

complaint

Mr L complains that Link Financial Outsourcing Limited should have applied a default registration to his account at an earlier date.

background

Mr L says that in December 2008 he found himself in financial difficulties and could no longer maintain the minimum repayments required on his credit card account. The debt was later assigned to Link, which registered a default in relation to the debt in 2015 – back-dated to 2011.

Mr L does not consider this to be fair, and says that any back-dated default should have been for 2009, when he actually defaulted, and should therefore now have expired through the passage of time.

Link said that it had written to Mr L in December 2014 to say that it was no longer able to accept nominal repayments. As Mr L did not offer increased repayments, it had issued a notice of default and registered the default back-dated to November 2011 in keeping with its agreement with the original lender. It was not willing to make any change to the default registration for the debt on Mr L's credit file.

As things weren't settled, Mr L brought his complaint to this service where an adjudicator investigated it. From the evidence, the adjudicator did not feel Link had treated Mr L fairly or consistently when deciding to default but to back-date the default to 2011 rather than to 2009.

To settle the complaint, the adjudicator recommended that Link should remove the default from Mr L's credit file – to reflect the position that would have applied if the default had been made in (or back-dated to) 2009.

Link did not respond to the adjudicator's recommendations, and so it was necessary for the complaint to be passed forward for 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.

There's no doubt that Mr L had defaulted on his payments for this account by 2009, having been unable to meet his contractual repayments.

The original lender sent Mr L a notice of default in 2011, because he was making payments that were substantially below the contractual minimum. It did not, however, register the default at that time because Mr L was maintaining the reduced repayments and it felt a default would be detrimental to him.

After the debt had been assigned to Link later in 2011, there appear to have been several occasions on which it wrote to Mr L threatening default but then took no further action when Mr L sent a payment to catch up with his monthly payment arrangement.

Link then changed its approach in December 2014, when it decided that all accounts where the borrower's payments were below a certain threshold would be defaulted. It says this was to reflect a general change in policy by the original lender.

When Mr L did not make an offer to increase his repayments, it registered the default – choosing to back-date it to 2011, because that was when the original lender had issued a notice of default.

Taking everything into account, I am not satisfied that this significant change of approach was applied fairly in Mr L's case. This is not his only debt, and he tried to maintain his payment arrangement but could not offer increased repayments. The decision about whether (and on what date) a default would be registered was not within his control. By applying the change of approach in that way, Link left Mr L with, essentially, the worst of both worlds.

Like the original lender, Link has a duty to act fairly towards Mr L and that duty is not overridden by any conditions or arrangements Link may have chosen to enter into under the debt assignment.

I gather that the debt has now been settled. In all the circumstances, I consider that the fair outcome here is for Link to remove the default registration for this debt from Mr L's credit file.

my final decision

My final decision is that I direct Link Financial Outsourcing Limited to remove the default registration for this debt from Mr L's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 15 December 2016.

Jane Hingston
ombudsman