

complaint

Miss D complains that Bank of Scotland plc unfairly recorded a default on her credit file, which adversely affected her ability to secure a mortgage.

background

In November 2013 Miss D rang Bank of Scotland (trading as Halifax) to arrange a temporary hold on her credit card repayments as she would be briefly unemployed whilst moving from England to Scotland. She had missed one repayment at that point. The adviser agreed to set up an informal repayment arrangement and told Miss D she should make whatever repayments she could afford whenever she could afford to make them. Miss D would receive letters from the collections department, which she should keep for reference, and her credit file would be affected.

Halifax failed to set up the arrangement and so Miss D rang again in January 2014 as she was continuing to receive letters showing interest and charges added to her account despite having previously been told this wouldn't happen. Halifax apologised for its error in not correctly setting up the arrangement. The adviser said she would refund all interest and charges and set up the arrangement. Miss D agreed to make a token payment around the 17th of each month. She was told this would affect her credit file for 6 years and that she would receive a default letter. Miss D changed her address to one in Scotland during this call.

Once again Halifax failed to set up the repayment arrangement and Miss D had to ring again on 5 March 2014. Halifax refunded all interest and charges, said it would set the arrangement up again for a period of 9 months; that Miss D should pay £5 monthly; that her account would be transferred to recoveries and she would receive a default notice and another letter that she should keep for reference, and that her credit file would be affected for the next 6 years.

During this call Miss D said she had received a letter from Halifax (a default notice) dated 28 February to her old address. The adviser confirmed that this had been sent in error and agreed with Miss D's statement that she could '*put it in the bin.*'

Halifax recorded a default on Miss D's credit file on 9 April 2014, and in July 2017 it sold her debt to a debt collector.

In September 2018 Miss D complained to Halifax that it hadn't contacted her for over 2 years about her account, that it had sold her debt to a debt collector without telling her and that it hadn't informed her of its intention to record a default on her credit file. She also complained about the poor customer service she'd received and about the length of time she'd had to spend on the phone.

Halifax didn't uphold her complaint about the default, but agreed its customer service had been poor. It therefore paid Miss D £66 compensation.

Miss D was unhappy with this response, the more so because she believed that the default had adversely affected the outcome of her mortgage application to Halifax in October 2018. Miss D therefore brought her complaint to us.

In summary, and having listened to the three relevant phone calls between Miss D and Halifax, our adjudicator didn't consider that the bank had treated Miss D fairly. As Halifax advisers had all led Miss D to believe that she could safely ignore the default notices, which were described as only being for her records, our investigator didn't think the bank should have recorded a default on Miss D's credit file.

Our investigator also thought that Halifax had acted unreasonably in selling the debt given that Miss D had maintained her agreed repayments.

With respect to Miss D's mortgage application, Halifax had provided evidence that it had agreed Miss D's application in principle, but she hadn't proceeded with it. Our investigator therefore didn't believe that the default on Miss D's credit file had adversely affected her application.

Having concluded that Halifax had treated Miss D unfairly, our investigator recommended that the bank recall the debt, remove the default from Miss D's credit file and pay her £150 compensation.

Halifax was unhappy with these recommendations. In essence, it believed that its February default notice had been correctly sent and that at no stage had its advisers told Miss D that it had been sent in error. It also considered that Miss D wasn't in any position to make repayments as her declared outgoings exceeded her income. And although Miss D had recently told us that she would have sought help from her parents to repay her debt if she had realised a default was about to be recorded on her credit file, she had not made this point previously.

For her part Miss D maintained that the default had adversely affected her mortgage application. She agreed that Halifax had granted the mortgage in principle, but she said it had only done so on condition that she provided a larger deposit than she was able to do.

Miss D asked for an ombudsman's decision.

my findings

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

At the core of this complaint is the recording by Halifax of a default on Miss D's credit file and the question of whether this was fair and reasonable under the circumstances. I should say at the outset that I have listened to all three of the relevant phone calls between Miss D and Halifax.

I am satisfied that Halifax sent Miss D a default notice dated 28 February 2014 that she received, albeit that the bank incorrectly sent it to her old address. But when Miss D rang on 5 March, because it was apparent that Halifax had once again failed to set up the promised repayment arrangement, she was very clearly told that the letter of 28 February had been sent in error and that it was fine to consign it to the bin. In my view that default letter was therefore null and void, and I certainly would not have understood from the adviser's comments that Halifax was about to act on the letter by recording a default.

