DRN-2588244

The complaint

Mr Z complains that Novaloans Limited, trading as Cash4UNow, ("NL"), wrongly applied a default to his credit file. It hadn't given him prior notice and it then took eight months for the notice to be removed. As a result of the default, he has suffered loss and is seeking £10,000 compensation.

What happened

Mr Z took out a loan with NL on 27 March 2019. The loan was for £250 and repayable by four monthly instalments. The monthly amount of £103.90 was payable on 26 April 2019, 24 May 2019 and 26 June 2019, and the amount of £103.87 was payable on 26 July 2019.

Mr Z didn't keep to the contractual repayment schedule and instead made the following repayments:-

Date of repayment	*Repayment amount*
30 April 2019	£104.56
28 May 2019	£106.26
22 July 2019	£25
2 September 2019	£68.56
30 April 2020	£150

Mr Z said that in the second half of 2019 it seemed that NL had a technical problem and it stopped communicating with him completely. He had entered into a repayment plan for the loan in July 2019. Mr Z had only repaid part and assumed that NL had written off the loan as he'd heard no further from it.

In early March 2020, Mr Z discovered that NL had registered a default on his credit file, but it hadn't sent him any prior warning of its intention to do so. Mr Z then complained to NL about the default. When he asked NL to remove the default marker from his credit file, he said that it refused to do so.

Mr Z explained that the default marker had an extremely negative impact on him. Mr Z was the CEO of a company and that company paid his salary. Mr Z said that the company had applied for and was rejected for a £10,000 loan. Mr Z believed that this was because of the wrongly applied default on his credit file. Mr Z believed that the lender would have reviewed his personal credit file as part of the loan application process. So, Mr Z is seeking £10,000 compensation from NL as his company was unable to obtain the loan. Mr Z also believes that his credit card was cancelled because of the default. Mr Z is also unhappy that NL only started the process of removing the default notice in April 2020. As NL said that this would take about three months, he is concerned about financial damage during this time.

NL's final response letter dated 9 March 2020 referred to its loan agreement in which Mr Z had agreed with the payment dates set out in the agreement and the amounts he would repay. NL said that Mr Z had successfully made two of these instalments. Two further ad hoc payments were made meaning Mr Z had repaid £304.07 in total and had an outstanding balance of £195.56.

The letter went on to say that on 26 July 2019, Mr Z's contractual payment plan came to an end. His account was in arrears and it was defaulted. On 3 July 2019, Mr Z had agreed to a reduced payment plan from 31 July 2019. NL sent Mr Z an email on 22 July 2019 to confirm the dates on which payments would become due and the payment amounts. NL received one payment under this plan. Subsequent payments failed and there was no further contact.

NL said that it agreed with Mr Z's complaint in part in that a communication should have been sent prior to a default being applied. But it said that it had also placed Mr Z in a reduced payment plan upon his request to assist him in repaying his loan.

NL's final response letter concluded in NL offering to reduce Mr Z's outstanding balance from £195.56 to £150 and to remove the loan from his credit file in its entirety once repaid.

Our adjudicator's view

The adjudicator didn't recommend that the complaint should be upheld. She said that Mr Z had missed payments on the loan and that he had entered into a repayment plan with NL. She noted that NL had advised her that it had sent off a request for Mr Z's credit file to be amended. NL had told Mr Z that this could take up to 90 days. The adjudicator concluded that she wasn't going to ask NL to do any more.

Mr Z disagreed. He said that NL refused to remove the default marker from his credit file despite him having made it clear to the lender that it had no right to issue a default without first sending him advance notice. He was unhappy that it appeared that NL would only remove the notice if he repaid £150. He was also astonished that the default would be kept on his credit file for about seven months in view of the harm it had created.

As the complaint hadn't been resolved informally, it was passed to me, as an ombudsman, to review and resolve.

My initial provisional decision

After considering all the evidence, I issued my first provisional decision on this complaint to Mr Z and to NL on 8 December 2020. I summarise my findings:

I said it was clear that Mr Z had very strong feelings about NL's actions. Mr Z had raised a number of issues. I said that it was for me to decide what I considered to be the relevant issues, in order to resolve the complaint in line with my statutory duties. So, while I'd considered all that Mr Z had said, I didn't necessarily need to comment individually on all of the issues he had raised. I explained that this service didn't supervise, regulate or discipline the businesses we covered, and we had no authority to impose punitive damages. But we did aim to make good substantial distress and inconvenience suffered as a result of a business's errors.

