

complaint

Mr W complains, in summary, that Shop Direct Finance Company Limited, trading as *very*, won't agree to write off his account balance, and that it contacted his Victim Support Officer without his knowledge and consent.

background

Mr W opened a credit account with *very* in September 2000. Mr W has suffered with mental health illness since 2001. He first contacted *very* about his financial difficulties in October 2012. Since then, *very* have agreed to repayment plans to help with the management of his account. The last payment to his account was £30 in September 2013, after which he ceased working due to his health conditions. Mr W then asked *very* for his account balance to be written off, as he had no income. It didn't agree to this, but it stopped interest and charges in the main from January 2013 and put a hold on his account pending an improvement in Mr W's circumstances. Mr W asked it to write off his debt several times more and sent *very* evidence of his health conditions. In January 2016, *very* contacted Mr W's Victim Support Officer ("VSO") by phone without Mr W's consent, although no sensitive data or personal information was discussed. Mr W was also unhappy that *very* had sent a third party authorisation letter to the VSO, again without his consent. *Very* has offered £50 compensation for this.

our adjudicator's view

The adjudicator noted that *very* had said that interest and charges would remain on hold until the account is reviewed again. Taking this and everything else they'd done to assist Mr W with his account, she couldn't say that *very* hadn't been positive and sympathetic towards Mr W's situation. But with regard to Mr W's concerns that *very* had contacted his VSO, she suggested that he may wish to raise it with the Information Commissioner's Office ("ICO") as it investigates breaches of the Data Protection Act 1998. But she thought that *very's* offer to credit Mr W's account with £50 compensation for this was a fair and reasonable resolution to Mr W's complaint.

Mr W disagreed and responded to say that he was unhappy that *very* had sent a third party authorisation letter to the VSO. He thought it had done this to cause confusion and to obtain confidential and personal information about him which it couldn't obtain by phone. He didn't think that £50 was enough compensation for the distress caused by this. Mr W also didn't think that *very* had been understanding throughout his difficulties. It had sent him emails which made him feel uneasy and that he was being bullied into paying money. Mr W also said that *very* shouldn't have continued trying to offer him long term repayment plans with him as he couldn't afford them. And if *very* was to default his account, this should be backdated to October 2012.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr W and to *very* on 21 March 2016. I summarise my findings:

I had read the medical evidence that Mr W had sent us and it was clear from this that he had a long history of poor mental health since 2001, and that he took medication for it. I also noted that he hadn't worked since September 2013 and that he hadn't claimed benefits because of the stress of signing on for these. I understood that he lives with family members,

one of whom has a terminal illness, and the other has a serious life limiting illness. So, I could understand how distressing it must have been for Mr W to have received debt collection correspondence and phone calls regarding his debt with *very*, and that this was aggravating his health. I also noted that he had other debts which had been written off by his creditors due to his circumstances.

In view of Mr W's mental health issues, I said that I would have expected *very* to have had regard to the Money Advice Liaison Group's Good Practice Awareness Guidelines for helping consumers with Mental Health Conditions and Debt ("the Guidelines"). The third edition of the Guidelines was published in 2015. I noted that Chapter 13 of the Guidelines said that lenders should consider writing-off debts when mental health conditions are long-term, hold out little likelihood of improvement and are such that it's highly unlikely that the person in debt would be able to repay their outstanding debts. I also noted that the Guidelines said that if a consumer is in receipt of Disability Living Allowance ("DLA"), he would be able to treat the entire award as non-disposable income, and not to be used for the purposes of repaying debts. I couldn't see that Mr W received DLA or any other benefits. He lives with family members and is supported by them, and he has no available assets.

