

The complaint

Mr A complains that NewDay Ltd didn't treat him fairly when he experienced financial difficulties.

What happened

Mr A had a credit card account with NewDay. He experienced financial difficulties after a change in his personal circumstances which impacted on his health. He says he told NewDay about these problems, but it didn't assist him.

He says NewDay registered adverse information about his account with credit reference agencies. He says it also sold his debt to a third party and both NewDay and the third party have separately registered a default with credit reference agencies – even though it is for the same debt.

Mr A says he's experienced poor service from NewDay. It's continued to send letters to his old address after he told it he no longer lived there. He says this is a breach of data protection laws.

Mr A complained to NewDay. It had responded to issues which Mr A raised in May but it didn't respond to further issues which he raised with it after that date. So, Mr A complained to our service.

Our investigator looked into his complaint. She contacted NewDay and it apologised it hadn't responded to Mr A about all the issues he'd raised with it. It said it'd reviewed its file and no payments had been made to the account in the period from January 2019 to May 2019.

NewDay said it had put a hold on the account in March after Mr A told it about his personal circumstances. NewDay says that when a hold is placed on an account no interest or charges are applied to the account. But arrears will continue to accrue. Once the arrears reach a certain level a default may be registered on the account and in certain circumstances NewDay may also sell it to a third party.

NewDay says it wrote to Mr A and asked him to provide medical evidence to support what he had told it. When it spoke to him in May it says it became aware he had left his previous address. So, it gave him further time to provide the medical evidence. But, NewDay said it accepted that it shouldn't have lifted the hold on his account in June or passed his account to a debt collection agency. It says it paid him £50 in August by way of compensation for what'd happened.

NewDay accepts that in circumstances where Mr A had told it about his health issues, it also shouldn't have sold his account to a third party. It had done this in September.

In order to resolve the issues NewDay offered to bring the account back under its own administration. No interest would be charged on the account and it said it would try to agree a repayment plan with Mr A. NewDay also offered to pay a further £150 by way of compensation. It said it would set this off against his outstanding balance.

But it didn't agree to remove the default which had been registered at credit reference agencies.

Our investigator considered what NewDay had said. She said NewDay had done everything it was required to do in circumstances where it hadn't been able to make an arrangement with Mr A and he hadn't provided it with the medical evidence it had asked for. She agreed that the debt shouldn't have been sold to a third party and the hold shouldn't have been removed. But she said NewDay hadn't done anything wrong when it registered the default.

She didn't think NewDay should remove the default it had registered but she said it must make sure there were no duplicates registered. She said NewDay would need to liaise with all third parties involved to ensure that any duplicates were removed.

She also thought that the offer to pay Mr A a further £150 by way of compensation was fair and reasonable. She said it was entitled to set off the compensation payment against the debt.

Mr A didn't agree. He says it's unfair to register the default. He also wants more compensation for what's happened. And, he wants the compensation to be paid directly to him rather than be set off against his debt.

Because Mr A didn't agree the complaint was passed to me to decide.

I issued a provisional decision in which I said:

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.

At the outset I'd just point out that in this decision I'm only dealing with the complaint Mr A has raised about how his account was managed after he experienced financial difficulties. I am aware that Mr A has raised other issues. Those need to be dealt with separately.

I've looked at the actions which NewDay took after it became aware of Mr A's personal and financial difficulties.

I can see that Mr A first made NewDay aware of his circumstances at the end of December 2018. At that time the account wasn't in arrears. So, NewDay didn't take any action until some time later. It tried to contact him in February but wasn't able to. It put his account on hold at that time. This meant no interest or charges would be applied to the account.

NewDay then wrote to Mr A in March and asked him to send it medical evidence to support what he had told it. But, Mr A didn't get this request because he had left his home. Mr A thinks NewDay has breached data protection laws by sending letters to an address when it knew, or ought to have known, he was no longer at that address.

Our investigator said we couldn't look into complaints about breaches of data protection laws. Complaints about data protection can be raised with the Information Commissioner's Office (ICO). I agree that's it not our role to determine whether there's been a breach of data protection laws. But, when considering what's fair and

reasonable, we take into account the laws, regulations and circumstances of each case.

I don't think NewDay was aware that Mr A wasn't living at the address on its records until its Customer Care team spoke to him on 6 May 2019. In the meantime, a default notice had been issued. After he spoke to the Customer Care team NewDay put the hold back on his account. But I can see it removed the hold again in June because it hadn't received Mr A's medical information. It received that in July 2019.

It is the case that in circumstances where Mr A had told NewDay about his personal and financial difficulties, we'd expect it to treat him sympathetically and positively. So, I think NewDay is right when it says it shouldn't have removed the hold on Mr A's account in June. When a hold is in place on an account no interest or charges are applied. But arrears will still accrue. And when the arrears reach a certain level a default will occur. That's what happened here.

Mr A says NewDay should've agreed a payment arrangement with him. He says if it had done that then the default wouldn't have been registered and the debt wouldn't have been sold. I've thought about what Mr A has said. But, having considered all the information recorded in NewDay's notes on this case, I don't think Mr A would've been in a position to make a payment arrangement to clear the arrears on the account within a reasonable period of time.

I can see that Mr A started to make token payments to NewDay in May 2019 – but these were not part of an agreed payment arrangement. So, the account defaulted.