I could firstly see that Mr Z was unhappy that he didn't receive any communications from NL after he had set up a repayment plan with it in July 2019. He thought that this meant that the loan balance had been written off. But I didn't think it was reasonable for Mr Z to have assumed this. NL had sent him an email in July 2019 setting out the repayments he needed to make and the dates he needed to make them. So, Mr Z would have been aware what he needed to do. However, NL had explained to this service that Mr Z's account had in error fallen into a "black hole" after the repayment plan was set up. This appeared to be the reason for the lack of communication by NL with Mr Z
I could also see that Mr Z was very concerned that NL had applied a default to his credit file. The default shouldn't have been registered without a default notice first being served on

Mr Z. I'd noted that NL had accepted that a default notice hadn't been sent to Mr Z. NL should have been clear with Mr Z about what it was doing and given him appropriate notice.

I'd noted that Mr Z emailed his complaint about the default to NL in early March 2020 after he'd discovered the default on his credit file. I could see that NL had provided a final response letter on 9 March 2020 and had referred to the contents of this above in some detail. As NL had accepted in that letter that it hadn't provided Mr Z with a default notice, I would have reasonably expected it to agree to remove the default at that point. Instead it offered to write off £45.56 from his loan balance and to remove the account from Mr Z's credit file when he'd paid the outstanding amount of £150.

I didn't think that NL's response was appropriate. I thought it would have been reasonable for NL to have requested the removal of the default at that point as it was applied in error. NL said that it was unable to remove the default as the account remained in arrears. But I disagreed. As the default was applied without the requisite notice having been given, it was applied in error. So, I thought it would have been reasonable for NL to have asked for its removal at that point.

I could see that Mr Z then told NL that he needed 60 days to repay the outstanding £150, but he in fact had paid NL £150 on 30 April 2020. NL then agreed to remove the default but said it would take 90 days.

I could understand that it would have been frustrating for Mr Z that the default could potentially remain on his file for such a long period. I'd listened to a recording of a call between Mr Z and NL on 30 April 2020. I could hear from the content of that call how upset he was about the matter and that he had expressed the urgency of the situation on several occasions during the call. Mr Z had also emailed NL on that date and said he would suffer extreme financial damage because of the default on his credit file. Despite this, NL said that the account got overlooked and the request to remove the default wasn't sent to the credit reference agency until 23 June 2020. It appeared that the default was removed by 23 July 2020 from Mr Z's credit file. I had seen an email from the credit reference agency to confirm this.

I'd noted that Mr Z was seeking compensation for a rejected loan application and a cancelled credit card. But I'd noted that the rejected loan wasn't for Mr Z. And I'd thought it was likely that there were other entries on Mr Z's credit file that might have caused the loan application to have been rejected. A credit check would have likely revealed the failed payments on NL's loan which might have caused a lender concern.

I hadn't seen any information about the cancelled credit card. I'd asked the adjudicator to ask Mr Z for this, but nothing had been received.

I'd also asked the adjudicator to ask Mr Z to supply further information about the ways in which he thought the default on his credit file might have affected his financial situation. But we hadn't received any response from Mr Z to this request. So, as I'd not seen any evidence to show that Mr Z had suffered a financial loss, I didn't find that it would be fair to require NL to pay compensation of £10,000 to Mr Z. I said that if further evidence of a financial loss was provided, I would consider this. But it seemed clear that by the time the default was recorded, a payment plan had been agreed under which Mr Z was to make significantly reduced payments, most of which he'd failed to make. That suggested that Mr Z was in significant financial difficulty. So, it seemed unlikely that, even if Mr Z had received a default notice, he would have been able to pay all the arrears on the account and avoid registration of a default.

But I could see that Mr Z had suffered distress and inconvenience when he'd discovered that a default had been placed on his credit file without receipt of prior notice. I could see he spent time pursuing NL about the default and his concerns were evident in his emails and from the call I'd listened to. I could also see that NL didn't request the removal of the default until almost four months after Mr Z's request that it do so. So, I'd thought that it would be appropriate for NL to pay Mr Z £200 compensation for the distress and inconvenience caused to Mr Z by NL's error. This was in addition to the amount of £45.56 which NL had already agreed to write off.

Subject to any further representations by Mr Z or NL my first provisional decision was that I intended to uphold this complaint in part. I intended to order NL to pay Mr Z £200 compensation.

