

complaint

Mrs B complains R. Raphael & Sons Plc (trading as Raphaels Bank) recorded a default on her credit file several years after it should have.

background

Mrs B had a credit card with Monument. In April 2004, after losing her job she experienced a period of financial difficulty. She said she wrote to all her creditors and offered token payments of between £1 and £5 per month. She said all of them accepted the offer and then registered defaults on her credit file in late 2004.

She said Monument accepted the token payment offer of £5 against a debt of over £3,000 but did not register a default. Mrs B said she increased her monthly payments to £20 sometime in 2011.

Mrs B said by 2013 she had repaid all her creditors apart from Monument and her credit file was repaired. She moved house in August 2013 with an increased mortgage.

In April 2015, having not received any correspondence for a number of months from Monument Mrs B said she stopped making the £20 monthly repayments. She said she considered 11 years of token repayments had made only a dent on the overall level and if the debt was still going to be pursued she would no doubt be contacted.

Mrs B said no further correspondence was received until September 2017. Mrs B said received correspondence from Company J, to whom her Monument debt had been sold to. She said she realised at this point Monument had registered a default on her account in October 2015 and not in 2007 when R. Raphael & Sons Plc had acquired Monument, nor in 2004 when she was in financial difficulty. Mrs B thought had Monument done so in 2004 she would have a restored credit file by now. She asked for compensation.

Monument said it had applied the default correctly because it said no payments were received after March 2015. Mrs B disagreed. She maintained the default should've been registered in 2004. So she brought her complaint to this service.

The investigator thought Monument hadn't done anything wrong. He said the default had been applied appropriately based on Mrs B stopping payments in 2015 and Mrs B failing to notify Monument of her change of address.

Mrs B disputed this. Referring to a previous decision from an ombudsman about a similar complaint she felt her arrangement with Monument in 2004 had been temporary and Monument was therefore required to issue a default at that time. She asked for a final decision from an ombudsman.

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 realise this will come as a disappointment to Mrs B but I find I agree with the investigator and for much the same reasons.

In her evidence Mrs B has made reference to the Information Commissioner's Office (ICO) Principles for Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies. These principles explain what is reported when a consumer offers or makes a reduced payment against a debt.

Mrs B said she offered to pay £5 per month to Monument and it was a temporary arrangement according to ICO principles. There are no communication records in the file which indicate how this offer was made or received. But if a permanent change in payment terms is agreed by a lender then the ICO says there would normally be a new agreement signed. There isn't any evidence of this so it's likely this was treated as a temporary reduction; though I'm unable to say with any degree of certainty. Mrs B is correct when she says the ICO principles state where there is a temporary reduction in the payment amount agreed then it will be recorded at credit reference agencies.

So it does appear in the absence of a new agreement it's reasonable Mrs B would take this to be a temporary arrangement and she would've expected to see it recorded in 2004. Had it been so then this record would've expired in 2010 or latest by 2011. But I don't agree this means Mrs B's credit file would be restored by now. I shall explain why below.

In ICO Principle 4 it states:

"If you fall into arrears on your account, or you do not keep to the revised terms of an arrangement, a default may be recorded to show that the relationship has broken down..."

Apart from being 3 or more months in arrears there are other circumstances which may lead to the recording of a default:

- The account is in arrears and the provider receives an indication that you have left your address without notifying them."*

In the credit card terms and conditions it states:

"You must tell us as soon as possible if you, or any additional cardholder, change your/their name or address"

Mrs B stopped payments in 2015. On her complaint form to this service she wrote:

"considering that 11 years of token repayments had made only a dent on the overall level and that if the debt was still going to be pursued I would no doubt be contacted at which point I would arrange to repay the debt by way of a full and final settlement. My address is easy to find as I am on the electoral roll and am registered at Companies House and so it is in the public domain. No further correspondence was received."

I've looked at Monument's contact records from 2015. Several unsuccessful attempts were made to contact Mrs B by post. On 24 August 2015 there is an entry which indicates Monument became aware Mrs B hadn't been living at the address it had on record for two years. There are also many attempts by Monument to contact Mrs B by telephone from April to October.

Mrs B said she received monthly statements from 2007 and she moved house in 2013. She said she had post redirection service in place and relied on the new owners of her old property to forward her post.

Mrs B hasn't said specifically whether she contacted Monument in 2013 when she moved in order to change her address details. If I assume she had done so then having not received correspondence from Monument prior to her stopping payments I consider it a reasonable expectation Mrs B would check to see Monument had amended its records; especially as she was required to do so as per the terms and conditions. It appears she believed it would be reasonable that Monument would seek her out in order to get payment on the debt. I'm afraid I don't agree this was a reasonable assumption to make.

I'm satisfied Mrs B stopped payments without communicating with Monument or agreeing a way forward with it and so she failed to keep to the revised terms. I'm also satisfied Mrs B failed to make sure Monument had a record of her new address.

It is possible Monument should have recorded a default in 2004 but I'm satisfied it had renewed grounds to do so in 2015 by virtue of Mrs B voluntarily stopping payments, falling into arrears and failing to ensure Monument had the correct address.

Mrs B has made reference to a previous decision by an ombudsman. While the circumstances of two complaints may appear very similar (particularly in the summarised way of decisions such as this one – a natural consequence of the informal nature of our role) the details may be different. Each complaint is judged on its own merits.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 23 November 2018.

Maxine Sutton
ombudsman