

complaint

Mr A complains that Close Brothers Limited ("Close Brothers") have defaulted his finance agreement and are making charges that could have been avoided if they hadn't made mistakes setting up his direct debit.

background

In October 2017 Mr A bought a phone and entered into a finance agreement with Close Brothers to fund it. But he says the retailer put the wrong sort code on the direct debit mandate and this meant that monthly instalments failed. In January Close Brothers sent Mr A a default notice as they'd not received payment. A new direct debit was set up but the arrears on the account weren't cleared and in April Close Brothers therefore sent Mr A a notice of termination asking for payment of the outstanding debt, and charges. They passed the liability to a debt collection agency.

Mr A says this was the result of incorrect bank details being recorded on the initial direct debit mandate. He's happy to pay the outstanding debt but doesn't want to be liable for charges and doesn't want the default reporting to credit reference agencies.

Close Brothers didn't think they'd done anything wrong. They accepted that the direct debit instruction had gone wrong but they said the new direct debit couldn't be set up to pay the arrears and despite regular attempts to contact Mr A this hadn't been done and the debt and charges remained payable.

So Mr A referred his complaint to this service and our investigator reviewed the evidence. She thought the retailer, Close Brothers agent in this transaction, had been at fault for recording the wrong bank details on the direct debit. She accepted that this had created some confusion and she thought Close Brothers could have made an attempt to contact Mr A by alternative means, when their emails were not returned prior to a default being raised. She thought Close Brothers letters to Mr A in March and April could've set out the deadlines in which payments were required and she thought it wasn't reasonable to send a termination notice on this basis, especially as the original default had been a result of their mistake. She noted that Close Brothers hadn't explained to Mr A, until 20 April, that the arrears couldn't be collected through a direct debit. But, she also thought Mr A could've done more to pay a debt that he was clearly aware of from the end of April.

She therefore suggested a conditional settlement where as long as Mr A paid the debt and the charges due, Close Brothers would remove the default from his records with the credit reference agencies.

Close Brothers reluctantly accepted that view but Mr A didn't. He didn't think he should be responsible for charges that were the result of a mistake made by the retailer and he therefore asked for a final decision by an ombudsman.

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 know it will disappoint Mr A but I think the resolution proposed by the investigator is sensible and reasonable. Please let me explain.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

I accept that Mr A was initially disadvantaged when the incorrect bank details were entered on the direct debit instruction. This led to payment issues and I think the default issued in January wouldn't have been issued if Close Brothers, or at least their agents, had not made a mistake and if they'd tried alternative means to contact Mr A.

But it's also clear that Mr A owns the debt. The agreement began in October 2017 and I think it's reasonable to suggest he had a responsibility to ensure his debt was being repaid. It's clear he'd recognised the debt wasn't being paid in January as he wrote to Close Brothers explaining that no direct debits had been presented to his bank. I don't think it's unfair to suggest that he could have made more stringent efforts to ensure payments were made from this point onwards and I therefore think Close Brothers were reasonable when levying charges and when pursuing the outstanding debt.

As long as the outstanding debt and charges are repaid by Mr A I think it would be reasonable to clear the default that wouldn't have been generated if Mr A's bank details had been properly recorded. But it wouldn't be fair to expect Close Brothers to do that until the debt was cleared in full. So I agree with the investigator's proposed redress.

my final decision

For the reasons I've given above I uphold this complaint in part and tell Close Brothers Limited to remove the default from Mr A's credit file if the debt and arrears are cleared within 14 days of the acceptance of this decision by the parties.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 April 2019.

Phil McMahon
ombudsman