

## **complaint**

Mr C complains that Clydesdale Financial Services Limited registered a default on his credit file without telling him it was going to, and without advising him that a balance was due. Mr C says this led to him being charged a higher interest rate by another credit provider.

## **background**

Mr C applied by telephone for a personal loan from his main bank, but the loan was declined. Mr C asked why and was told to visit his local branch, where he found out that there was a problem with his credit file. Mr C looked at his credit file, and saw that Clydesdale had registered his account as delinquent.

Mr C complained to Clydesdale and queried the matter, and was told it was an error and the balance on the account was actually zero. He received a letter confirming the zero balance, but was also advised by Clydesdale that it would not be removing the default status from his credit file. A few days later he took out a £14,000 loan from his bank at a higher than usual "risk-based" rate of 14.24%, applied because of the default record.

Mr C later received confirmation from Clydesdale that his complaint had been upheld, and the default was removed from his account. In its confirmation Clydesdale said *"we failed to notify you of any outstanding arrears on your account since [...] November [...]. I also cannot see that we have sent you any notification of the default which was applied. As we have a legal obligation to inform you of any arrears on your account, or if we apply a default to your credit file, I have agreed to remove this from your credit file."*

Mr C applied to Clydesdale for compensation in relation to the higher rate on his personal loan. He obtained confirmation from the loan provider that although it could not *"guarantee the information recorded by [Clydesdale] was the sole reason for risk based pricing being applied to [his] loan, as there can be several factors involved, [it did] acknowledge that the adverse information recorded by [Clydesdale] is likely to have been the reason. It is important to note that [Mr C's] credit file now appears to be in good order."*

Mr C's bank would not change the interest rate on his personal loan partway through the agreement, but he later applied for another loan with the same bank to clear the previous loan after the default had been removed and was granted this at a lower rate of 8.4%. Mr C says that in order to comply with his bank's policy on consolidation loans he had to apply for a further £2,000 in addition to his then borrowing.

Mr C calculated his claim for compensation at in excess of £3,000 in relation to the cost of his borrowing, plus compensation for his time and inconvenience.

## **our initial conclusions**

Our adjudicator partially upheld the complaint. She noted there had been arrears on Mr C's account due to confusion over a settlement balance when a direct debit payment was not taken. But the adjudicator also noted that Clydesdale had admitted errors with the way it had communicated with Mr C. Overall the adjudicator considered that the arrears and default were real, and there was not enough evidence to say for certain that Clydesdale's error had led to Mr C paying a higher interest rate. The adjudicator felt that Clydesdale's offer of £150 compensation in relation to its errors was a reasonable way to settle the dispute.

Mr C does not agree. He says the information from his loan provider is clear, and his bank has said *“it can trace no adverse information, other than the default which was applied by [Clydesdale], which led to risk based pricing being applied and the subsequent application of punitive interest rates being charged”*. Mr C says he had no choice but to take the loan at the higher rate, even though he was aware of the problems with his credit file. Mr C wanted to buy a car, and says he had to do it at that time in order to secure a reduction on the price of the car in a quiet period for the motor-trade.

Mr C accepts there had originally been a query regarding the balance due under his Clydesdale loan. However, as far as he was aware, the balance had later been cleared. Mr C says in any case, Clydesdale had failed to follow statutory procedures and had not notified him of the balance of the dispute for many years, and had not told him about the default.

Mr C also lists a number of other concerns with the way he says Clydesdale has handled his complaint. This is including that Clydesdale has given details of two debt collection agencies it says dealt with his account (Mr C says neither of these agencies actually did so) and that it has refused to give him details of its professional indemnity insurers.

I issued a provisional decision stating that I was intending to uphold this complaint, but that I had calculated Mr C’s financial loss as £570.24 – that being the difference between the amount he had actually paid on the higher rate loan before he refinanced, and what he would have paid on the rate he would have been able to obtain if the default had not been registered incorrectly. I proposed Clydesdale should refund this money, plus £150 compensation for the distress and inconvenience Mr C had suffered as a result of their error.

Clydesdale accepts the settlement but say it should be entitled to be repaid the amount originally owed by Mr C (£316.64), and this should be offset against the redress. Clydesdale says it had previously written the amount off and made an offer not to pursue Mr C for the debt; however as Mr C did not accept the offer made by Clydesdale and decided to pursue his complaint, they are now agreeing to a different settlement.