NL responded to my first provisional decision to say that it had carried out an internal audit on the account, and it appeared its final response letter contained factual inaccuracies. NL did in fact issue a notice of default to Mr Z on 27 January 2020 and it had sent this Service an extract from its loan platform evidencing the date and nature of the communication. It appreciated ensuing actions had been taken due to the factual inaccuracy in the final response letter. But it said that a default marker was added to Mr Z's file in line with its terms and conditions. Mr Z had made no payment between 22 July 2019 and 30 April 2020 and the default notice was sent prior to the marker being added to Mr Z's credit file. NL suggested that the removal of the valid default marker was sufficient compensation for Mr Z's complaint. It said that if it had provided factual information to the Service in the first instance it was possible that I would have agreed the default marker was registered fairly and in line with its legal obligations.

Mr Z responded to my first provisional decision by sending this service an extract from his credit file to show the default marker, and brief information about his company's loan and his credit card application.

My second provisional decision

After considering all the evidence, I issued a second provisional decision on this complaint to Mr Z and to NL on 29 January 2021. I summarise my findings:

I'd noted NL's response to my first provisional decision and asked the adjudicator to ask NL for the address to which its default notice was sent. NL responded to say it was sent to the address which Mr Z gave it in his application form. I'd noted that this was different to the address in Mr Z's complaint form and asked the adjudicator to ask Mr Z when he'd moved. Mr Z said that he'd moved in May 2019 to a different address. But he'd said that the main mode of communication with NL was by email and it also had his telephone number.

I'd also asked the adjudicator to ask NL for a copy of its default notice and for clarification as to when the default was applied to Mr Z's credit file. NL had sent us a copy of the default notice dated 27 January 2020. NL said that it had updated Mr Z's credit file in February 2020 as he had failed to pay in line with the default notice it had issued in January 2020.

I'd noted that Mr Z had changed address before the default notice was sent to him. I could see that his credit agreement said:-

"By having provided us with an email address, you agree that we may service any notice or demand on you by sending it to that email address, serving it on you personally or leaving it or sending it by prepaid envelope addressed to you at your current address or last known business or private address. If sent by first class post it will be assumed to have been received by you 48 hours after posting."

I'd thought Mr Z ought to have understood from this provision that he needed to keep NL updated about his current address in view of its option to send notices or demands to his last known address by post.

I couldn't see that Mr Z had given NL his new address before 27 January 2020. So, I couldn't say that NL had acted incorrectly in sending the default notice to Mr Z's last known address. Mr Z had said that he didn't receive the default notice. But it was clear that was because he had changed address. That wasn't something I could hold NL responsible for. It was ultimately the responsibility of Mr Z to keep NL informed of changes to his address and contact details.

I could see from NL's contact notes that Mr Z had been in contact with NL many times by email and phone after he'd moved but before the default notice was sent. So, Mr Z had the opportunity to give it his new contact details.

I said that I appreciated Mr Z's strength of feeling and I understood that he was concerned about having a default on his credit file. But I didn't think that NL had acted wrongly or unfairly in sending the default notice to Mr Z's last known address.

But I could see that Mr Z was provided with incorrect information on a number of occasions by NL and given the time it had taken to give Mr Z the correct information, Mr Z had been caused undue distress and inconvenience. In light of this, I thought it would be appropriate for NL to pay Mr Z £100 compensation for this. For the avoidance of doubt, this was in addition to the amount of £45.56 which NL had already agreed to write off.

So, subject to any further representations by Mr Z or NL, my second provisional decision was that I intended to uphold this complaint in part. I intended to order Novaloans Limited, trading as Cash4UNow, to pay Mr Z £100 compensation.

NL responded to my second provisional decision to say that it was willing to accept my findings and the offer of compensation to Mr Z.

Mr Z responded to my second provisional decision to say that NL never showed any interest in his address information during email and telephone conversations. He said that his credit card provider had refused to renew two of his credit cards and the first refusal had occurred when the default was on his credit file and the credit card provider had done a credit check. Mr Z also said that he had no specific evidence about the £10,000 loan to the limited company of which he was the sole director.

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.

We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

I note that Mr Z said that NL had shown no interest in his address information. But as I'd said above, I think it was Mr Z's responsibility to keep NL informed of changes to his address and contact details.

I also note that Mr Z's credit card provider had refused to renew one of his credit cards when the default was on his credit file and that Mr Z had no specific evidence about the loan to his limited company. But as I'd said above, I think it is likely that there were other entries on

Mr Z's credit file that might have caused the loan application to have been rejected and the credit card not to have been renewed.

So, after considering the points made by Mr Z and NL, I'm not persuaded to change my findings from those set out in my second provisional decision. It follows that I uphold part of the complaint and require NL to pay Mr Z some compensation as set out below.

My final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint I order Novaloans Limited, trading as Cash4UNow, to pay Mr Z £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 15 March 2021.
Roslyn Rawson
Ombudsman