

complaint

Ms H complains about how Express Gifts Ltd has responded to her efforts to manage her debt to it.

background

When Ms H's circumstances changed in 2009 she realised that she wouldn't be able to pay off a debt to Express. So she entered into a debt management plan. Although she accepts that she may have missed one or two payments, she has largely been paying off the debt since then.

In 2014 Ms H's debt management company told Express that she couldn't afford the agreed monthly payments any more. Her debt management company agreed with Express that she would enter into an "unable to pay" agreement and the account would be defaulted. That sort of agreement would then mean Express would accept whatever amount Ms H could manage as a repayment. But it would also mean that Ms H's credit file would show a default. Ms H complained that the default should've been added to her credit file in 2009, when she originally agreed her payment plan. That would mean it would have come off her credit record by now. And Ms H wants any interest or other charges applied to her account since 2009 refunded.

Ms H also complained about how Express responded to her complaint. She said that it got the facts wrong. And it didn't give her any credit for all the years that she had been carefully trying to pay off her debt.

Our adjudicator didn't uphold this complaint. She said that lenders usually register a default within three to six months of an account falling into arrears. But they don't have to do it then. Our adjudicator thought that it was reasonable for Express not to record a default in 2009, because there was a repayment plan in place. And our adjudicator said that Express told Ms H's debt management company in 2014 that if she changed her payment plan to an "unable to pay", Express would register a default. Ms H's debt management company agreed to that on her behalf. So our adjudicator didn't think that Express did anything wrong when it did that.

Our adjudicator also checked, and said that Express hadn't charged any interest on Ms H's account since late in 2009. It had charged for default notices, but those were in line with the credit agreement. So she didn't think it was unfair for Express to charge that.

But our adjudicator did think that Express could've done a better job of responding to Ms H's complaint. She said that Express hadn't acknowledged Ms H's efforts to pay off her debt, even after Ms H had reminded Express about what she'd already done. So our adjudicator said that Express should apologise to Ms H, and send her £25 in compensation.

Ms H didn't agree with our adjudicator. She said that she didn't think the default notice should've been applied so long after the account defaulted. She said that Express hadn't explained to her what not having a default in 2009 would mean. And she didn't benefit from not having a default back in 2009, because all the other debts in her debt management plan had defaulted at that time. She didn't think it was fair to have this default hanging over her head now.

Express didn't agree either. It said that Ms H's complaint was about the default added to her account. She didn't complain about the service she had received. So Express didn't think it had to pay her any compensation.

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've reached the same conclusion as our adjudicator, and for broadly the same reasons.

Our adjudicator explained that there is no deadline for a creditor to register a default notice. In this case, Express didn't register a default when Ms H first set up a payment plan. And it didn't register a default for all the time that Ms H was paying in line with the plan. It only registered a default when Ms H wasn't able to stick to that plan. Although I realise that this means Ms H's credit record will show a default for longer than she had hoped, I don't think it is unfair of Express to do that.

I have also checked Ms H's account details with Express. I can see that Express stopped charging interest and administrative fees in late 2009. It did charge some default fees, starting late in 2013. This was in response to payments that were either missed, late or below the agreed amount. I can see that these charges were in line with Ms H's credit agreement, and I don't think it was unfair for Express to do this.

I do think that Ms H has also complained about the response Express sent to her initial enquiry about the default notice. I agree with our adjudicator that Express didn't give Ms H any credit for the efforts she had made to pay off her account. I think that Express should apologise for the mistakes it made about Ms H's previous repayments in the email that Ms H replied to on 5 December 2016. But I don't think that £25 is quite the right amount of compensation to pay in this case. I think £50 more fairly reflects the upset that this matter has caused Ms H. So that's what I'll award.

my final decision

My final decision is that Express Gifts Ltd must write to apologise to Ms H as set out above. And it must pay Ms H £50 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 17 August 2017.

Esther Absalom-Gough
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