

complaint

Mrs C complains, in summary, that Uncle Buck Finance LLP, ("UBF"), continued to charge her interest on her loan account despite telling it that she was off work and unable to continue paying it.

background

Mrs C took out a short term loan with UBF on 7 February 2018 for £600. The loan was to be repaid by six monthly repayments with a highest repayment of £181.24. The total of all repayments under the loan agreement was £1,075.20.

Soon after taking out the loan, Mrs C became ill and she was under hospital care. Mrs C immediately sent UBF medical evidence, but UBF continued to apply interest to her account. Although UBF said it would halt her payments, the loan had more than doubled in interest. Mrs C also said that a default had been applied to her credit file and UBF had threatened to take her to court. But she was still under medical care with the hospital and unable to work until May 2019. She wants UBF to remove the interest it had applied. Mrs C is also unhappy that UBF caused her stress by referring her account to a debt collection agency.

In its final response letter, UBF said that when it received confirmation that a customer was having financial difficulties, it needed to establish what the current financial situation was. The best way to do this was for the customer to complete an income and expenditure form. Mrs C completed this on 27 February 2018 and her account was placed on hold until 18 April 2018 due to her situation. This hold expired and was then reapplied on 24 April 2018 to 24 July 2018, as Mrs C confirmed her situation hadn't improved. UBF also requested confirmation from Mrs C about her employment status and asked her what benefits she was receiving. After the hold on her account expired, Mrs C was asked to contact UBF to discuss a repayment plan.

UBF also noted that Mrs C was incorrectly told that she had disposable income when in fact it was clear from the figures she'd provided that there was a deficit. It apologised for this. But due to no payment on the account despite requests for an offer of payment to be made, UBF passed Mrs C's account to a debt collection agency.

Mrs C's first repayment on her loan was due on 23 February 2018. UBF said that it applied default interest plus a default charge to Mrs C's account from that date due to her not making the payment on time. Mrs C's account balance was the total cost of credit (as set out in her loan agreement) plus the default interest and default charge. No further charges had been applied to Mrs C's account after 27 February 2018, when she informed it of her financial situation. When UBF realised Mrs C was in financial difficulty it stopped any additional interest and provided her with breathing space on two occasions. UBF said that Mrs C did inform it that she intended to resume work but due to her ill health, this was not possible. It said that it wasn't able to place the account on hold indefinitely. So it had requested an offer of payment from Mrs C, which wasn't forthcoming.

The adjudicator didn't recommend that the complaint about how UBF had treated Mrs C's financial difficulties should be upheld. She could see from the notes provided by UBF that it had taken Mrs C's income and expenditure information and placed her account on hold. She could see there was further correspondence from March to May 2018, but it appeared a mutual agreement couldn't be reached. The account was then transferred to a third party to collect the debt. The adjudicator thought a reasonable amount of time was allowed before

the account was transferred to the third party. She said that UBF had added contractual interest but she didn't think this was unreasonable as it didn't appear it had charged her more than she was contracted to repay. The adjudicator thought that UBF had taken reasonable steps to allow Mrs C to make token payments on her account, but she couldn't see that this had happened. Due to this she didn't uphold Mrs C's complaint.

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 note that our adjudicator had issued an initial view which dealt with whether UBF had lent irresponsibly. But Mrs C's complaint wasn't about irresponsible lending. So I'm only dealing here with the subject matter of her complaint which was about how UBF had treated Mrs C's financial difficulties. This was also the subject of the adjudicator's second view which she didn't uphold as stated above.

I've seen Mrs C's loan agreement. I note that Clause 3.10 says that she should contact UBF immediately if she is experiencing financial difficulties and that it will show forbearance and seek to assist Mrs C by agreeing alternative payment arrangements.

I've reviewed UBF's contact notes. I note that Mrs C missed her loan repayment due on 23 February 2018. I can see from UBF's contact notes that she then contacted UBF on the following day and completed an income and expenditure form. On 27 February 2018, Mrs C told UBF she was receiving sick pay, her priority bills were in arrears and she was receiving treatment in hospital. I note that UBF said on that day that it would put a hold on the account until the end of March 2018 and then ask for some kind of token payment. I think this was reasonable.

