

complaint

Mr L complains about Lloyds Bank PLC recording information on his credit file. He believes the debt with the bank is statute barred and because of this the debt should no longer be showing on his credit file.

background

Mr L took out a credit card with the bank. In 2008 he lost his job and experienced some financial problems. Repayments to the credit card account stopped and an unpaid balance on the account remained.

In 2014 Mr L says his wife applied for a loan but was declined. He then noticed this account was showing in default with the credit reference agencies. He complained to the bank as he believes the account should not be showing as defaulted on his credit files.

Mr L believes the debt is statute barred as no action has been taken on the account for more than five years. Mr L lives in Scotland where debts can be statute barred after five years, instead of six years as it is in England and Wales.

Unhappy with the bank's response, Mr L referred his complaint to us. It was considered by one of our adjudicators, who did not recommend it be upheld. The adjudicator found that the default had been applied correctly to Mr L's credit file and our service could not comment on the enforceability of the credit card account debt. The adjudicator felt, on a fair and reasonable basis, he could not recommend the bank remove the default from the credit file.

Mr L did not accept the adjudicator's conclusions and the complaint has been referred to me for final consideration.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have not upheld this complaint.

The credit card account is showing as defaulted in August 2009. The bank has told us that it issued a default notice to Mr L in April 2009, after no payments had been received to the account for several months. The bank no longer has a copy of the actual default notice but it has provided details of its internal records that show the notice was sent.

The default notice set out what had to be paid, and by when, to avoid the account defaulting. Mr L was in financial difficulties at the time and it is perhaps unsurprising that he was not in a position to take the required action to avoid the account defaulting. Despite the absence of the default notice I am satisfied, on balance, the default notice was sent to Mr L. The required action was not taken to avoid the account defaulting and the default was then applied to the account with the credit reference agencies.

The Information Commissioner's Office (ICO) states that it is generally good industry practice for a default to remain on an individual's credit file for six years. A default would generally then come off the credit file after six years. The ICO also states that a credit file should be accurate and should reflect how an account has been run.

Mr L argues that the default should be removed after five years. He lives in Scotland and believes that as the debt has not been pursued for more than five years it is now statute barred. English law states a debt can be statute barred after six years but it is however different in Scotland. Under Scottish law a debt can be statute barred after five years. Scottish law also states that if a debt is statute barred, it will be deemed to have been 'extinguished'.

Our service has no power to declare a debt as statute barred as this is something only a court can do. I have not seen anything in this case that demonstrates a court has actually declared the account as now being statute barred. If the account is considered by a court the issue surrounding whether the default should remain on the account could also be considered by the court.

Our service considers complaints on a fair and reasonable basis and I have considered whether in the circumstances here it is unreasonable for the default to remain after five years. Having done so, I do not find the bank has acted unreasonably or unfairly by not removing the default after five years.

The account did default and the date of the default is accurately recorded with the credit reference agencies. Mr L believes his credit file is inaccurate as the debt no longer exists. As I have already stated however, it is for a court to determine a debt is statute barred, and I have not seen anything here demonstrating the court has done this. It is accepted good practice for a default to remain on a credit file for six years and in the absence of anything from the courts to find it should be removed, I do not find the bank should remove the default after five years.

I appreciate this decision will come as a further disappointment to Mr L but there are insufficient grounds for me to uphold this complaint.

my final decision

My final decision is that I do not uphold this complaint and I make no award or direction against Lloyds Bank Plc.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr L to accept or reject my decision before 8 June 2015.

Mark Hollands
ombudsman