

The complaint

Mrs W complains Morses Club PLC (Morses) defaulted her loan without giving notice during the COVID- 19 pandemic. Mrs W also says this default is preventing her from switching a mortgage to a lower interest rate.

What happened

The default was recorded on Mrs W's credit file in connection with a loan she took for £700 on 18 August 2017. Mrs W was due to make 52 weekly repayments of £24.50.

I can see from the statement of account provided by Morses that Mrs W had problems repaying the loan from at least December 2017. I can also see the debt was sold to a third-party collection agency in July 2021. Morses later confirmed a County Court Judgement (CCJ) has been recorded against Mrs W for the sum of £443.44.

Mrs W says that she called Morses at the end of February 2021 and it agreed to put a hold on her account. Then in June 2021, she found out that her account had been defaulted and she hadn't received notification of this.

Mrs W complained to Morses who wrote to her in a final response letter explaining why it wasn't going to uphold her complaint. In this letter, Morses accepted she has spoken to one of its representatives on 9 March 2021 who had put a temporary hold on the account until 26 May 2021. This hold would've stopped arrears calls and visits from its agent.

Morses says that during this account hold, information would've still been recorded with the credit reference agencies and regulatory letters would still have been sent – it says one such letter was sent on 22 March 2021. It also says another letter was sent to Mrs W on 22 June 2021 letting her know the account had defaulted. Around this time, Morses received a call from Mrs W and she agreed to pay £26.50 per month – however, no payments were successful.

Unhappy with this response Mrs W referred her complaint to the Financial Ombudsman.

An adjudicator reviewed the complaint, and he partly upheld it because he thought Morses ought to have defaulted the account much sooner than it did. The adjudicator explained it took almost four years for Morses to default the account and he could see from the statement of account that Mrs W had been struggling to repay the loan for some time. In the adjudicator's view the account ought to have been default in February 2019 – around 18 months after the loan was granted because at this point, Mrs W still owed Morses around half the amount she was due to pay.

In addition, he explained why Mrs W had contacted Morses for further help that she needed as a result of the COVID-19 pandemic. He could see that a planned call wasn't made after the end of the hold period in May 2021. Having thought about the distress and inconvenience caused to Mrs W he felt a payment of £100 was fair.

Following a telephone call with the adjudicator the call notes suggest that Mrs W did accept the outcome, but she had some further questions about the CCJ. Later the adjudicator emailed Mrs W to explain that the CCJ was a separate matter and not something Morses was granted. Therefore, Mrs W would need to complain to the third party who was awarded the CCJ.

Morses didn't agree with the adjudicator's proposed outcome. I've read in full what it has said, and I've summarised its response below.

- A default wouldn't be recorded until Mrs W went 17 weeks without a payment being made.
- Given Mrs W's payment record a default wasn't appropriate at the time the adjudicator suggested.
- Mrs W made a payment to Morses in February 2019 which prevented a default from being applied at this time.
- Morses acted fairly and sent Mrs W all the arrears notices that it was required to do.
- Morses was aware of a change in Mrs W's circumstances when it spoke to her on 25 February 2021.
- A default notice was sent to Mrs W on 14 March 2021 – when no further contact was received the account was defaulted and then sold to a third party in July 2021.
- When Mrs W spoke to Morses on 5 July 2021 the account was already in the process of being sold to the third party and so any payment which may have been made around this time wouldn't have prevented the sale from going ahead.

As no agreement could be reached, the case has been passed to me for a final decision.

What I've decided – and why

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

I want to start by echoing what the adjudicator has said about the CCJ. This decision can only deal with the acts or omissions of Morses. As the CCJ was sought and granted to a third party this decision can't look at what happened. Mrs W will need to take that up separately with the third party.

As I've explained above, had Mrs W repaid the loan in line with the credit agreement it would've been fully repaid by August 2018. This clearly didn't happen, and a default wasn't recorded until July 2021. The adjudicator said this should be backdated to February 2019. Morses disagreed with this and so I've thought about whether it is fair and reasonable for the default to be backdated, taking account of good industry practice and guidance.

I've considered what the Information Commissioner's Office (ICO) says because it is the body which has been created and has issued guidance for lenders as to what, how and when information should be reported to the credit reference agencies.

This guidance can be found in its paper called "*Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies*." I consider this to be good industry practice and so it is entirely reasonable to see what the ICO says about when a default ought to be reported.

The ICO sets out a clear expectation that should payments not be made in line with the credit agreement than adverse information can and should be reported to the credit reference agencies (CRAs)

“2. Should a payment not be made as expected, information to reflect this will be recorded on your credit file

If you do not make your regular expected payment by the agreed time and/or for the agreed amount according to your terms and conditions, the account may be reported to the CRAs as being in arrears.

If this continues over time, the level of reported arrears will increase, which may result in the lender taking some form of action. This could include notification of their intention to report the account as “defaulted” (see Principle 4 below).”

Underneath this is a footnote aimed directly at home credit providers – which Morses is one.

“1 Home collected credit includes informal flexibility as standard to help debtors cope with unexpected budget pressures. In effect, the home credit agent can - during the weekly home visit - agree missed or part payments on the spot (normally at no extra cost). These informal variations are not themselves reported. However, when the debtor has - in aggregate - missed to the value of 4.33 weekly repayments (equivalent to one month’s arrears), that is reported (as arrears). Only the larger home credit companies use the reporting agencies.”

