

complaint

Mr R complains that Metro Bank PLC won't remove late payment markers from his credit file despite it writing off a debt which was incurred during a period of incapacity. He wants the markers removed. Mr R is represented by an advocate who I'll call Mr B - but for ease of reading I'll mostly refer to everything as if Mr R had said it.

background

In the complaint Mr B told us that Mr R has suffered from serious illness and this has affected his ability to understand agreements he entered into. In short it's said he lacked the capacity to enter into credit agreements with various financial businesses - although this complaint only concerns Metro.

Mr B tells us that he has been supporting Mr R throughout this process. After an initial unsuccessful complaint, additional medical evidence was supplied. As a result Metro changed its initial view and agreed to write off the debts. But it still refuses to remove the late payment markers. Mr R thinks this is unfair.

Metro initially told us it had agreed to write off the debt and remove the default from Mr R's credit file but wouldn't be removing the late payments markers. Upon receipt of the investigator's opinion it replied in rather more detail.

Metro said it had written off the debt and removed the default from Mr R's credit file - neither of which it was required to do. It went on to explain that there was no dispute about payments not being made and that it was required to give accurate information to credit reference agencies. It accepted that once a bank became aware of a customer's mental health issues it was required to respond sympathetically and fairly - but this didn't necessarily include either writing off debt or amending credit files. So it didn't accept it had acted unfairly in refusing to remove the late payment markers.

I issued a provisional decision on 18th July 2017. In it I said I thought Metro had responded positively to new medical evidence when it became available. And in writing off the debt - but retaining the late payment markers on the credit file - it had acted fairly. Since then Metro hasn't provided any additional evidence or comment.

Mr R has been in touch on several occasions - saying he will be sending in more evidence to support his case. I understood this was likely to take the form of medical evidence suggesting new medication would guarantee there would be no repetition of this type of behaviour. And to add weight to this he's referred to his good credit history prior to his incapacity. But to date I've not received this further information. In these circumstances I see no reason to depart from the findings of the provisional decision which I set out below.

my findings

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

I should say that I'm also dealing with complaints from Mr R which raise similar issues with other businesses. This decision relates solely to the complaint against Metro.

I can see this has been a very difficult time for Mr R and that he's likely to be on medication for the foreseeable future. And that his actions have, according to the medical evidence, been largely influenced by his medical conditions. I can only express my sympathy for his situation and acknowledge the difficulties he has faced and will no doubt continue to experience.

I can see from the history of this case that it's been a long drawn out matter as new evidence has continued to emerge and more detailed medical opinion has been supplied. But this has also shown that Mr R has been on medication even before these credit arrangements were made.

And I think it's fair to say that Metro have responded to each new development in a positive manner. This has resulted in it writing off the debt and removing the default from Mr R's credit file - neither of which it was required to do. Industry guidance and the banking code do not require that agreements entered into - even when one party doesn't have capacity - are necessarily set aside. So Metro has shown flexibility and understanding in its handling of this matter.

But in reaching my decision I think it's necessary to emphasise that I have to consider the interests of both parties. And I think Metro (and other prospective lenders) should be able to see some information that would alert them to the risks that might attach to lending to Mr R. Obviously this needs to be achieved as fairly and sensitively as possible whilst maintaining an accurate reflection of events.

I've seen no evidence that - due to his medical condition - the same situation could not occur in the future and be beyond his ability to control. And it can't be in Mr R's interests that he should be able to access credit as easily as he seems to have done in the past. That view is supported by the medical evidence presented on his behalf. In it there's a recommendation that he not be allowed access to credit - because of his condition. Whilst that's not a decision for me to take, it's relevant to the issue of what is a fair and reasonable outcome to this complaint.

So I think it's in the interest of both parties that the credit file accurately reflects past account activity. It seems to me this could reasonably be achieved by either the debt being recorded as partially settled or - as Metro has decided - written off but with late payment markers remaining.

And whilst it will no doubt come as a disappointment to Mr R, for the reasons given above, I'm not going to uphold this complaint. So I shan't be asking Metro to do anything more.

my final decision

For the reasons given above my final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 6 November 2017.

Stephen D Ross
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