

complaint

Miss S complains that Shop Direct Finance Company Limited ("SDFC") unfairly defaulted a catalogue shopping account in November 2017.

background

Miss S opened a catalogue shopping account with SDFC in March 2001. Miss S says that she was able to afford the credit and operated her account well until she started to experience financial hardship in February 2010. She says that she made SDFC aware of her problems at the time and has remained in regular contact ever since.

I can see that over the intervening years Miss S has shared details of a serious and ongoing medical condition with SDFC, and has consistently made token repayments towards her outstanding account balance. In return I can see that SDFC has waived any interest and charges that would have been due on Miss S's account since March 2010 – although it should be noted that part of that interest was only waived after Miss S had made a complaint to this Service in 2011.

Each of the various repayment arrangements that Miss S made with SDFC were time-limited – they generally lasted for between six and twelve months. So at the end of those arrangements SDFC began recording Miss S's payments as having failed since she didn't make the contractual minimum payment on the account – although she did continue to make the previously agreed token payments. Once a new token payment arrangement had been set up the payments on Miss S's account were again reported as being made on time.

In November 2017 SDFC wrote to Miss S to inform her that it intended to default her account. It gave her two weeks to repay the full outstanding balance. As Miss S was unable to make that repayment the account was defaulted. SDFC says that it did this to enable Miss S to draw a line under the debt, although the default would remain on her credit file for six years. SDFC said that it had no intention of actively pursuing Miss S's debt, or selling it to a third party debt collection company. It also said it would continue to suspend any administration or interest charges on the account.

Miss S's complaint has been assessed by one of our adjudicators. He didn't think it had been fair to delay applying the default on Miss S's account until November 2017. He thought that when Miss S told SDFC in 2014 that, although her health was at that time improving, her financial situation remained just as difficult, it should have decided at that point there was little prospect of Miss S being able to repay the debt. So he recommended that the default be backdated to March 2014.

SDFC accepted our adjudicator's recommendation. Miss S said that she would also accept the recommendation, but only if SDFC additionally agreed to write off her debt. SDFC repeated its earlier offer that it would no longer actively pursue the debt. But it said it would provide an unfair picture of Miss S's credit history if it showed the debt as having been settled. Our adjudicator thought that what SDFC had said was fair.

Miss S didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Miss S accepts my decision it is legally binding on both parties.

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've also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Miss S says that she started facing financial problems in early 2010. From the information I have seen it appears that any interest or charges that had been added to her account since that date have been removed from her outstanding balance. Miss S accepts that the balance has been incurred due to her spending on the account, and has taken full responsibility for that outstanding balance. She says that it has always been her intention to fully repay her account once her circumstances improve.

Miss S's complaint relates in the main to the decision taken by SDFC in November 2017 to default her account. But she has also asked whether it would be appropriate for SDFC to write off her outstanding balance given her continuing medical condition, and the length of time that her balance has been outstanding. So I will deal with both issues in this decision.

The regulator at the time Miss S first started facing problems was the Office of Fair Trading. It required lenders to treat customers who were facing financial difficulties with understanding and due consideration. In particular lenders were encouraged to consider accepting token repayments from consumers whose budgets were in deficit to allow them a reasonable period of time to recover from an unexpected income shock.

But I don't think there was ever any intention for such arrangements to be prolonged in nature. In fact, when those arrangements were first introduced in 2010 the token payments were not expected to last for longer than six months. After that time it was hoped that a consumer would be back on their feet financially and able to resume their normal repayments. Or otherwise an alternative form of debt remedy might need to be considered.

On the one hand, it can be argued that SDFC treated Miss S with a great deal of understanding and sympathy in allowing her token repayments to run for such a long time. But I do think a point should have been reached, far earlier than 2017, when SDFC should have realised it was unlikely that Miss S's finances would recover in the short term. Even with the benefit of hindsight there isn't an obvious time at which I think that point should have been reached. Our adjudicator thought that point might have been reached in early 2014, after Miss S said her health was showing signs of improvement, but that hadn't led to an improvement in her financial situation.

Both Miss S and SDFC have said they are willing to accept the default being applied with an effective date of March 2014. I don't think, for the reasons I've given above, that would be an unreasonable point for a default to have been applied. So as part of putting things right, that is what I will ask SDFC to do.

I therefore now need to consider what should happen to the outstanding balance that remains on Miss S's account.

I haven't seen anything to suggest that SDFC was irresponsible to allow Miss S to take this amount of credit. Miss S has said that for a number of years she was able to afford to manage her credit well. It wasn't until 2010 that she first faced any financial problems. And as I've explained earlier her outstanding balance doesn't contain any interest or charges that SDFC would normally have added after that time.

Miss S has provided us with guidance given to lenders by the Money Advice Liaison Group. It particularly deals with how lenders might consider writing off debts owed by consumers with similar health issues to those being experienced by Miss S that are long-term in nature. But the health of a consumer is only one of a number of matters the guidance suggests a lender should consider. Here Miss S borrowed money that she intended to repay. And Miss S tells us that she has chosen not to seek insolvency remedies such as bankruptcy or a debt relief order as she was keen to repay what she owed rather than avoid her obligations.

I don't think it is right, in the circumstances of this complaint, for me to direct SDFC to write off the debt. But I have noted that SDFC has confirmed that a decision has been reached that it will no longer pursue Miss S for the outstanding balance or sell the debt to a third party. But in order for the debt to be shown as satisfied on Miss S's credit report she would need to pay off what she owes. I appreciate that Miss S has concerns that SDFC might alter its stance and begin seeking repayment of the debt in the future. I have no reason to think that is likely to happen, but whilst I would find that change of approach to be disappointing, I cannot say that it would be unfair for it to do so.

So in summary I don't intend to direct SDFC to write off the debt that Miss S owes. But SDFC should alter the default date of the account in its records, and the information it sends to credit reference agencies, to show the account should have been defaulted in March 2014

my final decision

My final decision is that I uphold part of Miss S's complaint and direct Shop Direct Finance Company Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 6 December 2020.

Paul Reilly
ombudsman