I noted that *very* has taken some steps to treat Mr W positively and sympathetically including previously agreeing a repayment plan, not applying interest and charges since January 2013, and putting a hold on collections activity for a certain period. But, I didn't think that it had done enough in Mr W's circumstances. As Mr W had suffered from a serious mental illness since 2001 and has no income, I thought it was unlikely that he would ever be in a position to pay off *very*'s debt of over £1,320. I noted that Mr W had spoken to *very* on numerous occasions to tell it about his situation and he had sent it medical evidence. Mr W had also told *very* that the debt was making him anxious and depressed, and *very*'s letters were causing him stress. I noted that he was particularly unhappy when *very* told him that it would charge him £12 for every month he didn't make a payment. So, overall, I thought that it would be fair and reasonable for *very* to write off the debt in its entirety.

I also noted that *very* had sent Mr W a default notice in November 2015. But Mr W wanted the default backdated to 2012 when he had fallen into financial difficulties. But I could see that *very* *had* put Mr W's account on hold to see if his situation improved. I thought that this wasn't unreasonable at the time.

I also noted that Mr W was unhappy that *very* had contacted his VSO for information about Mr W's circumstances without his knowledge or consent. It had phoned the VSO and sent the VSO a form which said that Mr W had given his written permission for the VSO to complete the form, which wasn't the case. I noted that the adjudicator suggested that Mr W contact the ICO about this if he wished. But I also thought that *very* should pay Mr W £100 compensation for the trouble and upset caused by this.

Subject to any further representations by Mr W or *very* my provisional decision was that I was minded to uphold this complaint in part. I intended to order Shop Direct Finance Company Limited, trading as *very*, to:

1. Write off Mr W's debt with it in its entirety; and
2. Pay Mr W £100 compensation.

Very responded to say that it agreed to my provisional decision. It also said that it had served a default notice on Mr W in November 2015 and had taken no further steps because of the involvement of this service, although it intended to apply a default to Mr W's credit file.

Mr W responded to say, in summary, that he was very unhappy about a default being registered on his credit file at a totally incorrect time, and that this would cause a massive setback to his health. He was also unhappy about the award of £100 compensation as *very* had seriously breached its ethics as a financial organisation by contacting his VSO. He also asked to speak to me about his case.

my findings

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

I discussed Mr W's concerns about the registration of a default on his credit file with him. It was very clear to me that because of his severe mental health difficulties, he was vulnerable and would suffer ongoing worry and stress if a default was now registered by *very* on his credit file. Mr W also told me that he thought that *very* had acted badly, harassed him about his debt and had wrongly contacted his VSO. But, I told him that I thought £100 compensation was a fair amount for the trouble and upset caused by this. If he wanted to complain about *very*'s conduct in contacting his VSO, I'd said in my provisional decision that he could complain to the ICO. I also said that this service's compensation awards were not intended to punish a business.

I then asked the adjudicator to ask *very* if they would agree to not register a default as a goodwill gesture in the specific circumstances of this case. *Very* said that it had obligations to other lenders to accurately record Mr W's account conduct and the default correctly. It also said that the default should remain so that other lenders could consider this account conduct when receiving any future application from Mr W.

It's not clear from *very*'s response whether *very* has recently registered a default on Mr W's credit file despite Mr W's account having been at least three months' in arrear since 2013. I didn't think that it was going to register a default whilst the complaint was with this service.

I note that *very* has agreed to write off Mr W's debt. If the default isn't registered, I don't think that this would adversely affect *very*. And I don't think that other lenders would make a lending decision solely on the basis of a search of Mr W's credit file. And whilst *very* has obligations to other lenders to record accurate account conduct, I note that this isn't a legal requirement.

So, in the specific individual circumstances of this complaint, and considering the problems the registration of a default would cause to Mr W, I don't think it would be reasonable for *very* to register a default on Mr W's credit file. But if *very* has now registered a default on Mr W's credit file, it should remove it. Otherwise, I am satisfied that the proposed resolution in my provisional decision is fair in all the circumstances, and I find no basis to depart from my earlier conclusions.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Shop Direct Finance Company Limited, trading as *very*, to:

1. Write off Mr W's debt with it in its entirety;

2. Pay Mr W £100 compensation; and
3. Not register a default against Mr W's credit file. If it has now done so, it should remove the default from the file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision 25 July 2016.

Roslyn Rawson
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