

## The complaint

Mr F complains that Shop Direct Finance Company Limited (SDFC) didn't default his credit facilities when he went into a Debt Arrangement Scheme (DAS).

## What happened

I issued a provisional decision on this case. It was my intention to come to a different outcome to the Investigator, so I wanted to give both parties the chance to respond before I came to my final decision on the matter.

I have copied my provisional decision below which also forms part of this final decision.

*“Mr F says he entered a DAS in August 2017, to which his debt with SDFC was included. Mr F says that SDFC didn't follow regulations set out in the Financial Conduct Authority (FCA) handbook, or guidance issued by the Information Commissioners Office (ICO) when it didn't default the account. He says SDFC should have treated the DAS in a similar way to that of an Individual Voluntary Arrangement (IVA) or a Debt Relief Order (DRO) – which Mr F believes should have resulted in his account defaulting in August 2017.*

*Mr F adds that SDFC have incorrectly recorded the settled dates as being November 2021 when it should be November 2020.*

*Mr F says that because of the way SDFC has recorded his accounts, instead of the DAS being removed after six years (which is what he says should have happened), it will show on his credit file until 2027.*

*The result of all of this is that Mr F has had to pay higher interest rates on lending. And it has delayed his application for a mortgage – which in turn has caused worry that the mortgage application may not be accepted.*

*To put things right, Mr F would like SDFC to remove the account from his credit file on the six year anniversary of starting DAS, which he says should be August 2023. And he would like SFDC to compensate him for the stress caused. And to reimburse him for the costs involved in having to use a Financial Advisor to make a mortgage application due to his credit file containing adverse information as a result of SDFC's mistake.*

*SDFC responded to Mr F's complaint, but it didn't uphold it. It said that it was correctly reporting the DAS as an arrangement on Mr F's credit file. It also explained that a DAS isn't a type of insolvency, and so no default is recorded on the credit file.*

*An Investigator considered what both parties had said, and they thought Mr F's complaint should be upheld. They found that Mr F had missed four months' worth of repayments prior to entering the DAS. They said the ICO says an account should default between three and six months. And it should have been clear to SDFC that the relationship had broken down when Mr F entered into a DAS and so a default should have been recorded in August 2017. The Investigator also thought the situation had caused Mr F unnecessary distress and so they felt SDFC should pay Mr F £125 to compensate him.*

*Mr F agreed to the Investigators view, but SDFC didn't. It said that it had correctly reported the DAS as an arrangement to pay – and reporting a default wouldn't be accurate. Because an agreement couldn't be reached, the complaint has been passed to me to decide on the matter.*

### *What I've provisionally 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.*

*Having considered all of the information on file, it is my intention to partially uphold this complaint. I'm currently of the view that SDFC don't need to record Mr F's account as having defaulted, and I don't find that it needs to pay Mr F any award for distress and inconvenience. However, based on what I've seen so far, I'm satisfied that SDFC should change the date the account was settled to November 2020. I appreciate that this provisional decision will likely come as a disappointment to Mr F, however I will explain my reasons for this below.*

*I think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my provisional decision. I say this as I'm aware I've summarised Mr F's complaint in considerably less detail than he has. If I've not reflected something that's been said it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless I think it's relevant to the crux of the complaint.*

*I note the Investigator's view explained that Mr F's account should have defaulted because of the four months of arrears on the account. ICO guidance states that an account should default when it is between three to six months in arrears. This account was four months in arrears at the point in which Mr F entered the DAS. So, I don't find that SDFC did anything wrong in not defaulting the account as a result of the arrears.*

*Mr F has provided this service with ICO guidance (see ICO publication 'Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies' (Version 2a Published July 2016 (updated to refer to GDPR and DPA 2018)) that states a firm should default an account when it receives notification of insolvency. Mr F has drawn particular attention to the bit that states that an account should be recorded as defaulted where "The account is or has been included in a bankruptcy, CCJ, Individual Voluntary Arrangement (IVA) or similar".*

*The ICO guidance here doesn't specifically refer to a DAS, and Mr F implies that a DAS is 'similar' to the types of arrangements listed. But DAS isn't considered a type of formal arrangement, as with the other listed arrangements. While I can see why Mr F thinks this should apply, I don't share that same view. Instead, the agreement Mr F had with SDFC was an arrangement to repay his debt at a reduced or revised amount. And I haven't seen anything in any of the guidance or rules which suggests it should be treated otherwise.*

*Additionally I have looked at the Accountants in Bankruptcy (AIB) guidelines which also refers specifically to DAS. These don't say that a business is required to register an account in default when a DAS is in place, which I'd have expected the guidance to comment on if this was a requirement.*

*The Principles Mr F has referred to state that that an account shouldn't be recorded in*

*default where there has been an agreement to repay a reduced or revised amount (unless that arrangement is broken). As far as I'm aware, Mr F stuck to the arrangement and so it follows that I don't currently find that SDFC has acted outside of these guidelines when it didn't report the account as in default. And I'm of the view that the accurate reporting in these circumstances was to report an arrangement to pay, which it has done.*

