

complaint

Mr R complains that Home Retail Group Card Services Limited (trading as Argos Card Services) incorrectly recorded a default on his credit file.

background

Mr R entered into an agreement with Argos which required him to make monthly minimum payments. His account was in arrears and he had exceeded his credit limit when Argos defaulted his account in May 2013. Mr R says he never received a default notice. He wants the default to be removed from his credit file.

Argos didn't think it had done anything wrong; it refused to remove the default on Mr R's credit file. Mr R remained unhappy so he bought his complaint to us.

Our adjudicator didn't recommend the complaint should be upheld. She thought the default had been recorded correctly by Argos in line with its terms and conditions, as Mr R's account was in arrears and had been over the agreed credit limit. She was satisfied from its records that it had sent Mr R a default notice. Mr R disagreed; he asked for an ombudsman to make a decision.

In summary Mr R says the statements and default letter didn't comply with the requirements of the Consumer Credit Act 1974 (CCA) or the Information Commissioners Office (ICO) guidance; so the default should be removed.

The complaint has been passed to me for a final 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.

Mr R's strength of feeling is clear; he has set out a detailed analysis of how we should look at his complaint in light of the ICO guidelines and CCA 1974. He has challenged the technicalities of the process and the wording used by Argos in the statements and default letter. However, whilst we take account of the relevant law, rules and guidance, we don't take a strict legal approach, but decide cases on fair and reasonable basis.

I've considered all of Mr R's submissions (including his recent emails); however as we are an informal service my findings are expressed in a lot less detail. And they focus on what I think are the main points.

was it reasonable for Argos to record a default on Mr R's credit file?

Mr R says that Argos were aggressive in defaulting his account after only two consecutive missed payments. As the Information Commissioners Office (ICO) guidance says this shouldn't happen until there are three consecutive missed payments.

In its final response Argos explained that it defaulted Mr R's account because his account was in arrears and as he didn't bring his account up to date within 14 days of the default notice it registered a default in May 2013.

Mr R's statements show that he first missed a payment in November 2012. Argos issued a statement in December 2012 clearly saying that an immediate payment of £417.96 was due in addition to a minimum payment of £140.24.

Mr R cleared the November 2012 arrears in December 2012, but he didn't bring his account up to date by clearing the amount over his credit limit. Subsequent statements showed the minimum payments due and what was due immediately. Mr R paid more than the minimum payment in January 2013, but this didn't bring his account up to date. He didn't make any payments to his account in February 2013 or March 2013.

Mr R says he didn't receive a default notice, but I'm satisfied it was issued on 14 April 2013. I've seen Argos' system notes and they confirm the date it was sent. So I can't find Argos responsible if he didn't receive it.

Argos provided an example of the default letter. This clearly sets out the amount that needed to be paid within 14 days to avoid registration of a default. Mr R did make a payment of £157.00 but a payment of £399.69 was required to bring his account up to date. The default was registered on 12 May 2013.

In line with the ICO guidance creditors should usually wait for there to be three missed payments in a row before it records a default. However, this is a general guide and I think the central issue here is whether it was reasonable for Argos to treat Mr R's account as defaulted. I don't think that the anomalies Mr R has raised about the statements or default letter means a default would be unreasonable.

Having considered everything I think it was reasonable for Argos to default Mr R's account when it did. In addition to missing two payments in a row, Mr R would've been aware since December 2012 that he had exceeded his credit limit and needed to bring his account up to date. And I haven't seen anything to suggest Mr R contacted Argos to let them know what his circumstances were. So overall I don't think it was aggressive for Argos to record the default when it did.

Mr R feels that he has been treated unfairly as it was the transfer of his Buy Now Pay Later plan to his normal account that took him over his credit limit in December 2012. However, I think it was Mr R's responsibility to manage his account and if he was having difficulty with this he could have got in touch with Argos.

Mr R says that Argos failed to properly update his credit file, as it didn't record any missing payments. Having looked at Mr R's credit file I agree that Argos didn't update his credit file properly. I don't know why Argos didn't do this, but the result is that Mr R has less adverse information on his credit file.

handling of the account

Mr R says that following the default he agreed a twelve month repayment plan. He says there was a problem with the final payment, but Argos failed to let him know this which led to his account remaining open until July 2016.

I can see from the May 2014 statement that Mr R's account balance was shown as zero. The statement sent to Mr R in June 2014 shows a remaining balance on the account. Argos explained that Mr R's April 2014 payment was reversed in May 2014 and it didn't receive the final payment from Mr R until April 2015, which is when the account was closed.

It's unfortunate that this situation was left by both parties for so long before a final payment was made. But the June 2014 statement showed Mr R that there was a remaining balance, so I don't think Argos failed to let Mr R know there was a problem with his payment.

changes to the account

Mr R has raised concerns about Argos fabricating its records in relation to showing that it sent him notice of the interest increase and the changes to his terms and conditions.

I can see why Mr R is concerned about this as Argos initially said that it sent letters out centrally to all customers about the changes to the terms and conditions; so a footprint wouldn't show on his account. However, Argos have since provided a screenshot and explained that this shows that Mr R was sent a variation letter in January 2012 and sent notice about the interest increase in October 2012.

Argos has clarified that generated letters i.e. letters of variation are only shown on account for a short period. After this the information is held in the archive system, which is where the screenshot was retrieved from. I think the explanation given is reasonable and I'm satisfied that Mr R was sent letters about the changes to his account.

subject access request (SAR)

Mr R has recently raised concerns about the way Argos handled his SAR request. He says it has given us different information. As our adjudicator has explained he will need to raise this concern directly with the ICO.

I know Mr R will be disappointed with my decision. I'm not saying Mr R can't take this further, he is free to pursue this through the courts if he doesn't accept my decision; but I am saying that we won't consider this any further, as this is the last stage of our process.

my final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 February 2017.

Karen Dennis-Barry
ombudsman