

## **complaint**

Mrs V complains that Shop Direct Finance Company Limited (SDFC) was wrong to record a default on her credit file.

## **background**

In 2010 Mrs V opened an account with SDFC. But when the first payment due did not arrive in her account, SDFC applied a late payment charge. She disputed that a payment had been late and refused to pay it. She incurred further charges. She complained and SDFC responded in 2011. The debt was sold on to a company I shall call A, but then bought back by SDFC. In December 2013 Mrs V complained that SDFC had registered a default on the account in May 2011. She says that she had not been notified about that.

Our adjudicator did not recommend that the complaint was upheld. He explained that he was unable to consider the underlying issue about the disputed payment back in 2010, as SDFC had issued a final complaint response about that in 2011, and it was now too late to complain to us about that issue. No payment had been made to the account for well over three months when the default was registered, and evidence from SDFC showed that it had sent a default notice. When the arrears had not been paid for so long, he felt it unlikely the account would have been paid even if Mrs V had received the notice.

However following further contact with Mrs V, the adjudicator tried to reach a settlement. SDFC agreed to accept a payment for £335.50 in settlement of the account, and then to remove contractual charges. The credit file would be amended to show the account default status as "settled".

Mrs V did not accept the offer. I summarise key points she made in various correspondence. She argued that the SDFC did not legally own the debt as she had not been sent a letter of assignment to say the debt was returning there from A, so she was not obliged to pay SDFC. She said SDFC had failed to honour a resolution it had offered back in 2011. The default was filed while the account was in dispute and guidelines said that collections activity should cease while an account was in dispute. She said the default notice had not given enough time to pay, and in any event she had not received it. She would have paid if she had. In any event the initial late payment charge should never have been applied as she had paid and sent a bank statement showing that to SDFC. She proposed that she would pay SDFC the outstanding balance in full, minus any penalty charges within 28 days, and that SDFC should then remove the default marker.

SDFC said that only 14 days' notice had been required for such a default. Mrs V had been given warnings in the default notice and debt collection letters. The debt was valid and the default would remain on the file.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Very late in the investigation of this complaint it emerged for the first time that the initial payment had left Mrs V's bank account but not reached her account at SDFC because apparently she used wrong reference number. It is most unfortunate that contacts between Mrs V and SDFC did not result in that being identified at the time. It is also unfortunate that

another chance to resolve matters was missed when the settlement SDFC proposed at the time was not implemented. But I cannot give any determination on the relevant issues as Mrs V did not complain to this service within six months of receiving SDFC's final complaint response to her original complaint.

I must focus on the issue of the default. There does not seem to be any dispute that Mrs V did not make any other payments to the account after the problem with the first one. Whatever the situation about that first payment and the resultant charges, I cannot see that that justified Mrs V failing to make any further payments at all towards the goods she had obtained. By May 2011, when the default was registered, even disregarding the disputed payment and charges, she was several months in arrears on the account. Any outstanding query related only to the first payment, not to the later ones which she did not make. So I consider that it was not unreasonable for SDFC to consider registering a default.

That brings us the issue of whether Mrs V was properly notified about the intended default, and what she would have done if she had been. Although SDFC has not been able to provide a copy of the actual notice sent to Mrs V, on balance, from the other records it has provided I am satisfied that a notice was sent on 18 April 2011 and that if Mrs V did not receive it that was not the fault of SDFC. The default was not registered until 5 May 2011, so gave her more than the statutory 14 days' notice: though it did not give the 28 days recommended at the time by the Information Commissioner.

Mrs V has argued that any question of a default registration has particularly serious consequences for her, not only in terms of her ability to obtain credit, but that it could also affect employment. She says that she would therefore certainly have acted had she received the notice. However I have seen that in September 2011 Mrs V complained to A, after it had bought the debt from SDFC and was pursuing her for payment. At one point Mrs V emailed A asking about her credit record. She said she intended to record a complaint against SDFC if the account was not shown as under query. A told her that a default had been recorded with a date in May 2011. It explained that the record had originated with SDFC, but was then being reported by A once it took over the debt. I have seen a reply Mrs V sent to that email, so I know she received it. I have not seen anything to show that she complained then about not having been sent a default notice, which I might have expected if she had not received one and if it was such a concern.

So it is clear to me that, even if Mrs V did not receive the formal default notice, she was aware by September 2011 that a default had been registered. She had also been told then by A that the account was being passed back to SDFC. However I have seen nothing to show that she took any action – either to pay the debt or pursue further an issue about the default – at that point. Indeed I have no evidence that, after the debt was reassigned to SDFC in 2011, either party did anything more about the situation, until Mrs V made the current complaint to SDFC in late 2013 or early 2014. At that point Mrs V initially said she knew nothing about the account or any default.

Looking at all the evidence, on balance, I do not think I can conclude that any failure to give Mrs V proper notification of the default in 2011 resulted in her missing an opportunity she would have taken to pay off the debt and avoid default registration.

In all the circumstances, I cannot see any grounds for me to say that it is unfair or unreasonable that a default has been recorded.

**my final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs V to accept or reject my decision before 1 May 2015.

Hilary Bainbridge  
**ombudsman**