The guidance then goes on to say

“4. If you fall into arrears on your account, or you do not keep to the revised terms of an arrangement, a default may be recorded to show that the relationship has broken down.

As a general guide, this may occur when you are 3 months in arrears, and normally by the time you are 6 months in arrears.

There are exceptions to this which may result in a default being recorded at a later stage, such as secured or long term loans e.g. mortgages, or if the product operates in a more flexible way e.g. current accounts, student loans, home credit.

If an arrangement is agreed (see Principle 3 above), a default would not normally be registered unless the terms of that arrangement are broken.”

So, the ICO is clear, that should payments not be made, then when the account is at least 3 months in arrears (and thinking about the home credit guidance this would be 12.99 weeks in arrears) a default can be recorded.

Mrs W was committed to paying £24.50 per week, so over a four-week period, I would expect to see repayments of £98. From the statement of account, I can see there are months when Mrs W doesn’t make any payments such as in December 2017, March 2018, June and July 2018.

When Mrs W did make payments, these tended to be for different amounts. For example, she paid £60 in May 2018 and then £35 in August 2018. Clearly, Mrs W was having longer term repayment problems given the infrequent and differing amounts she was paying. I’ve seen nothing to suggest that at this time Mrs W was subject to a formal arrangement, rather that Morses appeared to have been happy to accepted the variable payments Mrs W was making.

I accept the guidance says a default ought not to be applied if a repayment plan is agreed and stuck too, but I can't fairly conclude that in this case Mrs W was subject to a formal plan and was able to stick to it.

Morses says a default wasn't recorded in February 2019 because Mrs W called in and made a payment – and I can see a payment was made by Mrs W on 8 February 2019 for £10. But then Mrs W doesn't make any further payments until 8 April 2019 when she pays £100 and then another payment on 7 June 2019 for £30.

So, while I accept the February 2019 payment may have prevented the default, the fact that then no further payments were made for two months ought to have further indicated to Morses that Mrs W was having financial problems and applying a default at this time would be reasonable and in line with the ICO guidance.

I say this because by February 2019, Mrs W still owed Morses £668, which is just over half what Mrs W was contracted to pay. Even though it was now 18 months since the loan was granted and around six months after the loan ought to have been fully repaid. I am also satisfied that the account was sufficiently in arrears for a default to have been applied at this moment in time- as it seems that Mrs W had not made any repayment at all for at least seven months and so was at least 28 weeks in arrears.

Overall, I think proposed redress – that the default ought to have been registered in February 2019 is entirely fair and reasonable and consistent with the guidance the ICO issued. Especially in light of the number of months where no payments (seven months) were made at all and the sporadic nature of any payments Mrs W did make. I am therefore going to propose that Morses ought to back-date the default it has recorded about this loan to February 2019.

I appreciate Mrs W wants the default removed from her credit file but in the circumstances, I don't think that would be the right thing to do. This is because, unfortunately, she struggled to repay the loan from quite early in the loan term and therefore the loan was always likely to default given the repayment history. So, I think it's fair, in this case a default is recorded, but backdated to February 2019 as the adjudicator suggested. The default will remain on her credit file for six years from this date and therefore it will be removed around February 2025.

I accept that Mrs W sought help during the COVID-19 pandemic after a change in employment and the need to help a vulnerable family member. The Financial Conduct Authority (the industry regulator) provided guidance as to the steps lenders ought to take to assist someone needing help.

However, this guidance was really only applicable to people who were having difficulties solely because of the pandemic. In Mrs W's case, it is clear to me that her problems started much sooner than that – likely at some point at the end of 2017. And so, I don't think the COVID-19 support was appropriate for Mrs W. This would be that Mrs W would be subject to the regular guidance that lenders should adhere to which can be found in the Consumer Credit sourcebook.

The adjudicator also recommended a compensation payment of £100 due to the distress and inconvenience caused to her by Morses because it didn't carry out the account review at the end of May 2021, as agreed. And neither can it explain why it wasn't carried out. He also said, due to call recordings not being available because of Morses' deletion policy he wasn't able to confirm what Mrs W was told in July 2021 about the status of her account. In his view, due to a lack of proactivity by Morses it ought to make a payment of £100.

From what Mrs W has told me, this was a difficult time for her and there had been significant changes in her employment. She reasonably contacted Morses for advice and guidance and it seems, for whatever reasons the account review wasn't carried out. And neither does Mrs W appear to have been aware that her account was being sold. The call from July 2021 isn't available. But Mrs W's testimony is clear that neither the default nor sale of the account was mentioned. Overall, I agree with the adjudicator that a lack of proactivity from Morses added to Mrs W's distress during an already difficult time.

Therefore, I haven't seen anything to make me think this award isn't fair or reasonable, so I'm also going to recommend Morses makes this payment as well.

Putting things right

In order to put things right for Mrs W it should arrange for the following to be done;

- Update Mrs W's credit file in relation to this loan to backdate the default to February 2019.
- Liaise with the third party to ensure that any default it is recording about this loan is also backdated to February 2019.
- Pay Mrs W directly £100 for the distress and inconvenience that has been caused.

To reiterate, what Morses needs to do to put things right doesn't have any bearing on the CCJ that has been recorded on Mrs W's credit file as this is a separate issue.

My final decision

For the reasons I've explained above, I'm upholding Mrs W's complaint.

Morses Club PLC trading as Morses Clubs should put things right for Mrs W as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 12 April 2023.

Robert Walker
Ombudsman