

complaint

Mr A complains about a payday loan he had with MEM Consumer Finance Limited and is unhappy about a default being added to his credit file. He says he did not receive a default notice and was therefore unaware of the affect the default could have.

background

Mr A took out a payday loan with MEM Consumer Finance in August 2010. The loan was not repaid on the original due date and Mr A only repaid the interest due on the loan. This happened again and although Mr A did make further payments to the loan the full repayments due on the loan were not repaid.

MEM Consumer Finance was in contact with Mr A about the account being overdue and this included a letter it says was sent on 20 June 2011. The letter informs Mr A that his account is to be passed to a collection agent as it's overdue. It also states the account will be in default and this will affect his credit file for six years.

The required repayments were not made, the account defaulted and was passed to a collection agent. The loan was partially settled by payments from Mr A and MEM Consumer Finance wrote off the remaining £54 that was due.

Mr A recently complained to MEM Consumer Finance as he has been trying to obtain a mortgage. He says the default on his credit file is stopping him getting a mortgage and he would like it removed. He says that he did not receive a default notice and was unaware of the implications of the default on his credit file.

MEM Consumer Finance investigated his complaint and said, amongst other things, it is not required to issue a default notice. It did however inform Mr A of its intention to default the account and he would have therefore been aware of the possible default.

Mr A did not accept MEM Consumer Finance's findings and he referred his complaint to us. It was considered by one of our adjudicators and he explained why he did not recommend the complaint should be upheld. In summary, he did not think that MEM Consumer Finance was specifically required to issue a default notice but it did however inform Mr A of its intentions to default his account.

Mr A remained unhappy with the adjudicator's findings and asked for the complaint to be reviewed.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have not upheld this complaint.

Although all but £54 of the required loan repayments were repaid for the loan Mr A took out, there is no dispute the payments were not made when due. The account fell into arrears when the payments were not made and this is what resulted in the account defaulting.

There is also no dispute that MEM Consumer Finance did not issue a default notice, as defined in, or required by, the Consumer Credit Act (CCA). MEM Consumer Finance accepts it did not issue a default notice and it says it had no requirement to do so.

The issue I must consider here is whether or not MEM Consumer Finance should have issued Mr A with a default notice and if it had done so, what affect – if any, would this have had.

The type of loan that Mr A took out is a regulated consumer credit agreement and is covered by the CCA. Section 87 of the act refers to the requirement of a creditor to issue a default notice if it is intending to take certain action against a debtor. In summary a default notice under the CCA is required if the creditor intends to:

- a) *terminate the agreement*
- b) *to demand earlier payment of any sum*
- c) *to recover possession of any goods or land*
- d) *to treat any right conferred on the debtor or hirer by the agreement as terminated, restricted or deferred*
- e) *to enforce any security*

Having considered the specific circumstances of this complaint I am not persuaded that MEM Consumer Finance intended to do any of the actions referred to above. I do not therefore think that in the circumstances here MEM Consumer Finance was required by section 87 of the CCA to issue a default notice to Mr A.

However, I consider it to be good practice for a creditor to inform a debtor of its intentions to default an account and ultimately give the debtor the opportunity to do something to avoid the account defaulting.

The Information Commissioner's Office (ICO) has issued guidance around the issuing and recording of defaults. In summary it states that consumers should be made aware of information about their repayment history being recorded with credit reference agencies when the account or agreement is taken out. The ICO accepts it would be impractical at this point to explicitly refer to what may happen if the account defaults. However, the ICO,

'...strongly recommend that a notice of the intention to file a default should be served.'

It considers issuing a notice of intention to file a default,

'...helps the transparency of the credit reference process and may even prompt payment, so avoiding the need to file a default at all.'

The ICO also states:

'A notice of intention to file a default can be sent with a formal default notice served under Section 87 of the Consumer Credit Act 1974. Where lenders are not required to issue these notices, they can send an intention to file a default through a final demand, letter or relevant account statement, which should make clear not only the intention to file but also the date of the intended default. The date should allow the customer enough time to respond properly.'

While there are certain credit agreements that may not therefore require a default notice to be served as defined under section 87 of the CCA, I consider there is still a requirement for a creditor to inform a debtor of its intention to default an account. The notice of intention should include specific information, as set out above and in the ICO guidance.

MEM Consumer Finance says it wrote to Mr A on 20 June 2011 to inform him of its intention to default. Amongst other things, its letter states:

'Your file will now be passed to a third party collections agency that will act on our behalf. Please note this external agency could arrange to visit you at home to collect any outstanding balances owed.'

Please be aware your account information will be passed to a credit reference agency as in default which will stay on your credit file for six years and this could affect future borrowing with other lenders.

In order to prevent this action being taken please call our collections team on 0800... as a matter of urgency.

Our experienced collections team will be happy to discuss the options available to you if you are having financial difficulties. This may include the option of a reduced settlement figure on your account.'

The letter informs Mr A of MEM Consumer Finance's intention to default his account, what he could do to avoid this and the implications a default may have on his credit file and ability to obtain future credit. On balance, I am satisfied that MEM Consumer Finance has in this instance informed Mr A of its intentions to default his account and what he could do to avoid this. Mr A did not make the required repayment and the account was passed to a collection agent. A default was then applied to his credit file.

Having considered the circumstances of this complaint I am not persuaded that MEM Consumer Finance failed to sufficiently notify Mr A of its intention to default his account, or what he could do to avoid this. While I appreciate Mr A will remain unhappy with my decision there are no grounds for me to instruct MEM Consumer Finance to remove the default that it applied to his credit file.

my final decision

My final decision is that I do not uphold this complaint and I make no award or instruction against MEM Consumer Finance Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr A to accept or reject my decision before 2 December 2014.

Mark Hollands
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