

## **The complaint**

Mr A complains that NewDay Ltd, trading as marbles (“NewDay”), placed a default on his credit card account after it told him it wouldn’t. Mr A is also unhappy with NewDay’s treatment of him because of his health and financial issues.

## **What happened**

Mr A missed two payments on his credit card and was sent a first default notice in December 2018.

Between missing the first payment and the first default notice, NewDay wrote to Mr A and called him several times to establish why payments had not been received. Mr A told NewDay he had:

- experienced a reduction in income
- had been in hospital because of a heart condition
- was behind with payments to other creditors and
- had recently been bereaved.

NewDay also asked Mr A on a number of occasions if he would like to discuss repayment options but Mr A declined. Mr A also said that he was unhappy with NewDay phoning him about his account.

On 10 January 2019, Mr A contacted NewDay and agreed a repayment plan for a minimum of £1.00 a month. The first payment was never received. The account was then terminated, transferred to NewDay’s debt recovery agent and charges and interest suspended. This situation remained unchanged until 1 May 2019.

On 1 May 2019, Mr A made two calls to NewDay as he’d received another default notice. He was unhappy that his account would be placed in default in 28 days when he says he’d previously advised NewDay of his mental health problems – it appears previous notices did not to give Mr A a date by which he needed to take action. Mr A said he’d not opened letters from NewDay since January 2019 as he’d been in and out of hospital and coming to terms with the death of a friend. He said he wanted to have the default dealt with that day, however, there was no-one available at NewDay to take this forward.

Mr A raised a complaint during the first call on 1 May 2019 about the default notice and NewDay’s management of his account. During the second call, the agent confirmed to Mr A that the default would not be applied and that she’d email the customer care team accordingly. The following day, the customer care team unsuccessfully tried to call Mr A and sent him a letter.

On 13 May 2019, Mr A received a final response letter from NewDay. It said details of default notices had to be shared with credit reference agencies and that Mr A’s account had been managed in line with its processes for accounts in arrears. Mr A was told to contact NewDay customer services if he wanted assistance.

On 11 June 2019, Mr A complained to NewDay that the default had been registered and he had missed out on a house because of it. NewDay rejected this complaint. It accepted Mr A was given incorrect information as Mr A was told the default would not be applied, but that the default should remain to accurately reflect Mr A's payment history. It said that placing a 'vulnerable block' on Mr A's account would not have stopped the default being registered. Mr A was offered £150 compensation for the incorrect information. Mr A was unhappy with this and brought the case to us.

Our investigator concluded that:

- NewDay dealt with Mr A positively and sympathetically given his financial difficulties
- Mr A's application for a mortgage being declined was not NewDay's fault as many factors are taken into account when a provider decides whether to lend.
- The default recorded on Mr A's file was fair given the level of arrears on the account
- £150 is a reasonable offer of compensation.

Mr A asked for his complaint to be referred for an Ombudsman's decision.

### **What I've decided – and why**

Firstly, I would like to express my sympathy to Mr A as this has undoubtedly been a difficult time for him.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I don't think NewDay needs to do anything more than it has done already in respect of Mr A's complaint. I appreciate this is not the outcome Mr A was hoping for, so I have set out my reasons for my decision below.

I am satisfied that NewDay dealt with Mr A positively and sympathetically before Mr A first informed NewDay of his mental health problems on 1 May 2019. NewDay contacted Mr A soon after the first payment was missed and again on a number of other occasions over following months to discuss how they could help him. NewDay stopped phoning Mr A after he expressed his unhappiness about receiving calls from it and agreed a reasonable payment plan with Mr A. NewDay also did not apply further interest or charges to the account after January 2019 – all of which shows a sympathetic approach to Mr A's situation.

I think NewDay also gave Mr A as much time as it could before registering the default. A default should be registered between three and six months of a consumer falling behind on payments. Mr A was given around six months before the default was registered, so I think NewDay has done what I'd expect of it here.

Even after taking into account Mr A's financial and mental health problems, NewDay would still have been entitled to notify credit reference agencies of the conduct of the account. Mr A was also unhappy NewDay sent him default notices after he'd told it about his mental health issues. It appears Mr A first told NewDay of about these problems on 1 May 2019 and the default notices were sent before this date, so I don't think NewDay did anything wrong in sending the default notices to Mr A.

I am satisfied that – on balance – the refusal of Mr A's housing application was unlikely to be because of the default NewDay placed on his file. Many factors are taken into account by landlords and mortgage providers when deciding whether to enter into an arrangement with a consumer. From what Mr A had told NewDay previously about his situation, Mr A had experienced financial difficulties before making his application, which would most likely have had an impact on the refusal.

So I don't think that Mr A should be awarded further compensation on these grounds alone.

But NewDay accepts it made a mistake here and that it gave Mr A the wrong advice when he called about the default. But that doesn't automatically mean it'd be fair for me to tell NewDay that it should remove the default. Instead, we look to put a customer in the position they would be in were a mistake not made. Here, that would've been that he was advised correctly that he needed to pay off what was outstanding to avoid the default.

So I've considered whether Mr A could have avoided the default had he been given correct information by NewDay. I asked NewDay what Mr A could have done to avoid a default being placed on his file had he been given correct information. NewDay responded that Mr A would have had to pay to a total of £297.27 to bring the account back up to date. NewDay also said that if Mr A was unable to pay this amount, it may have agreed to reduced payments, but because of the level of arrears, the default would still have been applied to Mr A's file.

I've considered whether Mr A would have been able pay the outstanding £297.27. Mr A provided copies of his payslips from around the time he called NewDay in May 2019, but says he is unable to provide bank statements as he's since changed banks. So I am unable to see Mr A's expenditure alongside his income. That makes it difficult for me, on balance, to see whether he could've paid the outstanding amount. But, given what he told NewDay about his financial position previously, coupled with the fact he hadn't made contractual payments for some time and the payments he could make were only £1– I'm not satisfied that it's likely he'd have been in a position to pay the outstanding amount and so avoid the default. With this in mind, I am satisfied that the default should remain on Mr A's credit file.

I think NewDay could have done more to correct its mistake. NewDay called Mr A and wrote to him when there had been known issues in the past with these forms of communication. NewDay were also relying on Mr A to get in touch with it so it could correct its mistake. NewDay has already offered Mr A £150 compensation for the incorrect information, which I feel is reasonable when the correct information would have been unlikely to have prevented a default being registered on Mr A's credit file.

### **My final decision**

I do not uphold Mr A's complaint. NewDay Ltd should pay Mr A the £150 compensation it has offered him for giving him incorrect information, if it has not already done so. I do not instruct NewDay Ltd to do anything more than this.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 June 2020.

Ruth Peek  
**Ombudsman**