Mr C accepts the basis of the provisional decision, but queries the amount of redress. He says the redress should be subject to an “indexation” from the date of his complaint to date of settlement. Mr C also says that the compensation for distress and inconvenience did not reflect that it was almost 18 months since he raised his complaint with Clydesdale, and Clydesdale’s actions and response to his complaint have caused him great embarrassment and distress, and significant inconvenience.

### **my findings**

I have considered what Mr C and Clydesdale have said and provided, to decide what is fair and reasonable in the circumstances. Having done so, I uphold this complaint, with the same redress as proposed in my provisional decision.

#### *the registration of the default*

Clydesdale has admitted its errors in the way it communicated details of Mr C’s arrears and the default it registered. But there are a number of additional complexities with this case, starting from the original issue of whether there was an outstanding balance on Mr C’s account; through the way that Clydesdale communicated (or failed to communicate) details

of the arrears and default; to the way that Clydesdale has dealt with Mr C's complaint. I will work through these in the order events occurred.

I find that Clydesdale was correct in stating that the account was in arrears. Mr C had asked for settlement figures on his loan at the same time as a direct debit was supposed to be taken. Clydesdale gave figures as if the direct debit had been paid, but it was cancelled at the same time Mr C paid the settlement figure and so there was one month's payment still outstanding. I think this was an unfortunate confusion, but not one where I think fault can be apportioned either way. As it was, Mr C later queried the outstanding balance, and Clydesdale agreed to drop additional charges it had added due to late payment, but Mr C did not pay the amount owed. I find he did legitimately owe this money, and I think it was correct for Clydesdale to consider the account in default when he did not pay it.

I find Clydesdale did make an error when it stopped notifying Mr C of the arrears, and again when it did not send a default notice warning Mr C that if he did not pay the remaining balance then it would take action to enforce the debt. However, given the circumstances and the previous communications between Clydesdale and Mr C about the outstanding amount, I also consider that Clydesdale did enough for Mr C to be aware of the existence of the arrears.

Section 87 of the Consumer Credit Act 1974 sets out that if a creditor fails to send the required default notice then it cannot terminate the agreement, demand earlier repayment, recover possession of any goods, treat any of the debtor's rights as terminated or restricted, or enforce any security. I do not think that the Consumer Credit Act explicitly requires a creditor to send a default notice before it records the default with credit reference agencies, however I think this must be counted as implicit in the Act, particularly given that the very purpose of the default notice (as set out in Section 89) is to give the debtor the chance to remedy the breach and for it to be then treated as if the breach had never occurred.

Put simply, the debt may well have been correctly owed, and Mr C may well have been aware of the existence of the debt, but I don't think this takes away from the fact that Clydesdale made an error by not giving him the required notifications. Had Mr C been given the default notice as required, he may have decided not to pay the amount owed if he still disputed it, but I think at least he would have been on proper notice of the consequences of not paying it. As it was, he was not aware of the default, and sought a loan from his bank thinking they would give him the best rates, not the risk-based pricing which they actually applied.

#### *the effects of the default*

Mr C says the consequences of that error include that he had to take a loan at a much higher rate than otherwise would have been the case. Mr C's bank has said that it applied risk-based pricing because of the default, and that it can trace no other adverse information apart from Clydesdale record. And later, once the default was removed from Mr C's credit file, he was able to get a loan from his bank at the expected lower rate. Having looked at the evidence, and in particular the statements from his bank, on balance I am satisfied that it is likely the sole reason for the higher rate was the Clydesdale default.

I have considered the issue that Mr C was in the end aware of the default on his credit file when he agreed to the loan at the higher rate – he queried the default with Clydesdale at the beginning of the month and signed the credit agreement at the end of that month. In particular, I have considered whether Mr C could have taken steps to mitigate any loss.

Mr C says he wanted to get a loan at this particular time because he would get a better car deal. I am not sure this is necessarily the case, as I note how much higher the overall cost of the car would be with the higher interest he was going to pay, as opposed to the interest he might have paid if Clydesdale agreed to remove the default. However, I note that Clydesdale had at that point told him the default was not going to be removed from his file, and therefore I think it is reasonable for Mr C to proceed with the loan from his normal bank at the higher rate.

