

complaint

Mr C complains that he has asked Express Finance (Bromley) Limited (“Express Finance”) to remove two defaults recorded on his credit file, but it has not replied to his correspondence.

background

Mr C took out a loan with Express Finance at the beginning of September 2010. Four days later he took out a ‘top up’ loan. The total plus interest was repayable at the end of the month. However, when Express Finance attempted to debit Mr C’s account it was unsuccessful.

Express Finance says it entered into a repayment arrangement with Mr C in October 2010. The debt was finally settled in January 2013.

Mr C complained in April 2013 that defaults had been recorded on his credit file which were affecting his ability to get a mortgage. Express Finance says it told him that any debt outstanding for more than 90 days is correctly reported to the credit reference agency.

our initial conclusions

After initially rejecting Mr C’s complaint, the adjudicator ultimately recommended that it should be upheld because she was not satisfied that Express Finance had sent Mr C a default notice. She recommended that Express Finance remove the default entries on Mr C’s credit file.

Express Finance does not agree with the adjudicator’s conclusions. It says Mr C did not settle the loan until 861 days after the due date. Therefore, it does not agree with the recommendation to remove the defaults from Mr C’s credit file.

my provisional findings

In my provisional decision issued in June 2014, I explained why I was minded to uphold Mr C’s complaint, but for different reasons to those of the adjudicator. I invited both parties to let me have their further comments and evidence. Express Finance and Mr C have accepted my findings.

my findings

In light of the parties’ responses to my provisional decision, having considered all the available evidence to decide what is fair and reasonable in all the circumstances of this complaint, my decision remains the same.

Therefore, I have set out my findings again below.

Express Finance says Mr C defaulted because he did not repay his loan on time. Therefore, it was obliged to report this information to credit reference agencies. Express Finance says Mr C would have been sent a default notice as part of its standard procedures, even though, it argues, it did not have to send one ‘for credit file registration’.

Initially, Express Finance said it was unable to produce a copy of the default notice it sent because of the passage of time. It says the notice would have been ‘system generated’ and sent 74 days after the repayment due date. This would have been around the second week of December 2010.

However, Express Finance has recently produced a default notice dated 13 December 2010, which it says is a copy of the notice sent to Mr C, retrieved from its archives. The notice states that Mr C had breached the agreement by failing to repay the loan on the due date. It gave him 14 days to pay the arrears to avoid the proposed enforcement action listed in the notice itself.

Mr C disputes that Express Finance sent him a default notice. He says he did not receive one. He argues that he would have sourced money from friends or relatives to repay the loan to avoid a default being registered had he received the notice.

I do not agree with Express Finance's argument that it did not have to send Mr C a default notice to register a default on his credit file. As the loan agreement between them was regulated by the Consumer Credit Act 1974 the default provisions set out in section 87 of that Act apply.

In summary, the effect of section 87 is that a person is not in default under a regulated consumer credit agreement unless-

- (i) he commits a breach of the agreement;
- (ii) the breach entitles the creditor or owner to take any of the actions listed in section 87 of the Act, e.g. terminate the agreement;
- (iii) the creditor or owner has given the person the opportunity to remedy the breach by serving a default notice which complies with the Act, and
- (iv) the person does not comply with the notice, or does not comply in time.

Unless this has happened, in my view it would not be fair or correct, in accordance with the Data Protection Act 1998, to record a default on a person's credit file.

Mr C has provided this service with a copy of his credit report which shows that Express Finance registered two defaults in early October 2010. However, if I accept what Express Finance has said and the evidence it has provided, it did not send Mr C a default notice until 13 December 2010. Therefore, the registration was premature.

Also, by this stage, Express Finance knew that Mr C was experiencing financial difficulties and had already (in October 2010) agreed a reduced payment arrangement with him. In these circumstances, I do not agree that it should have gone on to send a default notice to Mr C unless he reneged on that arrangement. In my view, this is in accordance with Information Commissioner's guidance to lenders set out in the Commissioner's Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies. Even though the Principles were published in January 2014, they are no different in substance to the Commissioner's earlier 2007 technical guidance on this point.

In addition, even if Mr C had defaulted on the arrangement, I do not think it is right that two separate defaults should have been recorded for what was in effect a single loan repayable in one lump sum.

Express Finance has queried what it is permitted to report to credit reference agencies if it is not permitted to register a default in these circumstances. I would refer it to the Information Commissioner's Principles, which set out clearly what is acceptable. Express Finance can find the Commissioner's guidance on his website.

my final decision

For the reasons given, my final decision is that I uphold Mr C's complaint and direct Express Finance (Bromley) Limited to remove both default registrations from Mr C's credit file.

Athena Pavlou
ombudsman