

complaint

Mr F complains that The Co-operative Bank Plc wrongly recorded a default on his files with the credit reference agencies. Mr F also complains that The Co-op shouldn't have allowed his account to become overdrawn as he didn't have an agreed overdraft. He asks that the default is removed and The Co-op refunds bank charges and the sum he paid to settle the debt.

background

In October 2013 Mr F's account went into an unauthorised overdraft. Mr F says this was due to bank charges and payments wrongly made from his account. Mr F says he didn't respond to letters from The Co-op as he can't read or write in English and suffers from depression. He says The Co-op didn't give him a fair opportunity to deal with the debt before recording the default. He says The Co-op used intimidating language.

The adjudicator did not recommend that the complaint should be upheld, saying:

- The Co-op contacted Mr F in writing and by phone a number of times about his overdraft. It allowed Mr F six months to pay the debt before telling him the account had been defaulted and the debt transferred to a debt recovery agent. The Co-op was not aware of Mr F's depression.
- The default was correctly recorded on Mr F's credit files. The default wouldn't usually be removed for six years, even if the debt is paid. So The Co-op hadn't made an error.
- The Co-op was entitled under the terms and conditions to treat payments from Mr F's account as a request for an overdraft. It was Mr F's responsibility to ensure there were funds in the account before making payments.
- The Co-op was entitled under the terms and conditions to apply charges to Mr F's account. A court ruling in 2009 says charges can't be challenged because they are unfair or too high.

Mr F didn't agree. He said he didn't understand the letters from The Co-op due to his depression and difficulties reading in English. He feels this hasn't been taken into account. He'd like the money he paid to settle the debt refunded.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr F didn't have an agreed overdraft facility. The terms and conditions of his account say if payments are made from the account when there aren't sufficient funds, The Co-op can treat it as an informal request for an overdraft. The terms say this is more expensive than an overdraft agreed in advance. The Co-op wrote to Mr F when this happened. It told him it would apply charges. I think the charges were applied in accordance with the terms and conditions of the account. So I don't think it's reasonable to ask The Co-op to refund them.

The Co-op wrote to Mr F a number of times about the overdraft. It also phoned him. While Mr F told The Co-op he would visit his branch to discuss the debt, The Co-op has no record of him doing so. The Co-op gave notice to Mr F before defaulting the debt. I think The Co-op told Mr F about the debt and what would happen if it wasn't paid. I think it allowed him a reasonable amount of time to deal with it. It waited more than six months before defaulting the debt.

Banks have a duty to report accurate and up to date information to the credit reference agencies. I don't think The Co-op made an error when it reported the default.

Mr F says his account was overdrawn because of two unauthorised payments. He says these were refunded. I don't think Mr F raised this with The Co-op when it spoke to him about the debt. While Mr F says he told his branch about the unauthorised payments, The Co-op has no record of this. Mr F made other payments which increased his overdraft.

Mr F has difficulty reading English and suffers from depression. I don't think he told The Co-op about this before it defaulted the debt. So I don't think The Co-op made an error by not taking this into account when dealing with Mr F. The Co-op phoned Mr F to discuss the debt as well as writing to him. I think it acted reasonably.

In the circumstances, I don't think it's fair and reasonable to require The Co-op to remove the default from Mr F's credit files. I also don't think it's fair and reasonable to require it to refund the amount Mr F paid to settle the debt.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 1 March 2016.

Ruth Stevenson
ombudsman