In confirming that Halifax would for the third time set up the repayment arrangement, the adviser said it would last for 9 months; that it would affect Miss D's credit file for 6 years, and

that Miss D would receive a default notice and another letter, both of which would be sent to her for reference. The tone of this conversation was similar to the previous two in providing comfort to Miss D that the bank was happy to agree a temporary repayment arrangement with her and that she could safely put to one side formal letters that it was nevertheless required to send. Halifax has said it didn't in fact send the default notice, although it sent a letter confirming the arrangement to pay.

Where customers fall behind with repayments – usually for at least 3 to 6 months - banks will generally send a default notice. This requires customers to take some action if they wish to avoid the default. Sometimes banks will require full and immediate repayment, but many will be prepared to enter into a repayment arrangement and hold off from registering a default for some months to monitor the situation. And following Miss D's discussions with Halifax I consider it entirely reasonable that this is what she believed to have happened here, albeit in reverse i.e. the repayment arrangement was agreed before issuing the default notice, which was nevertheless sent to regularise matters.

I have also considered whether it was reasonable for Halifax to have sent a default notice with the alacrity it did. Miss D had not missed a payment until she rang the bank on 26 November 2013 to explain that she was moving to Scotland. The adviser seemed unable to understand Miss D's explanation of her position although it was perfectly clear to me. She was no longer working full time but 'temping' for the next 4 weeks. And although she would be earning enough to cover her essential outgoings she didn't think she'd have any spare money to make her monthly credit card payment.

The adviser was plainly working to a script and in determining a repayment arrangement pressed Miss D for income figures that she struggled to provide. The nature of her work meant that her earnings were not only unpredictable but largely unknown. The adviser put Miss D under considerable pressure to provide figures, which she eventually did, and the result was that her outgoings appeared to exceed her projected income by some margin. Taken at face value this meant that Miss D would struggle to make any repayments. But it was clear to me that the figures she provided didn't form a reliable basis for agreeing anything other than a short term arrangement given that she would be moving very soon and expected then to be back in full time employment. In my opinion it was therefore incumbent on Halifax to follow up on its discussion once she had moved, which she had by early January 2014, and certainly to have done so before taking the decision to issue a default notice.

In all three calls Miss D was told that the arrangement to pay would be recorded on her credit file for 6 years, and it is therefore this information that I'd reasonably have expected Halifax to have recorded.

Miss D had a good credit record until the missed repayment, and having agreed a repayment arrangement she not only maintained those repayments but increased them in early 2016. But Halifax nevertheless sold her debt in July 2017. Miss D has said the bank didn't tell her that it intended to do so. Halifax doesn't seem sure whether it did or didn't, because in its complaint response to Miss D of October 2018 it apologised for not writing to her about the sale, but it has separately told us that it did send Miss D a letter. However, in my view it matters little, because I don't think that the bank should have sold the debt. I consider that the default was unfairly recorded, and Miss D had also maintained her agreed repayments.

Miss D believes that the default meant that although Halifax approved her mortgage application in principle it wanted a larger deposit from her than it might otherwise have done. For its part Halifax has said that Miss D applied online without specifying a deposit and so its in principle approval of her application did not take that into account.

Lenders are entitled to determine their own criteria in assessing whether they wish to lend to customers and on what basis, and they take a range of factors into account. Halifax did check Miss D's credit file in assessing her application and will no doubt have noted the default. But of course Miss D would not have had a clear credit file in any event because in the absence of the default her arrangement to pay would have been recorded. Given this I cannot reasonably conclude that without the default Halifax would have made an improved mortgage offer to Miss D.

Miss D complains that she has received poor service from Halifax in dealing with her credit card repayment arrangements, and I agree that she has.

And so to summarise, my judgment is that Halifax didn't properly notify Miss D of its intention to record a default and it was therefore unreasonable for it to have done so. It should then not have sold her debt to a third party given the absence of a default and that Miss D was maintaining her agreed repayments. And overall it has provided poor customer service for which a payment of £150 would be fair and reasonable compensation.

my final decision

My decision is that I uphold this complaint and I require Bank of Scotland plc to:

- recall Miss D's debt;
- remove the default from Miss D's credit file, and
- pay Miss D £150

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 29 September 2019.

June Brown
ombudsman