*Mr F has also provided this service with information from the FCA handbook. Specifically referring to CONC 7.3.16. This states that a firm should not take steps to enforce a debt where the customer is subject to, amongst other things, a DAS. The enforcement of the debt here relates to a firm taking legal action to recover what is owed. SDFC haven't sought to enforce this debt, so I don't find this particular part of the rules relevant to Mr F's complaint. And I also don't find that this part of the rules suggests that a DAS should be treated (generally) in the same way as other insolvency schemes. It only refers to the enforcement of debt.*

*Overall, I'm satisfied that SDFC has accurately reported the DAS as an arrangement to pay on Mr F's credit file, so I won't be asking SDFC to do anything more here – including asking it to record the account as having defaulted in 2017.*

*Mr F also complains about the more recent information on his credit file. He has provided evidence to show that a missed payment was recorded in November 2020 (when the balance was settled), and that his account isn't showing as having settled until a year after it did in November 2021.*

*I asked SDFC about this, and it said that it hasn't reported a missed payment – providing evidence to support this. It also said that the account would only show as settled on Mr F's credit file once the account was closed. It said that when a DAS is completed, a consumer can have the option to use the account again, or they can close the account. It said that because Mr F didn't shop on the account again, it went dormant and was closed in August 2021 – which should also be the settled date on Mr F's credit file. SDFC added that the DAS was completed in November 2020, after this, the account was recorded as "OK" with the credit reference agencies until it was closed. It said this reporting was accurate and it didn't think it needed to be changed.*

*Once the DAS ended, Mr F didn't owe any further money to SDFC – SDFC has sent evidence to show that it was reporting the balance as zero, which is what I would have expected it to do. But it didn't report the account as settled at this point because Mr F didn't tell it to close the account. The ICO Principles say the following:*

*"If you make a full or part payment and no further money is expected, the account should be closed unless you have agreed with your provider to continue your relationship"*

*This suggests that the account should be closed once it had been repaid, unless Mr F had asked for it to remain open. SDFC hasn't provided me with any evidence to suggest that Mr F had asked for the account to remain open – and the fact the account became dormant and unused suggests that Mr F expected the account would close as per the guidance, or that he didn't want or need to use it. Because of this, I think accurate reporting would be to show the account as having been settled in November 2020. So, my current view is that SDFC should change the settled date to November 2020.*

*I note that Mr F says that a missed payment was reported for November 2020. From what I've seen, it appears that only one credit reference agency has reported a missed payment. And the information SDFC has sent me doesn't show that it has reported this. However, my view that the account should be showing as settled in November 2020, should override this reporting.*

*I've thought about whether SDFC's incorrect reporting of the settled date has caused unnecessary harm to Mr F's credit file, but I don't think it has. From what I've seen, it hasn't reported anything negative about Mr F throughout the time it should have been showing as settled. And so I don't currently find that SDFC's actions here is enough to warrant any compensation for Mr F."*

SDFC responded to the provisional decision to make an offer to Mr F, to settle his complaint by changing the date the account displays as being settled as November 2020.

Mr F responded to the provisional decision to say he didn't agree, I have summarised his main points below:

- A DAS is the Scottish equivalent of an IVA in England and Wales. But I have not treated this the same in my provisional decision. He adds that DAS is the equivalent of an IVA (which isn't available in Scotland) but unlike an IVA, all debts included in a DAS can be recorded for longer than the 6 years that they'd be removed by an IVA. Mr F says that is unfair, and he is being treated differently due to his place of residence.
- The provisional decision doesn't comment on the emotional distress Mr F went through when his mortgage lender delayed his mortgage application as a result of the missed payment showing on his credit file. Mr F adds that I have not given enough weight to how a missed payment, even if it happens four years ago, can affect a lenders decision.
- The purpose of the DAS is to be less damaging than an IVA or Trust Deed. But Mr F feels that he is worse off for opting for a DAS given the length of time an arrangement to pay will be viewable on his credit file.
- DAS is not an informal arrangement to pay scheme that's available in England and Wales. It is run by the Scottish government and it isn't a Debt Management Plan. It is specified that a DAS is on a credit file for six years. Mr F adds that because SDFC agreed to the statutory scheme under Scottish and UK legislation, they agreed the DAS would last for a period of six years and that all debts would be limited to six years. SDFC agreed to a DAS and not an arrangement to pay or a DMP.
- Mr F says he had to declare that he was in a DAS to his mortgage broker because SDFC were reporting on his credit file that he was in a debt management plan. Mr F says this is a breach of the DAS, as the rules of the scheme say he doesn't need to let creditors know that he was in a DAS once it has completed.

### **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.

Having considered all of the available evidence again, it is my decision to uphold Mr F's complaint, for much of the same reasons as that in the provisional decision, however, I'll explain my reasoning for this below.

