

complaint

Mr and Mrs A complain that GE Money Consumer Lending Limited hasn't correctly reported their personal information to credit reference agencies.

background

In 2005 Mr and Mrs A took a loan from GE Money. It was secured by a second charge over their house. In 2006 Mr A lost his job and they went into default. GE Money served a default notice on 8 April 2006 and obtained a suspended court order for possession. The house was subsequently sold.

Mr and Mrs A say that GE Money is incorrectly reporting the status of their account to a credit reference agency. The time limit for reporting the default ended on 7 April 2012 and it should be removed from their credit files.

On their complaint to GE Money it said that in 2011 Mr and Mrs A entered into the Mortgage Rescue Scheme (MRS). A shortfall payment was agreed with the remaining debt being paid off at £1 per month. Therefore their credit files would show a default to the date the shortfall was paid. This default would remain on their credit records for six years. GE Money was required to report the status of their account to the credit reference agencies and therefore the shortfall outstanding would show on their records. If GE Money removed the default and history from their credit files, the data held by the agencies would be incorrect.

Mr and Mrs A brought their complaint to this service but our adjudicator didn't recommend it be upheld. She said they complained that GE Money registered a default against them in 2011. They believed it should have been registered in 2006, and would therefore no longer show on their credit files.

The adjudicator said they'd taken their case to the Information Commissioner's Office (ICO). The ICO had said that in 2006, it was reasonable for GE Money to decide that the relationship hadn't broken down, because the parties had come to a mutually acceptable arrangement. But GE Money was correct in recording the default in 2011. This was because when Mr and Mrs A went onto the MRS there were arrears outstanding, and these were unlikely to be paid. In other words, the relationship had broken down at that time.

Mr and Mrs A didn't agree. They said the ICO's findings were inconsistent with the fact that GE Money had registered a default in 2006. GE Money hadn't told the ICO this.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The ICO reported on 25 September 2015. It said:

"...there is a difference between a default notice, as required under the Consumer Credit Act, and the registering of a default on a credit file. In terms of credit file information a default is when the lender has decided that the relationship between the lender and the borrower has broken down. There is no automatic trigger for such a decision although there are some circumstances when a default is normally applied. These include when the loan is included in a bankruptcy, the level of arrears

has become unacceptable, the loan is passed to a debt collection agency, or the lender has repossessed an asset secured against the loan. However, it is not a requirement of the Data Protection Act that any of those events will automatically trigger a default; they are just conditions under which registering a default is likely to be justified. The lender may still take other factors into account when deciding whether or not to record a default.

GE Money has explained that, following the application for a court order for repossession, it was agreed between all parties that the order be suspended on the understanding that payments be made on the account. Since both parties had come to a mutually acceptable arrangement it was reasonable for GE Money to determine that the relationship had not broken down. Consequently, there was no need (and possibly no justification) to register a default at that time.

GE Money has explained that, following the completion of the MRS, there was a shortfall in the amount due and that this was unlikely to be paid. It was at this point that GE Money determined the relationship had broken down and the recording of a default would have been justified.

Having carefully considered the submissions from both parties I have to concur with GE Money.”

I agree with Mr and Mrs A that these findings (and therefore the adjudicator's recommendation) are inconsistent with GE Money having registered a default in 2006. The question then is, did it do so?

On 4 February 2016 the adjudicator asked Mr and Mrs A for a copy of their credit file so that she could see what information had been registered from 2006 onwards. Mr and Mrs A replied on 11 February:

“As requested, please find attach the relevant page of my credit report. We don't have available, our credit reports dating back to 2005.”

I have looked at this report. It shows that GE Money registered a default as at August 2011. There is no indication of a default having been registered in 2006. On 20 and 21 April 2016 Mr and Mrs A sent to the adjudicator a further copy credit report, and this also records a default date of 2011.

Mr and Mrs A will say in reply to this that GE Money ought to have registered a default in 2006, which would by now have expired. But I don't agree. The court made a possession order suspended on terms as to payment. It was open to GE Money to decide that it wasn't appropriate to register a default at that point.

It's true that on 18 and 24 February and 14 April 2016 GE Money wrote to this service saying a default was registered on 7 July 2006, but there's no evidence of that registration and I think that must have been a mistake. Indeed GE Money wrote on 9 June 2016 acknowledging it was unable to validate that it had registered a default in 2006. It had no notes to confirm this, and it now believed that the only default registered was in 2011.

GE Money offered to change the August 2011 default date to 7 July 2006 and to pay compensation of £300, but Mr and Mrs A declined the offer. They insist that a default was

registered on 7 July 2006, but the credit reports they have supplied don't show this. There's no evidence at all that GE Money registered a default in 2006.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs A to accept or reject my decision before 29 July 2016.

Edward Callaghan
ombudsman