

The complaint

Miss H complains that NewDay Ltd ("NewDay") unfairly closed her account and added non-payment markers to her credit file.

What happened

Miss H had an account with NewDay. In July 2019, the balance on the account exceeded the agreed limit. As no payments had been received on the account until October 2019, it was closed and reference to the closure and non-payments were added to Miss H's credit file.

Miss H was unhappy about this. She said she hadn't received the default notice explaining what would happen if she didn't make a payment. And she also said that when she spoke to NewDay on the phone, she'd been told that the account would not be defaulted if she made a payment at the end of October. She also said she'd made them aware of health and financial issues which made it difficult to make a payment.

NewDay rejected her complaint. It said its records showed it had informed Miss H on several occasions that her account was over the agreed limit and what would happen if she didn't make a payment. It also said it had no record of her being told a payment at the end of October would mean that the account wasn't closed.

Miss H wasn't satisfied with this response and brought her complaint to this service. Our investigator didn't think NewDay had done anything wrong. He said the evidence available to him was that NewDay did give Miss H sufficient notice of the consequences of not making payments to the account. He also didn't think the phone calls referred to by Miss H did indicate she'd been told she could pay at the end of October, or that NewDay should have known from this that she was unable to make a payment. Miss H didn't accept this, and has asked for an ombudsman's 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.

Miss H argues that NewDay didn't tell her it would close the account if she failed to make a payment, and that it had agreed not to close the account if she made a payment by the end of October 2019. NewDay disputes this. So this is what I need to decide.

I can see from the evidence provided by NewDay that a default notice was sent to Miss H's address towards the end of September 2019. I'm aware Miss H says she didn't receive this but NewDay's shown it did send the letter. It's our service's normal position that where evidence of posting can be provided, it's reasonable for the sender to assume it's been received.

The notice itself details the amount that needs to be paid, and gives a date in mid-October 2019 that the payment must be made by. The notice also clearly sets out the consequences

if this payment isn't made, including that the account will be closed and details may be shared with credit reference agencies.

So I'm satisfied that Miss H was aware that the account was over its limit, and that she hadn't made the required payments. I also consider that NewDay had explained what needed to be done to prevent the account being closed and a default recorded.

After the default notice was sent, Miss H spoke to NewDay twice in one day at the beginning of October. This was before the payment deadline. In the first call, which was made by NewDay to Miss H, she said she was struggling financially. NewDay's representative began to ask her further questions but due to a poor quality line, it was agreed NewDay would call Miss H back.

Miss H spoke to NewDay later the same day. She agreed she was aware the account balance was over the agreed limit. She explained she'd left her job and was doing agency work, as well as studying. She said she thought she could make a payment towards the end of the month. NewDay's representative asked questions about her situation, but before any definite answers were given or a plan discussed, Miss H said she was unable to talk further and would call back. There's no record of any further call made by Miss H to NewDay before the account was closed.

It's important to note here what wasn't said in either call with NewDay. There was no agreement that the account would not be closed, or that Miss H could make a payment after the deadline which was contained in the default notice. I can't agree with Miss H's characterisation of this call to both NewDay and our service that she'd said she would make a payment by the end of October and that NewDay had said this was acceptable, and the account would not be closed. I can't agree that she could reasonably have assumed from this phone call that NewDay had agreed she could make a payment at the end of October. She'd said she was going to call back, at which time she would have expected to discuss her situation and ability to make payments further. I've not seen any explanation for why she didn't do this.

Similarly, Miss H did tell NewDay in her telephone calls that she was having difficulty making payments. She referenced her employment, but I can't see that she said her health was having an impact on her financial situation. But it's also apparent that NewDay were asking questions so it could look at options to assist Miss H. But it was unable to gain enough information from Miss H in either call to get to a point where such matters could be discussed. And Miss H had said she'd call back to discuss this further, but didn't do so.

So, in the absence of any agreement with Miss H, I'm not persuaded that NewDay acted unfairly in closing the account when no payment was received. I'm also satisfied it had made Miss H aware that the account limit had been exceeded and she needed to make payments. And as she hadn't made the payment, and the account had been closed, it was entitled to inform credit reference agencies about this.

My final decision

It's my final decision not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 8 June 2020.

Ben Williams
Ombudsman