In these circumstances, I don't think the expectation that NewDay should treat Mr A positively and sympathetically means that arrears shouldn't continue to accrue. And for that reason, I don't think NewDay did anything wrong when it registered the default with credit reference agencies.

I've also thought about NewDay's decision to sell the debt to a third party. The Standards of Lending Practice state that where a customer has provided evidence of an ongoing mental health or critical illness that affects his ability to repay his debts, the debts should not be sold. In this case Mr A had provided evidence of his ongoing health issues. So, in these circumstances, I'm satisfied the debt shouldn't have been sold.

NewDay has accepted it shouldn't have sold the debt to a third party. It's offered to bring the account back under its administration. And, our investigator has told it she thinks that any duplicates of the default should be removed. I think that's fair and reasonable.

I've also considered the compensation offered by NewDay. New Day says it's already paid Mr A £50 by way of compensation and it's offered to pay a further £150. I think the total amount of £200 is fair and reasonable compensation for the trouble and upset caused in this case.

NewDay thinks this compensation payment should be set-off against the debt which Mr A owes to it. It's already applied £50 in August 2019 by way of set-off against the debt. And, it proposes that the additional £150 should be applied in the same way.

I've thought about what NewDay has said. The compensation is for trouble and upset which Mr A experienced as a result of the process which NewDay followed in this

case. In these circumstances I think it's fair and reasonable for that compensation to be paid directly to Mr A rather than be set off against the outstanding debt.

What I think should be done to put things right

In order to put things right I intend to require NewDay to take the following action:

- *Bring the account back under its administration;*
- *Take all reasonable steps to ensure that any duplicates of the default entry on this account recorded at credit reference agencies are removed; and*
- *Pay Mr A £200 by way of compensation for the trouble and upset he's been caused as a result of what's happened. This amount should be paid directly to Mr A and should not be set off against his debt. And, in these circumstances, NewDay may decide to reverse the compensation payment of £50 it's already applied to Mr A's account in August.*

Mr A has responded to what I said in my provisional decision. He says that although the basic issues had been addressed, he didn't think the impact had been fully considered. In particular he said I should take into account the fact that, at the time, he was still dealing with issues associated with being a victim of a very serious and traumatic event. And it was against this background he'd had to deal with NewDay – often having to spend hours on the telephone with it.

He also said he'd prefer that the account wasn't returned to NewDay's administration because he didn't want to have to deal with it. He said if it did go back to NewDay's administration he wanted to have online access to his account. NewDay had said no interest or charges had been applied since June 2019, but he'd not seen any statements and wasn't sure if this was correct.

NewDay responded to the provisional decision by saying it agreed to the actions proposed. It said that in order to remove the duplicate default, the account would have to be brought back under its administration. It said it couldn't provide online access to statements because of the account status. But it said copies of statements between June and September 2019 could be made available to Mr A.

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've thought about what Mr A and NewDay said in response to my provisional decision.

I was very sorry to read about the issues Mr A has been dealing with after he was the victim of certain traumatic events. This was included in the information which had been provided to me before I made my provisional decision, and I had taken it into account.

When dealing with this complaint I had to consider NewDays's actions and any distress or inconvenience its actions had caused Mr A. As I said in my provisional decision NewDay did make mistakes in this case. And, Mr A did have to spend time contacting it to try to get the issues resolved.

When an organisation makes mistakes it's not our role to fine or punish it. We consider the impact the mistakes have had upon the particular person involved. In this case, I know Mr A was already going through a stressful time because of the traumatic experience he'd had. But, although Mr A is disappointed with the amount of compensation I thought he should receive, I did take his circumstances into account when considering the distress and inconvenience he was caused by NewDay's actions.

I've considered the actions NewDay took to try to resolve the matters associated with his account. As I said in my provisional decision, it shouldn't have removed the hold it had placed on the account. But I can see it hasn't applied any interest or charges to his account since June 2019. I also thought it shouldn't have sold the account to a third party. And, NewDay has accepted this and agreed to bring the account back under its own administration.

I've also explained why I don't think NewDay did anything wrong when it recorded the default on his account.

So, having considered everything here, I haven't changed my view that £200 by way of compensation is fair and reasonable for the distress and inconvenience Mr A experienced as a result of the actions NewDay took. I've also said this amount should be paid direct to Mr A and not used to reduce his outstanding balance.

NewDay has explained why it needs to bring the account back under its administration. It needs to do this to remove the duplicate default which the third party purchaser has registered. I understand Mr A would prefer he didn't have to deal with NewDay. But I think it's important that the duplicate default is removed, and I can't require the third party which purchased the account to do that. It is not a party to this complaint.

NewDay should ensure Mr A is kept advised of the state of his outstanding account. It cannot provide online access, but it should be able to provide Mr A with the information he needs to keep track of his account, by other means. I think that's fair and reasonable.

My final decision

For the reasons given above I uphold this complaint about NewDay Ltd. I now require it to take the following action:

- bring the account back under its administration;
- take all reasonable steps to ensure that any duplicates of the default entry on Mr A's account recorded at credit reference agencies are removed; and
- pay Mr A £200 by way of compensation for the trouble and upset he's been caused as a result of what's happened. This amount should be paid directly to Mr A and should not be set off against his debt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 November 2020.

Irene Martin
Ombudsman