

## The complaint

Mr C complains that NewDay Limited (NewDay) sold his debt to a debt collection agency without giving notice and while an agreed payment plan was in place.

## What happened

Mr C had a loan account with NewDay and due to a change in his financial circumstances he agreed with them a payment plan. Mr C says a few days following the payment plan being agreed he received a letter from NewDay informing him his debt had been sold to a third-party debt provider.

Mr C says he was never told of this previously and wants NewDay to take back the loan and the payment plan that was agreed, put back in place.

NewDay says that the arrangement to sell the debt to a third party was already in place and they shouldn't have agreed to the payment plan arrangements. NewDay say while this should have been explained to Mr C, when he called to discuss the payment plan, they have acted correctly and in line with the terms and conditions of the loan agreement, given the loan was in arrears. NewDay have offered Mr C £75 by way of an apology for not making this clear to him when he telephoned them.

The investigator looked at all the information available but didn't uphold Mr C's complaint. The investigator says that Mr C was in arrears despite the payment plan being in place and the formal notices were issued in line with NewDay's obligations under the terms and conditions of the loan agreement.

Mr C wasn't happy with the investigator's view and felt the compensation offered wasn't sufficient and asked for the matter to be referred to an ombudsman for a final decision.

I sent both sides a provisional decision, where I said :

*I've considered all of the evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Having done so, I have come to a different outcome to the investigator and I will explain how I have come to my decision.*

*I can see it would be upsetting and frustrating for Mr C to receive a notice he was in default and his debt had been sold to a new debt provider after he had agreed a payment plan with NewDay.*

*What happened here was Mr C found himself in financial difficulties and initially contacted New Day about this in April 2019 and the account was frozen pending completion of an income and expenditure profile. Following a series of missed phone calls and letters sent, NewDay received an income and expenditure profile from Mr C in June 2019. NewDay wrote back to Mr C asking him to contact them about this as they believed he wouldn't be able to meet his offer of payments of circa £100 per month.*

*Mr C then contacted NewDay in August 2019 and during the phone call, with NewDay's collection team, a payment plan of £50 per month was agreed for six months, starting in October 2019. What happened here was the same day the payment plan was approved, NewDay sent out a Notice of Termination and a few days later sold the debt to a third-party debt provider.*

*Mr C queried this with NewDay a couple of weeks later and was told that his loan debt had been sold. NewDay says while they shouldn't have accepted a payment plan previously, they are within their rights to sell on the debt under the terms and conditions of the loan agreement, given the loan was in arrears. NewDay accept they should have been clearer with Mr C when he discussed the payment plan and offered him £75 by way of an apology.*

*I have considered the information provided by both parties here. It's worth mentioning that while Mr C didn't believe his account was in arrears, I have listened to telephone conversations between him and NewDay and during these calls it was made clear to him that despite any payment plan in place his loan debt would remain in arrears. I am satisfied this was correct and NewDay advised Mr C of his arrears in a letter dated June 2019 and in the notice of default in July 2019. So, I can't say that Mr C wasn't made aware of his arrears position.*

*I accept, NewDay like most banks, can give notice of default under the terms and conditions of the loan agreement (11.3) and have the right to sell the debt to another debt provider, without formal notice if those terms are unaltered. What is different here is NewDay's own collection team had specifically agreed over the telephone and subsequently in writing to Mr C a payment plan for six months. The fact that the same day another part of the business had issued a Notice of Termination was counter to what had been agreed with Mr C and even though they accept this was an error on their part, I can't see that Mr C should be affected by this mistake.*

*I haven't had access to the terms and conditions the new debt provider have offered or if this is the same as agreed in August 2019, but nevertheless, NewDay should have allowed Mr C to commence the payment plan for a reasonable period of time before passing the debt to another debt provider.*

*To put matters right NewDay should now take back the loan from the debt provider to whom it was sold and agree a payment plan that suits Mr C's current financial circumstances, in addition to the compensation they have already offered.*

*While NewDay will be disappointed with my decision, I am satisfied this is a fair resolution to the complaint.*

*Both Mr C and NewDay have responded to my decision, so the case has been passed back to me to make a final 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.*

*I gave both Mr C and NewDay until 25 December 2020 to accept or reject my provisional decision. NewDay have come back and have accepted in part my provisional decision in that they have agreed to pay the compensation payment of £75. NewDay have made the point there is little benefit in returning the debt from the new debt provider as "they are specialist in their field and are sympathetic in their approach and will be able to agree the most appropriate level of support suitable to Mr C." I have given this further thought and given Mr*

C's financial circumstances, I am now of the view the transfer of the debt back to NewDay will only serve to create more inconvenience for him. It's also fair to say the new debt providers are as well placed to offer a workable payment plan as NewDay, so there seems little point, on reflection, in creating any further inconvenience for Mr C here, in transferring the debt back.

This option was put to Mr C who has accepted this, as he feels the matter has gone on long enough. Mr C doesn't feel the compensation offered by NewDay is sufficient but as I have explained in my provisional decision the compensation awarded is to reflect a mistake made by NewDay when advising him over the telephone a payment plan would be agreed when it had already been decided to transfer the debt to a new debt provider. I maintain this is a fair amount of compensation here, given the reasons I have previously mentioned.

Mr C should now contact the new debt providers to establish a suitable payment plan.

### **Putting things right**

I instruct NewDay Limited to pay Mr C £75 for the trouble and upset caused.

### **My final decision**

My final decision is that I uphold this complaint. I instruct NewDay Limited to pay Mr C £75 for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 February 2021.

Barry White  
**Ombudsman**