It's worth noting here, that is my role when investigating complaints to see if a business, like SDFC has done anything wrong. If it has, then I would ask the business to put things right. And I can't ask a business to put things right where it hasn't done anything wrong. I say this, because some of what Mr F has said in response to my provisional decision relates to the DAS, and not necessarily about something SDFC has done wrong, or had control over.

I have looked through all of the information Mr F has provided this service which relates to DAS – including all of the information from the Accountant in Bankruptcy (AIB), information available on the Scottish government website, guidance from the ICO and The Debt Arrangement Scheme (Scotland) Regulations 2011.

Having carefully considered all of this, I haven't seen anything that states a business should default an account when it is notified of a DAS. Because of this, I can't fairly say that SDFC has done anything wrong when it didn't report Mr F's account as having defaulted when he entered into the DAS. And so, I won't be asking SDFC to record Mr F's accounts as having defaulted back in August 2017.

My provisional decision said that a DAS isn't a type of formal arrangement. In hindsight, this explanation isn't entirely clear, given the process one needs to go through to enter into a DAS. That said, this still doesn't change my view that there was no requirement for SDFC to record Mr F's accounts as having defaulted when he entered into DAS.

I note that DAS is a debt solution specifically for residents of Scotland. It is designed to help people repay their debts in a more manageable way, and without the risk of a creditor taking legal action. In my provisional decision, I explained that it wasn't unreasonable of SDFC to have treated this as an arrangement to pay. An arrangement to pay isn't a specific type of debt solution. It is just the term used when there is an agreement in place to make repayments to the creditor. The ICO Principles on reporting state that when a lender agrees to reduced or revised repayments with a borrower, this arrangement will be reflected on the credit file – which SDFC has done. The arrangement under DAS is still an agreement to reduced or revised repayments even though SDFC is compelled to the agreement by operation of the law.

Mr F feels that the DAS should be treated in the same way to that of an IVA and it isn't fair that it isn't – because he says an IVA would be removed from a credit file more quickly than a DAS. And it isn't fair that he is being treated differently because of his country of residence. I can understand why Mr F feels this way. But as I've explained, based on the information I've seen, there isn't a requirement for an account which is included in a DAS to default once the DAS starts. So, I can't ask SDFC to change how it has reported the account, as I don't think this would lead to accurate reporting.

I've also seen the information provided by the government website relating to DAS. This states that a DAS can stay on a credit file for at least six years. This suggests to me that the minimum time a DAS should remain on someone's credit file is six years. This doesn't seem to suggest that an account should have defaulted.

Mr F states he had to tell his mortgage provider about the DAS, which he says is a breach of the DAS rules. I've looked at the letter Mr F has provided on this point. The letter says that Mr F's details had been removed from the DAS register and that he no longer needed to inform a creditor that he had been in a Debt Payment Programme when he applied for credit. There was a requirement on Mr F, while he was subject to a DAS, to notify any creditors of such if he were to apply for credit (which was allowed in limited circumstances). When he was removed from the DAS there was no longer a requirement to do this. But I haven't seen any information that suggests it would be a breach of the regulations if Mr F let a creditor know he was part of a DAS previously – he only *needed* to do this while he was subject to DAS. I don't think SDFC has done anything wrong in relation to this point.

Mr F says that a missed payment showing on his credit file caused delays to his mortgage application being processed. And he said I've not placed enough weight on how a missed payment is viewed by other lenders. This caused Mr F a lot of distress when applying for a mortgage. I have looked at the copy of the credit file Mr F has sent, this shows in November

2020, for one of his SDFC accounts, and with one particular credit reference agency (CRA), "DM" was being reported – for this CRA, "DM" refers to "debt management plan in force". I can also see that Mr F has sent this service some information from a website he used, which told him he had a missed payment in November 2020. This website is not a CRA. And looking at the information provided to me by SDFC, and the information that Mr F has sent showing the reporting on his credit files, it doesn't appear SDFC has in fact reported a missed payment.

Even if I were to accept that SDFC had reported a missed payment, I have seen that Mr F has another complaint with this service about a default showing on his credit file for longer than he says it should have been. He's said in that complaint that the default caused a delay in his mortgage application being processed. So, it seems to me that there was other information on Mr F's credit file that *could* have caused delays to Mr F's mortgage application being processed. In addition to this, mortgage applications can be delayed and declined for many reasons, and because of this it would be very difficult for me to conclude that the application was delayed as a direct result of something SDFC did.

I am however satisfied that SDFC are incorrectly reporting the settled dates for both accounts. Because of this, I will be asking SDFC to put this right.

### **Putting things right**

SDFC should put things right for Mr F by amending the settled date on his credit file to November 2020. This date is applicable for both accounts.

### **My final decision**

For the reasons set out above, I uphold Mr F's complaint. Shop Direct Finance Company Limited should put things right for Mr F by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 23 October 2024.

Sophie Wilkinson  
**Ombudsman**