

The complaint

Mr P complains that NewDay Ltd trading as Marbles defaulted his credit card and sold it to a third party even though he had agreed a payment arrangement.

What happened

The details of my initial conclusions are set out in my provisional decision. In my provisional decision I explained why I didn't think Mr P's complaint should be upheld. I said:

What happened

Mr P opened a credit card with Marbles in August 2016. The account fell into arrears and in March 2017 a default notice was sent to Mr P.

In June 2017 Marbles instructed a third party business (B) to administer the account and try to get agreement for the arrears to be repaid.

On 25 September 2018 Mr P agreed a payment arrangement with B. The payment arrangement was confirmed in writing on 27 September 2018. B's letter said that it had accepted a payment arrangement of £3.27 a month and that the first payment was due by 25 October 2018. B's letter went on to explain that, providing payments were made on time, the arrangement would be reviewed in six months.

In October 2018 Marbles says it took the decision to default and sell Mr P's account. Marbles says that decision was made due to the level of arrears. On 23 October 2018 Marbles closed Mr P's account. After the debt was transferred to the new owner it reported a default date of 24 October 2018.

B received Mr P's first payment of £3.27 on 26 October 2018. But by this point the account had already been sold and defaulted. Mr P complained to Marbles and B. Marbles responded to Mr P's complaint on 4 November 2019 and said Mr P should refer his concerns to B if he feels the advice he was given on 25 September 2018 was wrong.

Mr P referred his complaint to our service and it was passed to an investigator. They thought Marbles had dealt with the complaint fairly and didn't ask it to do anything else. Mr P asked to appeal so his complaint has been passed to me to make a decision.

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.

Marbles referred Mr P back to its agents, B, to raise any concerns he has about the payment arrangement he agreed. But Marbles instructed B to act on its behalf and seek recovery of its debt from Mr P. So, Marbles had to make sure B treated Mr P fairly while pursuing the debt.

Marbles says that the decision to close and default an account isn't impacted by a payment arrangement agreed with the borrower. In general, where a payment arrangement is agreed and maintained, I wouldn't expect a business to default the account. Guidance issued by the Information Commissioner's Office says, "when such arrangements are made and maintained... a default will not be recorded." I don't agree with Marbles' claim that an active payment arrangement wouldn't have been a barrier to fairly defaulting Mr P's account.

Marbles closed Mr P's account on 23 October 2018 and sold it to another business which then reported the default from 24 October 2018 onwards. Mr P says that's unfair because he had a payment arrangement in place. As I've quoted above, the guidance says that where a payment arrangement is agreed and maintained, a default should not be recorded.

The issue here is that Mr P's payment arrangement agreed he would make a payment of £3.27 on 25 October 2018. Marbles has provided evidence to show that B didn't receive Mr P's first payment until 26 October 2018 (a day late) and says that, as a result, the terms of the payment arrangement were broken.

I appreciate my decision will feel harsh to Mr P as I agree that the order in which Marbles acted wasn't right. But, as the first payment due under the payment arrangement wasn't made until 26 October 2018, I think it can reasonably be argued to have failed. There's no obligation on a lender to extend the deadlines and I can see that Mr P's account had been in arrears for a reasonable period by this point.

Ultimately, as the first payment was made a day late, I'm satisfied Marbles would have closed and defaulted Mr P's account in any case. That means Mr P is in broadly the same position – with the account being closed and defaulted and the debt sold to a third party.

I agree that Marbles could have been clearer but I haven't found Mr P is in a worse position as a result of the way it handled his account. The evidence I've seen shows the first payment was late which would have given Marbles grounds to close and default the account. Marbles has confirmed that if Mr P's account hadn't already been closed and sold it would've taken that step after the first payment was made late. Overall, I haven't found that Mr P has been unfairly impacted by Marbles' actions so I don't intend to tell it to do anything else.

I'm conscious that Marbles and the basis on which I've made my decision differs from the investigator. I've issued a provisional decision to allow Mr P and Marbles to send me any additional comments or information they would like me to consider before I make my final decision.

Mr P responded with details of why he feels the default dated 24 October 2018 should be removed from his credit file. In brief, Mr P said:

- The impact of the default will last a long time and damage his credit file.
- A default shouldn't be reported if the lender makes any errors and Marbles failed to follow the correct process.
- The account was closed and sold before the default was registered.
- Whether Mr P's payment due under the payment arrangement was made on time didn't matter as Marbles defaulted his account anyway.
- It's not relevant that the first payment made under the payment arrangement was received late by Marbles.
- It's unclear why the payment wasn't received on time.
- The date used for the default isn't accurate.
- The Information Commissioner's Office has offered to investigate a complaint.

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'd like to thank Mr P for the level of detail given in his response. I've summarised what Mr P said but I want to assure him that I've read and considered everything he's said both in his original submissions and in response to my provisional decision.

Mr P has said that a default shouldn't be reported if Marbles failed to follow the right process. But a default is intended to show the relationship between a borrower and lender has broken down and that payments haven't been maintained as agreed. So I've considered whether, accepting that Marbles failed to follow the right process, the default should stand. As a service, we deal with complaints on a fair and reasonable basis and try to put the consumer into the position they would have been in had no error been made.

As I said in my provisional decision, I haven't been persuaded that Marbles' errors impacted Mr P's situation. I won't repeat my provisional decision again as it's quoted above, but I remain of the view that Mr P's payment arrangement would have failed as the first payment wasn't received on the agreed date. Marbles has told us it would've defaulted Mr P's account on that basis if it hadn't been sold. I still think that's the case, for the same reasons.

Mr P has also questioned whether the payment was late as he believes it was made on time. But I'm satisfied the evidence shows the payment wasn't received on 25 October 2018 as agreed. The evidence shows the payment was received by Marbles' agent on 26 October 2018, which is later than the payment arrangement Mr P agreed. I appreciate my decision may feel harsh, but I remain of the view that the payment arrangement would have failed because Mr P's first payment was made late.

Mr P says the date of the default isn't accurate and that it should be back dated to June 2017. I'm sorry to disappoint Mr P but I'm satisfied the default date Marbles has used is fair and in line with the payments made, collections activity and industry guidelines.

Mr P has responded to say the Information Commissioner's Office has told him to refer a complaint about Marbles' actions. Mr P is free to decide whether to refer a complaint to the Information Commissioner's Office.

Whilst I accept Marbles didn't follow the right process, for the reasons given above and in my provisional decision, I haven't found that Mr P's position has been unfairly impacted. I'm sorry to disappoint Mr P but I haven't been persuaded to change my view of his complaint.

My final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 3 February 2021.

Marco Manente
Ombudsman