On 24 March 2018, Mrs C sent UBF a doctor's note which UBF noted had expired and it asked Mrs C if she was back at work. Two days later Mrs C told UBF she was required to stay off work until 14 May 2018. And on 24 April 2018, Mrs C sent UBF documents to confirm that she would need to be off work until 15 May 2018. So UBF extended the hold on Mrs C's account. On 12 May 2018, I can see that Mrs C told UBF she would be off sick until 9 July 2018. UBF said in its final response letter that it extended the hold on Mrs C's account until 24 July 2018. I again think this was fair.

I can see that UBF sent Mrs C an email on 26 July 2018, and it sent her another email on 1 August 2018 asking for more clarification of her debtors. I can't see that Mrs C responded to these emails. On 7 August 2018 UBF sent Mrs C a default notice and it registered a default on her credit file on 10 October 2018. The account was sent to a debt collection agency on 7 August 2018.

Mrs C's loan was regulated by the Financial Conduct Authority. Its Consumer Credit sourcebook ("CONC") 7.3.6G says: "Where a customer is in default or in arrears difficulties, a firm should allow the customer reasonable time and opportunity to repay the debt." And when Mrs C contacted UBF, I would have expected it to respond positively and sympathetically.

I think that UBF's sending Mrs C an income and expenditure form was a reasonable response after her missed repayment. And I think it continued to act reasonably and in line

with the CONC guidance by putting a hold on Mrs C's account and then extending it for around five months until she didn't respond to its emails.

Mrs C was unhappy that UBF continued to charge her interest. I note that it had charged Mrs C a few days default interest and a default charge until 27 February 2018, but it then said that no further charges or additional interest (other than contractual interest) had been applied to Mrs C's account after 27 February 2018, when she informed it of her financial situation.

I don't think that UBF was necessarily required to reduce the amount of contractual interest payable on Mrs C's loan. CONC 7.3.4R says, "A firm must treat customers in default or in arrears difficulties with forbearance and due consideration." CONC 7.3.5G then goes on to provide examples of forbearance.

The first of these includes suspending interest and charges. But I think it's important to read that example as a whole: "...considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a customer provides evidence of financial difficulties and is unable to meet repayments as they fall due or is only able to make token repayments, where in either case the level of debt would continue to rise if interest and charges continue to be applied)".

In Mrs C's case, after the initial default interest and charges were applied to her account, the level of debt didn't continue to rise, as the loan was at a fixed rate of interest and the interest was all applied at the start. Her loan agreement showed that a total of £1,075.20 was due to be paid which included the amount borrowed of £600 plus the interest due on that amount. After 27 February 2018, I can't see that UBF added any extra interest or otherwise increased Mrs C's debt.

I note that Clause 3.11 of Mrs C's credit agreement says that if Mrs C hasn't responded to any of its attempts to contact her, it may pass her file to an external debt collection agency for recovery of the outstanding debt. Overall I don't think that UBF acted inappropriately in passing her account to a debt collection agency. It had sent her at least two emails asking for more information since the hold on her account had expired. And I can't see that she had answered these.

I note that Mrs C is unhappy that UBF applied a default to her credit file. I can see that this was applied on 10 October 2018.

I have considered the relevant guidance set out in the "Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies (CRAs)" – principles agreed by the credit industry in collaboration with the Information Commissioner's Office.

The guidance explains to consumers that if they fall into arrears on their account, a default may be recorded to show that the relationship has broken down. This may occur after the lender has notified the consumer of its intention to register a default at least 28 days before doing so. The notice is normally given when the account is at least three months in arrears.

Mrs C had missed six monthly payments when UBF sent her a default notice in August 2018. The default notice would have warned Mrs C that her account was about to default as she was behind with her repayments and given her time to catch up on missed payments. But as she didn't do so, the default was recorded on Mrs C's credit file. I don't think UBF acted unreasonably in doing this.

I appreciate that my decision will be disappointing for Mrs C and I'm sorry to see that she has suffered poor health and financial difficulties. But, considering all the circumstances here, overall I don't think that UBF has acted inappropriately here.

If, as seems likely, a balance remains outstanding, UBF should attempt to agree a mutually acceptable repayment arrangement with Mrs C bearing in mind the need to treat her positively and sympathetically in those discussions if she is still suffering financial difficulties.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 5 April 2020.

Roslyn Rawson
ombudsman