

complaint

Mrs R and her representative complain that MEM Consumer Finance Limited has applied a default to her credit file.

background

Mrs R took out a payday loan with MEM but her payments were in arrears. She is unhappy that MEM applied a default to her credit file without sending her a default notice. She says if she had been made aware that a default would be applied to her credit file she would have found a way to repay the outstanding balance.

MEM says it did not send a default notice as it was not required to do so by section 87 of the Consumer Credit Act 1974. Mrs R was in arrears and had not repaid the balance despite it sending several arrears notices so it added a default to her credit file.

Our adjudicator recommended that the complaint should be upheld. In summary she considered that it would have been reasonable for MEM to have sent Mrs R a default notice before applying the default to her credit file. Failing to do so deprived her of the opportunity to find alternative means to pay off the debt and to stop a default appearing on her credit file. As this was not done the default should be removed from her credit file and which should also be updated to just show that she was in arrears.

MEM does not agree. In summary it says:

- It did not issue a default notice as it was not required to do so by the Consumer Credit Act 1974 or OFT Guidance.
- It is concerned that it is being suggested that wholly accurate information is removed from Mrs R's credit file.
- Mrs R was sent prior notification that her default status was going to be recorded in the case of continued non-payment. It also supplied a template letter it says was sent.
- Mrs R had consented to the terms and conditions of the loan agreement and its privacy policy which included references to the referral of information to credit reference agencies in specified circumstances.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have noted MEM's references to provisions in the Consumer Credit Act 1974 and OFT Guidance - particularly about when it is required to send a default notice - which it says are relevant in this complaint. But, this service is designed to be informal and to resolve problems arising between consumers and their financial services providers and my role, as an ombudsman, is to consider the individual complaint and decide whether something has gone wrong. I am required to reach a decision on a complaint that is fair and reasonable in all the circumstances, taking into account – but not necessarily being bound by – any relevant law (amongst other things).

Having considered matters I agree with the conclusions reached by our adjudicator for broadly the reasons given.

Furthermore, whether or not MEM was required by the Consumer Credit Act to send Mrs R a default notice, and notwithstanding the terms of her loan agreements, I agree with the adjudicator and find that it was fair and reasonable for MEM to have sent a default notice in this case before applying the default to her credit file.

Had MEM done so I consider Mrs R would have had one final opportunity to pay off the outstanding balance before a default was applied to her credit file. Mrs R has said that if she had received one she would have sought the means to pay off the debt – including borrowing the money from friends - to avoid a default being applied.

MEM also says that it sent Mrs R a letter confirming that a default would be applied to her credit file and it has supplied a template of the letter. But it has not provided evidence that the letter was actually sent to Mrs R. Its contact with her in the five or so months prior to the default being applied appears to have been limited to attempts to phone her.

The template letter says “*Your file will now be passed to a third party collections agency that will act on our behalf. Please note this external agency could arrange to visit you at home to collect any outstanding balances owed. **Please be aware your account information will be passed to a credit reference agency as in default which will stay on your credit file for six years and this could affect future borrowing with other lenders. In order to prevent this action being taken please call our collections team on ... as a matter of urgency.***” But it does not detail exactly how much Mrs R owed, when it had to be paid by, the exact consequences of not paying and the timetable when further action would be taken, as I consider would have been fair and reasonable.

In all the circumstances I am satisfied that the fact that MEM did not send Mrs R a default notice and/or write to her in a more precise, detailed and specific manner has most likely deprived her of the opportunity to pay off the debt and avoid the registration of the default.

Consequently I consider that the adjudicator’s recommendation - that the default should be removed from Mrs R’s credit file and that it should be updated to just show that she was in arrears – is fair, reasonable and accurately reflects the conduct of her account.

Overall, I therefore see no compelling reason to change the proposed outcome in this case.

my final decision

My final decision is that I uphold this complaint and I order MEM Consumer Finance Limited to remove the default from Mrs R’s credit file and also to update it to just show that she was in arrears.

Stephen Cooper
ombudsman