional decision

I issued a provisional decision on this complaint to Mr V and the Co-operative on 25 February 2013.

I confirmed that what the adjudicator said about Section 40 of the Act was correct. This service is not in a position to determine whether or not a criminal offence of harassment (as specifically defined by the Act) was committed, only a Court could do that. However, this service can consider whether, in more general terms, a bank harassed a customer for payment or acted unfairly or unreasonably in other ways.

In December 2011 the Co-operative made a new six month agreement for Mr V to pay a significant fixed sum per month, interest-free. That was what he had said he could afford. I could see that until that figure was agreed the Co-operative had sought rather more. It also refunded interest and charges applied to the account since October. Although I could see that Mr V would have felt under some significant pressure until this new agreement was reached, I was not convinced that the Co-operative's approach amounted to harassment or had been unfair or unreasonable to that point.

However, in January 2012 Mr V was sent the default notice, saying he was in arrears by a small amount. If he paid that by 31 January no further action would be taken: if not the Co-operative would terminate the agreement and require the full debt to be paid. If he was not able to bring the account up to date in 28 days, a default may be registered. Mr V then telephoned the Co-operative and was told the notice had been sent for legal reasons and he should simply continue with the arrangement. He did that. In March the Co-operative wrote again, this time saying he had failed to rectify the breach in the Default Notice and the full balance was now due. It made no mention of a default being registered, though referred to the possibility of the account being passed to solicitors or a debt collection agency. Mr V telephoned the Co-operative again and was told he could ignore the letter as an arrangement was in place. Mr V says he received an automated telephone call in early March, saying he needed to pay another small amount, but was eventually told he could ignore that because of his arrangement. Shortly afterwards the Co-operative responded to a complaint from Mr V and said a default notice had been issued because contractual payments (*i.e.* as in the original terms of his account) were not being met. It referred to his account being in arrears. It said his repayment arrangement was in place for six months and was due for review in June. In the interim Mr V continued to receive statements showing the payments he had made (but saying he had failed to make minimum payments) and quoting arrears figures.

In June 2012 the Co-operative wrote again to Mr V, this time to say that his arrangement had expired and he was now required to make the full contractual repayments. If he was not able to increase payments to the normal level, he should contact the bank or return an attached slip, which sought his signature to acknowledge that it was necessary for his account to be registered as a default with credit reference agencies. The bank would then consider a longer term interest free arrangement for up to 12 months.

However, it then emerged that in fact the Co-operative had already registered a default in April 2012. The Co-operative has told us that it was legally required to register the default, because Mr V was not making his contractual payments: but the default was registered later than it should have been. £100 in compensation was offered in respect of that. The

Co-operative has provided a letter it sent to Mr V back in November 2010, when agreeing to continue a payment arrangement, saying it would shortly be issuing a default notice.

While I was still not convinced the Co-operative's dealings with Mr V in 2012 amounted to harassment, I could see that they would be extremely confusing. The Co-operative was approaching the issue in two different ways. On the one hand it looked at matters from the position of the original credit card agreement (as it was entitled to), and was sending statements, and a default notice etc which reflected that. On the other, as the bank had recognised that Mr V's financial situation meant he could not comply with the original contract, it had agreed to accept lesser payments and encouraged him to comply with the arrangement and ignore the other correspondence.

But taken together, the very different messages Mr V got in quick succession, depending on whether the Co-operative was referring to the original contract or the repayment plan, would have left anyone confused about what was expected and what was going to happen.

I did not feel it was fair and reasonable for the Co-operative to go ahead and register the default in April 2012, while Mr V was sticking to the arrangement, and when he could not be expected to have properly understood the implications of the default notice. He had been encouraged to see it as a technicality and to ignore other letters, the notice had referred only to him needing to pay only a small sum, and he had been receiving other confusing information from the Co-operative. Therefore, my provisional decision was to uphold Mr V's complaint as regards the registration of the default, and the confusing handling of his account between January and June 2012.

However, that did not mean that that default notice should simply be removed, or that that would be in Mr V's interests. Guidance from the Information Commissioner says that accounts should normally be filed as being in default where payments due (under the original contract or a rescheduled one) have not been received for six months. Mr V's situation in 2011 and 2012 was not a rescheduling in that formal sense, but a series of informal arrangements to pay. The guidance says that if a customer fails to return to contractual payments after an arrangement to pay has expired, then the lender can file a default immediately.

So in this case, not only would the Co-operative have been entitled to go ahead with default procedures in June 2012 when the arrangement ended but, in line with what it later said, actually it could (and probably should) have defaulted Mr V's account much sooner. That is because it was much longer than six months since he had been able to make full contractual payments and he had had various other payment arrangements.

It seemed inevitable, given what Mr V said about his inability to pay more and the Information Commissioner's guidance, that the Co-operative would have registered a default at some point. In that situation, it might be in his interest for the default to be registered from as early a date as possible. It appears that the Co-operative had intended to issue a notice in November 2010, which would most likely have resulted in registration of a default in January 2011. The sooner a default is registered the sooner it is removed.

I noted the point Mr V raised about his data subject access request, but that was not a matter I could consider as it was not included in his original complaint. In any event, it was more appropriate for the Information Commissioner to handle.

Although I noted that (when offering the £100) the Co-operative told us that it recognised the obvious distress, inconvenience and confusion caused by its actions, I considered that a direct apology to Mr V would be appropriate in the circumstances here.

Subject to any further representations from either Mr V or from the Co-operative, my provisional decision was that the Co-operative should:

- remove the default registration made in April 2012;

- if Mr V requested that, replace it with one dated January 2011, when the Co-operative probably should have registered the default;

- pay Mr V £200 in compensation for distress and inconvenience caused by its handling of matters;

- give Mr V a written apology for the confusing way it communicated with him.

The Co-operative accepted my proposed decision. Mr V disagreed. He said he disputed the November 2010 date for a default, saying that he had told all his creditors about his financial problems in 2008 and all the others had registered defaults in 2008. He questioned why the Co-operative wanted to register one in 2010-11. He also referred to the implications of a new default in 2011 for his employment and sent information about his calculation of costs relating to the complaint. Those included loss of earnings and administrative costs.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. However, the further representations Mr V has made do not alter my opinion about what would be fair and reasonable in this particular complaint.

In his complaint Mr V disputed the Co-operative's issue of a default notice in 2012 when he was complying with a repayment plan. I can understand why, in the light of my provisional decision, Mr V now seems to be arguing that a default notice should have been registered even sooner than 2011. However, if he had wished for a default to be registered back in 2008, he could have complained about that at the time. That is not what the current complaint is about. That is about the bank's actions in 2011 and 2012. I do not think I can properly now extend my consideration of matters back to details of the situation in 2008 when, as far as I know, that has not been the subject of a complaint to the bank or this service.

If Mr V's employers needed an explanation about why an additional default dated from 2011 was only being recorded now, he could give them a copy of this decision.

This service only makes modest awards for time spent dealing with matters, and not generally for time dealing with us. I still consider the £200 award to be fair and reasonable.

my final decision

My final decision is that I uphold this complaint in part. In full and final settlement of it, I order the Co-operative Bank plc to:

- remove the default registration made in April 2012;

- if Mr V requests that, replace it with one dated January 2011, when the Co-operative probably should have registered the default;

- pay Mr V £200 in compensation for distress and inconvenience caused by its handling of matters; and

- give Mr V a written apology for the confusing way it communicated with him.

Hilary Bainbridge
ombudsman