

complaint

Mr W complains that Lowell Portfolio I Ltd (Lowell) has registered a default on his credit file without notifying him. He wants it removed and compensation for the stress he says he has experienced.

background

Mr W is complaining about a default that he says was put on his credit file. He says he never received notice of it. And despite saying he's repeatedly asked for evidence he says none has been given to him. He says had he known he would have paid off the sum involved and avoided the default. Mr W says it's stopping him getting a mortgage.

In its final response letter Lowell said it had bought the account from another company (A) in good faith and relied upon information supplied by it. Lowell stated it was required to accurately report how the account was operating at the time of purchase. It gave details of the date that A had applied the default and the date it (A) had said the last payment had been made on the account.

Lowell gave details of the date it said it had sent a notice of assignment to advise Mr W of the sale of the debt. And that it was obliged, as the legal owner of the debt, to update the default to show in its name. It said that further letters had been sent but no contact had been received from Mr W - so the account had been passed to debt recovery agents. Amounts totalling more than £200 had since been received. But it did say it would be happy to consider removing the default if Mr W could show payments had been made between the dates that A reported receiving the last payment and the date the default was registered. Otherwise, it confirmed that it could see no reason to remove the default from the credit file - in the light of information provided by A. And Lowell further explained that it was updating the credit file correctly, on a monthly basis, to reflect any payments received through its debt recovery agent.

Our adjudicator did not recommend that this complaint should be upheld.

She noted that Mr W had an outstanding complaint against A but emphasised that she was dealing only with the complaint concerning Lowell. She found the default notice had been sent - and that whilst Mr W claimed not to have received it - a business can't be held liable for items lost in the post. She observed that Lowell had offered to consider removing the default - if Mr W provided evidence of payments made which had not been recorded. And she thought this was not an unreasonable request.

The adjudicator advised that although A had now decided, as a gesture of goodwill, to clear the balance on the account it had not admitted any error. And it had said that any charges applied had been imposed in line with the terms and conditions. She said Lowell had since told her that *if* the debt was cleared by A, it (Lowell) would no longer be the owner of the debt - and the default would be removed. But that wouldn't prevent A from re-recording it for the remainder of the default period. So given the circumstances as she couldn't safely conclude that Mr W had not been made aware of the default - she wasn't going to ask Lowell to remove it.

Mr W replied and said he didn't think the evidence relied on by the adjudicator to justify her view - a screen shot of the record of default notice having been sent - would be sufficient in

court. The adjudicator replied that whilst we take the law into account we are able to take a “fair and reasonable” approach and thus screen shots can be considered.

Mr W wasn't satisfied with the outcome and asked that an ombudsman make the final decision.

my findings

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

I'm aware Mr W has another complaint which arises out of these circumstances and I understand how he sees the two matters as inextricably linked. But I need to make it clear that I can only deal with the aspect of his complaints that refer to Lowell.

The evidence I've seen shows clearly that the notice of default was sent by A. And Lowell subsequently sent notice of the assignment. Whether he received them I'm not able to say - although I'm happy to accept he does not recall doing so. But it makes no real difference to my decision for the reasons I'll explain.

Mr W has not denied that he owed a debt. As such it was his responsibility to make arrangements to keep the repayments up to date or to contact the lender to let it know if he was unable to do so. When Lowell bought the debt the default had already been recorded and it simply re-registered that information in its name.

And it seems that it's only after the debt was passed to debt recovery agents that contact - and payments - were re-established. When payments began to be received Lowell updated the credit file accordingly.

Since the complaints were made I'm aware things have moved on and I've seen a letter from A that says it will be clearing the debt with Lowell - as a gesture of goodwill. But as our adjudicator has said A does not accept any mistake was made and insists the defaults were properly recorded.

And Lowell has told Mr W that if he can supply evidence of payments made after the last date recorded - and before the date of default - it would be happy to consider removing the default. But I've seen no evidence that he has done so. In my view that was a reasonable request - and in the absence of such information I'll not be asking Lowell to do anything else.

I'm aware that this will come as a disappointment to Mr W. But I agree with our adjudicator that it would not be fair and reasonable of me to say that Lowell has done anything wrong - and as such I can't uphold this complaint.

my final decision

For the reasons given above I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 August 2017.

Stephen Ross
ombudsman