

complaint

Mr and Mrs L complain about the way they were treated after they agreed a payment break on their conditional sale agreement with A Shade Greener (Boilers) LLP ('ASG').

background

Mr and Mrs L acquired a new boiler through a 14 year conditional sale agreement with ASG in February 2014. The agreement contained provisions that ASG would maintain and service the boiler for the life of the agreement. In October 2018 Mr and Mrs L signed an addendum shortening the term of the agreement, changing the monthly repayment to £70 and releasing ASG from its obligation to service and maintain the boiler.

Shortly after this Mr L became unwell and had to go into hospital. In November 2018 Mr L asked if he could take a break from repayments under the agreement and ASG agreed.

ASG says it attempted to contact Mr L in March and April 2019 to resume payments. But it says that because Mr and Mrs L didn't respond or make any payments it issued a default notice on 23 April 2019. It issued legal proceedings against Mr and Mrs L for the total amount owed under the agreement on 31 May 2019.

Mr and Mrs L say it was unfair for ASG to default the agreement as they had only missed one payment of £70.

Our investigator thought Mr and Mrs L's complaint should be upheld. He said ASG didn't make it clear enough when Mr and Mrs L were expected to resume payments or when the payment break ended. He said ASG should restore their agreement back to how it was before the default and remove any adverse information from their credit file.

ASG agreed with the investigator's recommendations on the condition Mr and Mrs L wrote to the court confirming they withdrew their defence to the claim ASG had made against them. Mr and Mrs L were not happy to do this. ASG then dropped this requirement but Mr and Mrs L asked for a final decision from an ombudsman saying they did not trust ASG to withdraw the case from court.

my findings

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

Mr and Mrs L have made some complaints about the amount they owe on the agreement as a result of the addendum signed in October 2018. Mr and Mrs L have asked me not to consider these complaint points here so I make no findings in respect of these in this decision.

While looking at this complaint, I've given due consideration, among everything else, to the Financial Conduct Authority Consumer Credit Sourcebook ('CONC'). This is a set of rules and guidance made by the regulator for firms carrying out consumer credit activities (as ASG is doing in this case acting as a lender under a conditional sale agreement). CONC 7.3.4 sets out that

'A firm must treat customers in default or in arrears difficulties with forbearance and due consideration'.

I've kept this overall obligation in mind when deciding whether ASG treated Mr and Mrs L fairly, but where there are other specific areas of CONC I find to be relevant I will make this clear.

ASG's internal contact notes show that Mr L called ASG on 30 November 2019 explaining that he'd just come out of hospital from an operation, was off sick from work and wanted to hold off from payments until after Christmas. After asking Mr L for proof of this Mr L emailed ASG back on the same day. He attached doctor's evidence and asked that payments resume at the end of February 2019. ASG's internal records for the same day say that *'Mr L has sent proof in I have saved in customers folder. Will contact customer end of Feb 2019'*.

It's clear from the note made by ASG referenced above and the statements of account it's sent us that it did agree to the payment break that Mr and Mrs L requested. I do find it treated Mr and Mrs L with forbearance and due consideration in agreeing this.

But having agreed this internally, I haven't seen anything that shows ASG contacted Mr and Mrs L to confirm it, or to make clear exactly when monthly payments should resume again. This is important in this case because ASG has said that Mr and Mrs L should have resumed repayments from March 2019 onwards. And from looking at the default notice it sent Mr and Mrs L in April 2019, March 2019 is when ASG considered arrears began to accrue from.

While Mr L indicated he wanted to resume payments at the end of February 2019, without anything to confirm this, or an exact date that contractual payments should resume, I don't think it was clear enough what was expected of Mr and Mrs L when the payment break ended. There was a direct debit in place for repayments to be made on the fifth of every month but it looks like this was cancelled once the payment break was accepted. So I don't think it was fair for ASG to just assume that payments would begin again on the 5 March 2019.

I recognise that ASG tried to contact Mr L on a number of occasions between 1 March 2019 and the date of the default notice on 23 April 2019. ASG's internal notes show records of attempted calls and text messages to Mr L's phone. But while the notes of these calls do explain the reason for the contact, I've no way of knowing if this was made clear in the voicemail messages that were left. And the text messages and emails only refer to arrears, not the fact the payment break had ended.

