

## **complaint**

Ms M complains that 1st Credit Limited wrongly refuses to remove adverse data registered on her credit file.

## **background**

Ms M owed debts to a bank. 1st Credit bought the debts and took legal proceedings against Ms M to recover the money. Ms M says that 1st Credit failed to comply with court procedures for disclosure of documents, with the result that the court did not give judgment in its favour and awarded costs of £90 in her favour.

Ms M considers that 1st Credit is obliged to now remove all entries relating to the debts from her credit file. She believes that it is wrong and unfair for 1st Credit to allow these to remain.

1st Credit says that the outcome of the court proceedings does not affect the registrations, which were initially made by the original creditor and which it considers still to be correct. So it is not willing to remove them. As things were not settled, Ms M brought her complaint to this service where an adjudicator investigated it.

From the evidence, the adjudicator concluded that 1st Credit had bought the defaulted debts which had been genuinely owed by Ms M. The adjudicator was satisfied that the credit registrations were true and accurate reflections of the account and did not find that 1st Credit had made any error in recording that.

Overall, the adjudicator was not persuaded that 1st Credit had to remove the registrations and so did not recommend that the complaint should succeed. Ms M did not agree and said, in summary:

- There is case law that, where it has been found that a regulated credit agreement is irremediably unenforceable, the debtor cannot accurately be described as being in default.
- The judge said that 1st Credit had not provided the necessary proof of the debt and that is why its claim was dismissed. It is just a technicality to say that the judge did not find the debt to be unenforceable.
- In her view, if 1st Credit was unable to persuade the court to give judgment in its favour for the debt, then it is not entitled to report the debt on her credit file.
- At the very least, the credit file reporting should have stopped as at the date the case was heard.
- The debt is also statute-barred since more than six years have elapsed since any payments were made on her account.
- The registrations are stopping her from changing mobile phone providers and she has been forced to stay with her current provider.

Ms M also provided a copy of her credit file, to show what was recorded there.

### **my findings**

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

Ms M has not claimed that she never owed the debts – rather, her argument is that 1st Credit is not entitled to recover the debts from her in court and so must remove any credit registrations relating to them.

When 1st Credit took Ms M to court it did not provide the necessary documentation to support its claim, with the result that the claim was dismissed. Ms M regards that as tantamount to a declaration of unenforceability.

I have no standing to determine whether or not a debt is enforceable in law; that is a matter for the courts to decide. That said, I've seen nothing to suggest that the court ruled the debts irremediably unenforceable in this case – only that it was not prepared to give judgment for 1st Credit and so dismissed the case.

I've noted Ms M's view that this is just a technicality, but I do not share that view. From what she has shown us, there is no court order that prevents 1st Credit from maintaining the credit registrations.

The registrations were initiated by the original lender, and I do not accept that they are inaccurate. In all the circumstances, I find that 1st Credit is not obliged to remove or discontinue the disputed registrations.

### **my final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 4 April 2016.

Jane Hingston  
**ombudsman**