#### *redress*

Turning to the exact amount of the loss incurred because of the error and the higher rate, I note that Mr C has provided two calculations for the loss he says he incurred. One of £3,589.07 – based on his calculation of the difference in interest payments between a £14,000 loan at 14.24% and at 8.4%; and one of £3,293.41 – based on £320.19 arising from settlement of the first loan and £2,973.22 arising from the additional money he says he had to pay on the £16,000 loan at 8.4% he had to take out to settle the first loan when all he wanted was £14,000 at 8.4%.

I do not think either calculation is correct. Mr C settled the higher-rate loan early and so did not have to pay all the interest due on the higher-rate; and he had the benefit of the extra £2,000 on the second loan, so I do not think this can count as a loss.

Mr C paid two payments under the higher-rate loan, before settling it early by taking out a second loan at the rate he would have had but for the Clydesdale default. In my view, the correct calculation is the difference between the interest actually paid on the first loan (in the two monthly payments, and in the early settlement) and the interest Mr C would have paid for those same payments had the original loan been at the lower rate.

Mr C paid two payments of £263.73 under the 14.24% loan, and using the European Commission's "excel simulator"<sup>1</sup> I calculate he would have paid £221.01 per month had the loan been at 8.4% from the start. Therefore, I think the interest overpaid on the monthly payments is £85.44.

Mr C settled the 14.24% loans after the two months, with a settlement figure of £14,320.19 (calculated in accordance with the Consumer Credit (Early Settlement) Regulations). I calculate that the early settlement figure in the same position on a £14,000 loan at 8.4% would be £13,939.59. Therefore, I think the interest overpaid on the early settlement was £380.60.

I note Mr C's view that he had to take out a £16,500 loan to cover the £14,000 loan settlement. I consider the additional money to be money which Mr C had the benefit of. I also note he had the opportunity to get a loan elsewhere for only £14,320.19 if he had wished to. I do consider that he was paying interest on the additional £320.19, which only arose because of the higher-rate loan settlement. Therefore, I consider Clydesdale should also compensate for this amount. I calculate this as being £104.20.

In total, I conclude that Clydesdale should pay Mr C compensation of £570.24 to cover the additional costs Mr C incurred as a result of the default incorrectly being on his credit file. Mr C has also suggested that Clydesdale pays £550.88 to compensate for the time, effort and

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<sup>1</sup> [http://ec.europa.eu/consumers/rights/fin\\_serv\\_en.htm#credit](http://ec.europa.eu/consumers/rights/fin_serv_en.htm#credit)

distress he has incurred in dealing with this complaint. Mr C has also suggested that the redress should be “indexed” from the date of the error.

In my provisional decision I proposed to also direct Clydesdale to pay Mr C £150 compensation for the distress and inconvenience. Our awards for distress and inconvenience are typically modest, and in the circumstances I still consider £150 to be an appropriate amount. Likewise, in this case I do not think it is necessary to add interest to the redress; I do not think there is any consequential loss which should be covered by adding interest.

Clydesdale says it should be entitled to offset the arrears of £316.64 which I find Mr C legitimately owed as a result of the confusion over the settlement of the original loan, and which remains unpaid. However, Clydesdale had previously written this off and told Mr C it would not pursue him for this balance. I do not consider it would be fair for me to offset this amount from the required redress which reflects the cost of the loss caused by Clydesdale’s error. If Clydesdale believes it is legally able to pursue this debt then it should do so through proper debt collection channels, giving Mr C the protections he is entitled to in relation to consumer credit debt.

#### *other matters*

Mr C has also complained about a number of different or incidental issues arising from this dispute, including whether Clydesdale did or didn’t pass his account to debt collection agencies, and whether Clydesdale should give him details of its professional indemnity insurers. I do not consider these matters to be material to the substance of the complaint, and given my proposed decision on the core of his complaint I do not make any findings on these other matters.

#### **my final decision**

For the reasons set out above, my final decision is that this complaint should succeed.

I direct Clydesdale Financial Services Limited to pay Mr C:

- £570.24 compensation for the additional interest he actually paid by having a loan at 14.24% rather than 8.4%, and
- £150 compensation for the distress and inconvenience.

Nigel Cates  
**ombudsman**