Furthermore I'm not convinced that ASG was even clear itself about what it was asking Mr and Mrs L to pay at this stage. For example, one of its internal notes made on 7 March 2019 says *'owing £350'* (seemingly making reference to the payments not made during the payment break), yet the default notice said there were arrears of £140.

Mr and Mrs L have said that the reason no action was taken after some of this contact was because Mr L was recovering from complications he'd experienced from his earlier surgery. So, even if ASG had been able to get in touch with Mr and Mrs L to discuss what it considered was due for March 2019, I think it's likely, given Mr L's health and the fact he was not working that Mr and Mrs L wouldn't have been in a position to make a repayment yet. I think the fair thing to do, giving regard to ASG's obligation under CONC 7.3.4 to treat Mr and Mrs L with forbearance and due consideration, would've been to allow Mr and Mrs L a little bit more time on the payment break.

So, having not made it clear to Mr and Mrs L when their payment break ended or when monthly payments should resume – and given Mr L's circumstances in early March 2019 - I don't think it was fair for ASG to treat Mr and Mrs L's account as in two months of arrears at the point it issued the default notice. So I don't think ASG should've sent the default notice or required Mr and Mrs L to repay the whole balance due on their agreement in April 2019.

Once Mr and Mrs L were in a position to make repayments in late March 2019 I can see that Mr L emailed ASG asking for its bank details. ASG sent this in early April 2019. It did then take Mr and Mrs L a few weeks before they made a payment, and this was after they received the default notice from ASG. But as I don't think it was fair to treat the account in default at this point, I think the fair thing to do would have been to accept the payment and make sure there was agreement for the date of future repayments. Mr and Mrs L have maintained repayments on the agreement since April 2019 and have cleared the arrears that ASG said they were in for March and April 2019. So I don't think there would have been any more problems with their account from this point.

With this in mind I think it would be fair in this case for ASG to treat Mr and Mrs L's account as if their payment break ended in March 2019 and as if repayments began on time from then onwards. Their credit agreement should be amended to reflect this and any adverse information about the agreement recorded from March 2019 onwards should be removed.

ASG issued legal proceedings against Mr and Mrs L on 31 May 2019 and I'm aware that the case is due for hearing on 16 October 2019. I've given consideration to this against the backdrop of CONC 7.15.10 where it says:

'Complaints to the Financial Ombudsman Service and initiating legal proceedings

A lender must not initiate legal proceedings in relation to a regulated credit agreement where the lender is aware that the customer has submitted a valid complaint or what appears to the firm may be a valid complaint relating to the agreement in question that is being considered by the Financial Ombudsman Service.'

Mr and Mrs L's conditional sale agreement with ASG is a regulated credit agreement. This service accepted Mr and Mrs L's complaint on 13 May 2019. On 29 May 2019 ASG acknowledged the complaint was with us. And on 31 May 2019 it sent us its complaint file and explained that it would '*shortly be commencing court proceedings*'. So I think ASG would've known Mr and Mrs L had submitted a valid complaint with this service before it initiated legal proceedings.

I therefore find ASG acted in contravention of CONC 7.15.10 when it initiated legal proceedings against Mr and Mrs L.

I cannot of course stop ASG from pursuing court proceedings in this decision. But in breaching this rule I do find ASG has caused Mr and Mrs L considerable distress and inconvenience. This is in addition to the distress and inconvenience caused to them by the lack of clarity on the payment break and the subsequent pursuit of the full balance on their agreement from April 2019. I think ASG should pay Mr and Mrs L compensation of £400 for all of this.

my final decision

For the reasons I've explained above, my final decision is that I uphold Mr and Mrs L's complaint. To put things right, A Shade Greener (Boilers) LLP must:

- treat Mr and Mrs L's agreement as if their payment break ended and repayments resumed (and were not missed) in March 2019;
- remove any adverse information that has been recorded on Mr and Mrs L's credit file from March 2019 onwards, and;
- pay Mr and Mrs L compensation of £400 for the distress and inconvenience they have been caused.

Under the rules of the Financial Ombudsman Service, I'm required to Mr and Mrs L to accept or reject my decision before 15 November 2019.

Michael Ball
Ombudsman